(b) (5)

(b) (5)

6-22-84 - desc re deeds

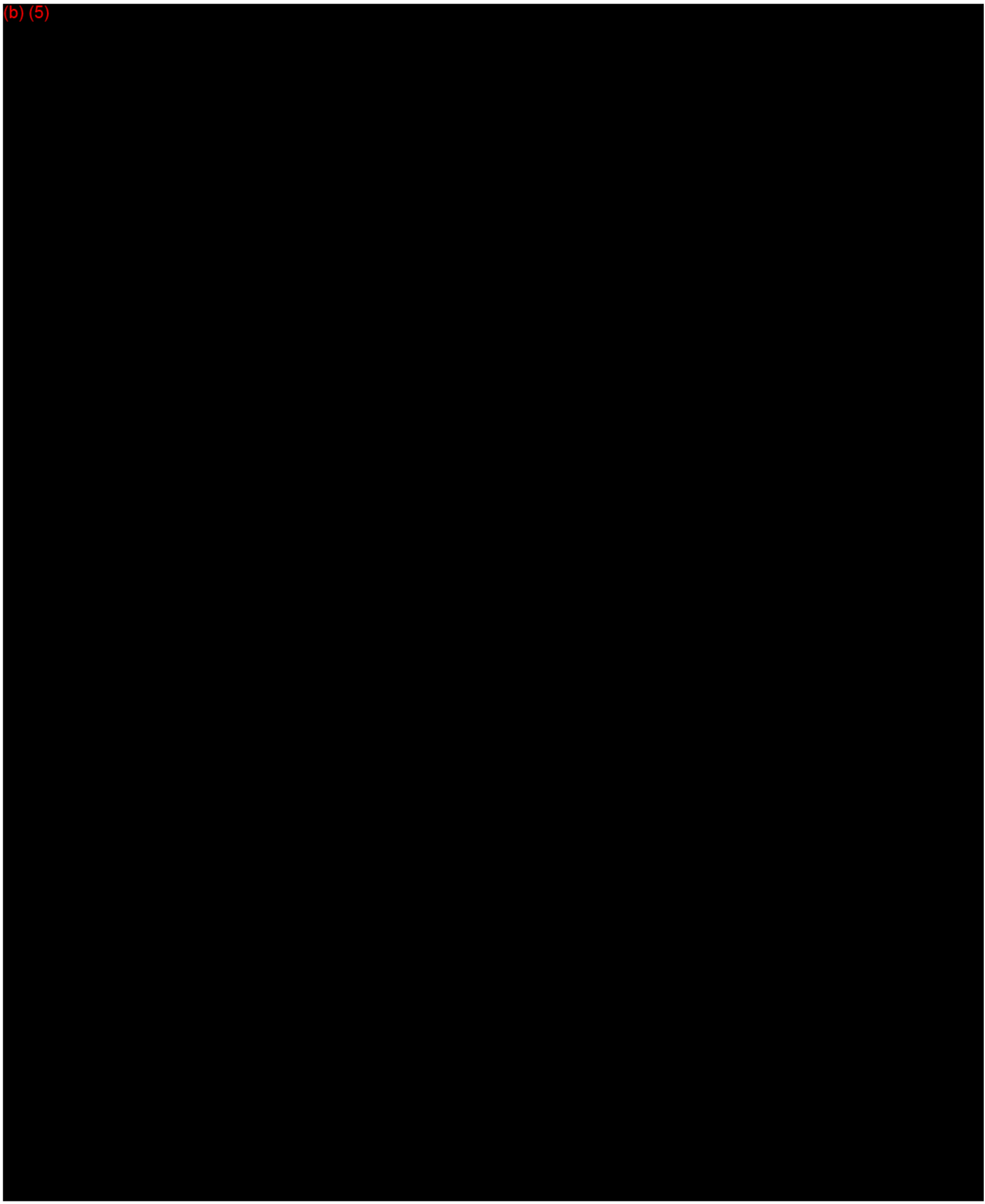
(b) (5)

(b) (5)

[redacted]

AA-55128

(b) (5)

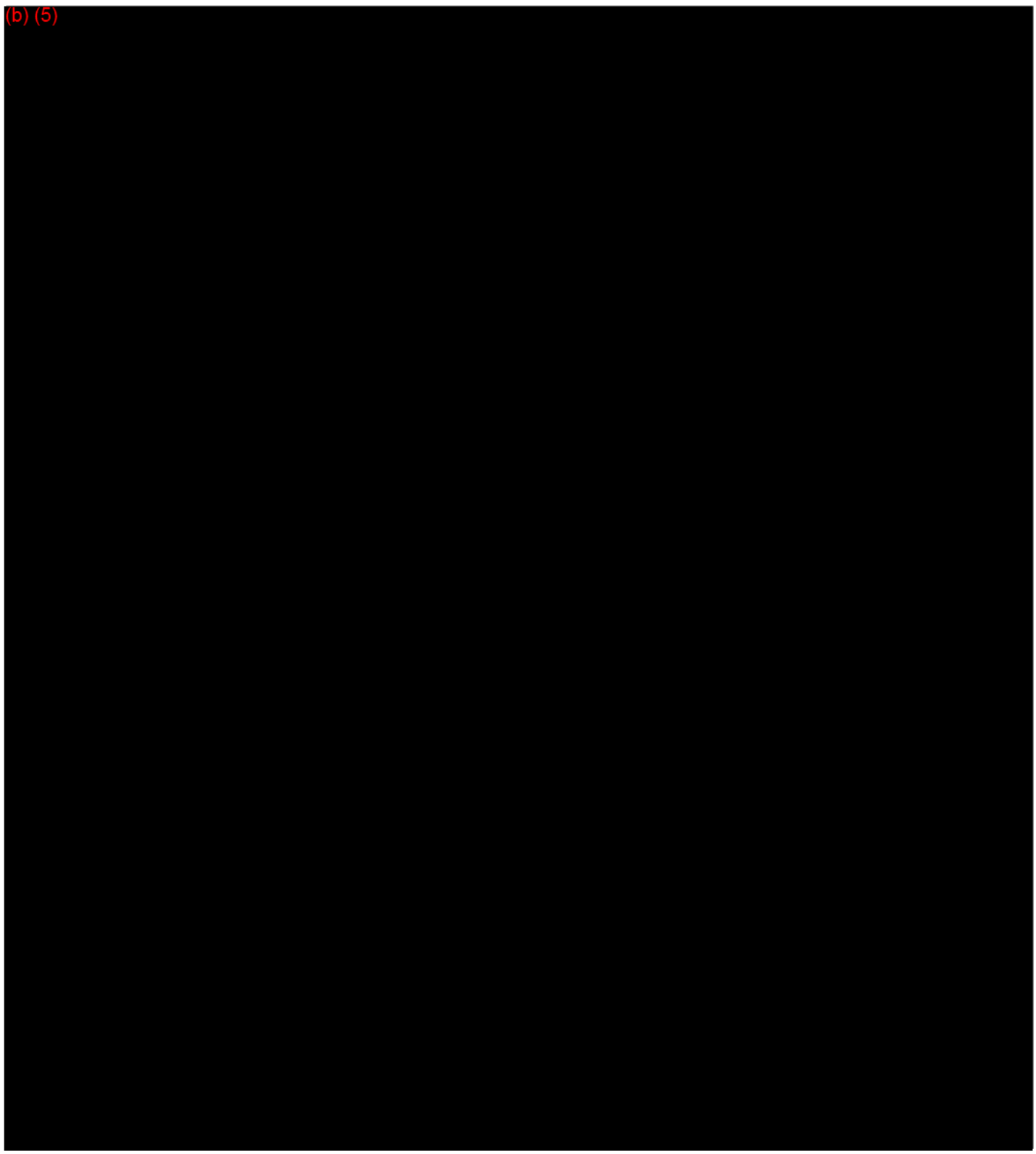

(b) (5)

AA-55128

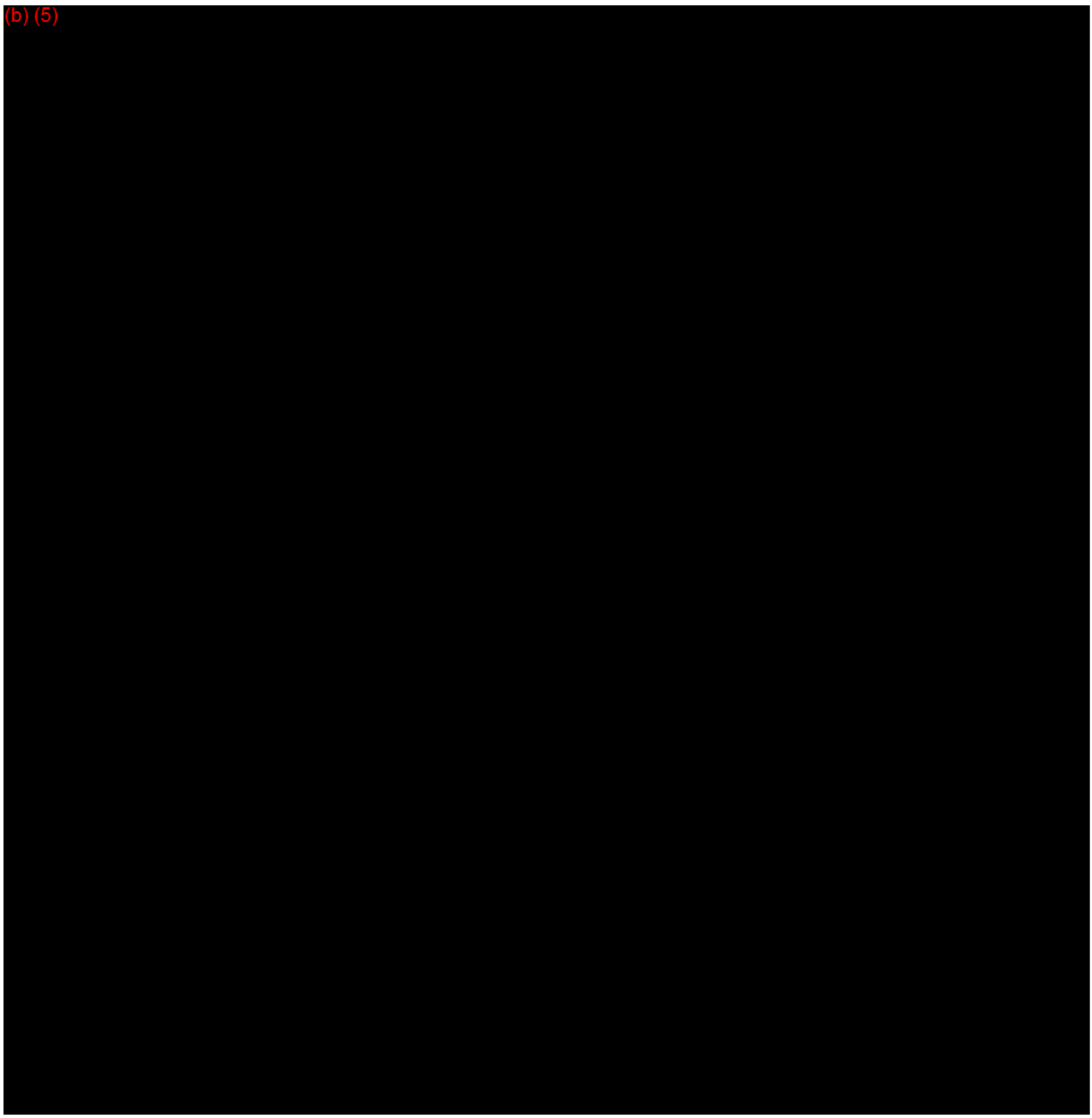
(g) (q)

AA-55128

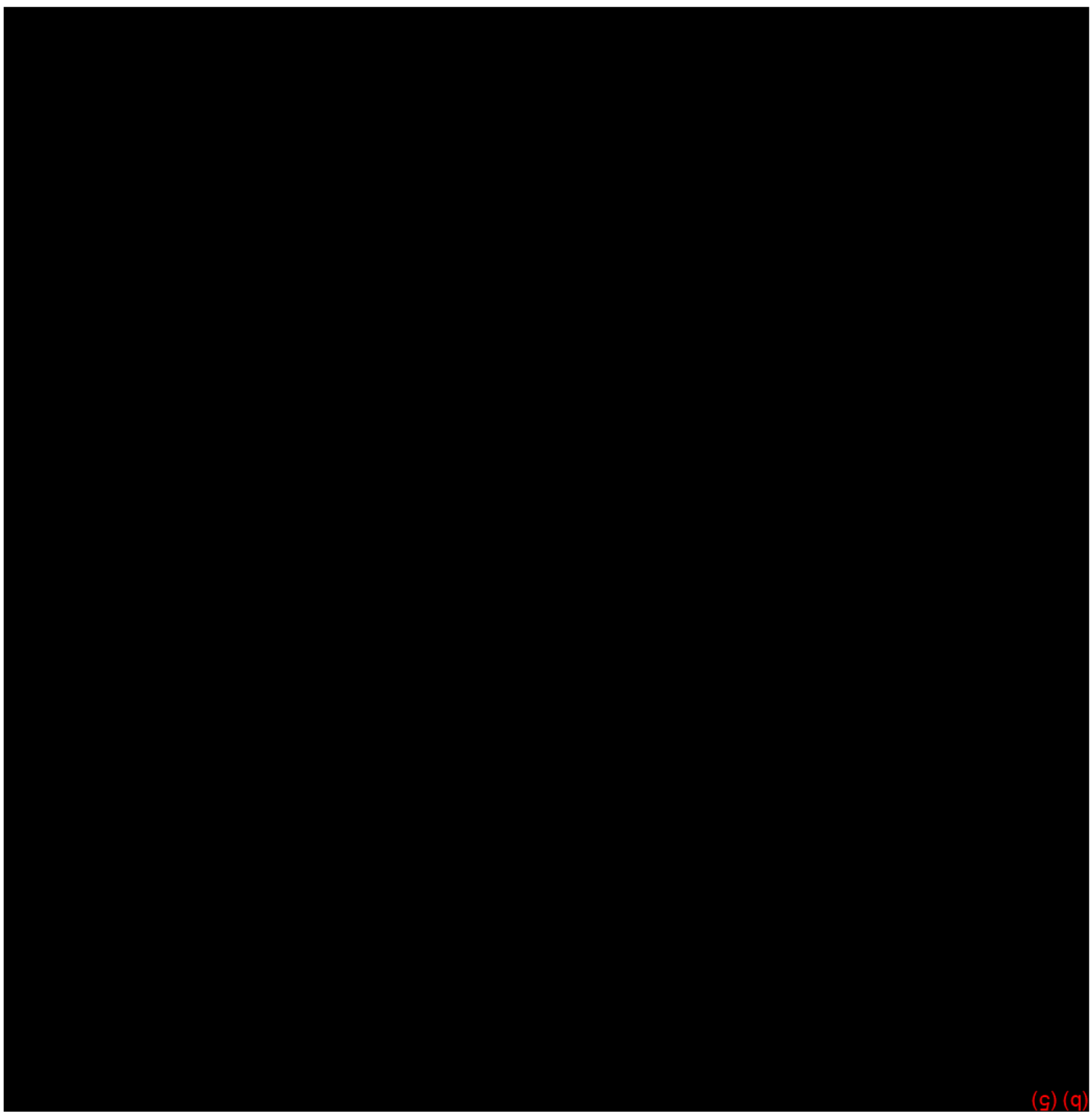
(b) (5)



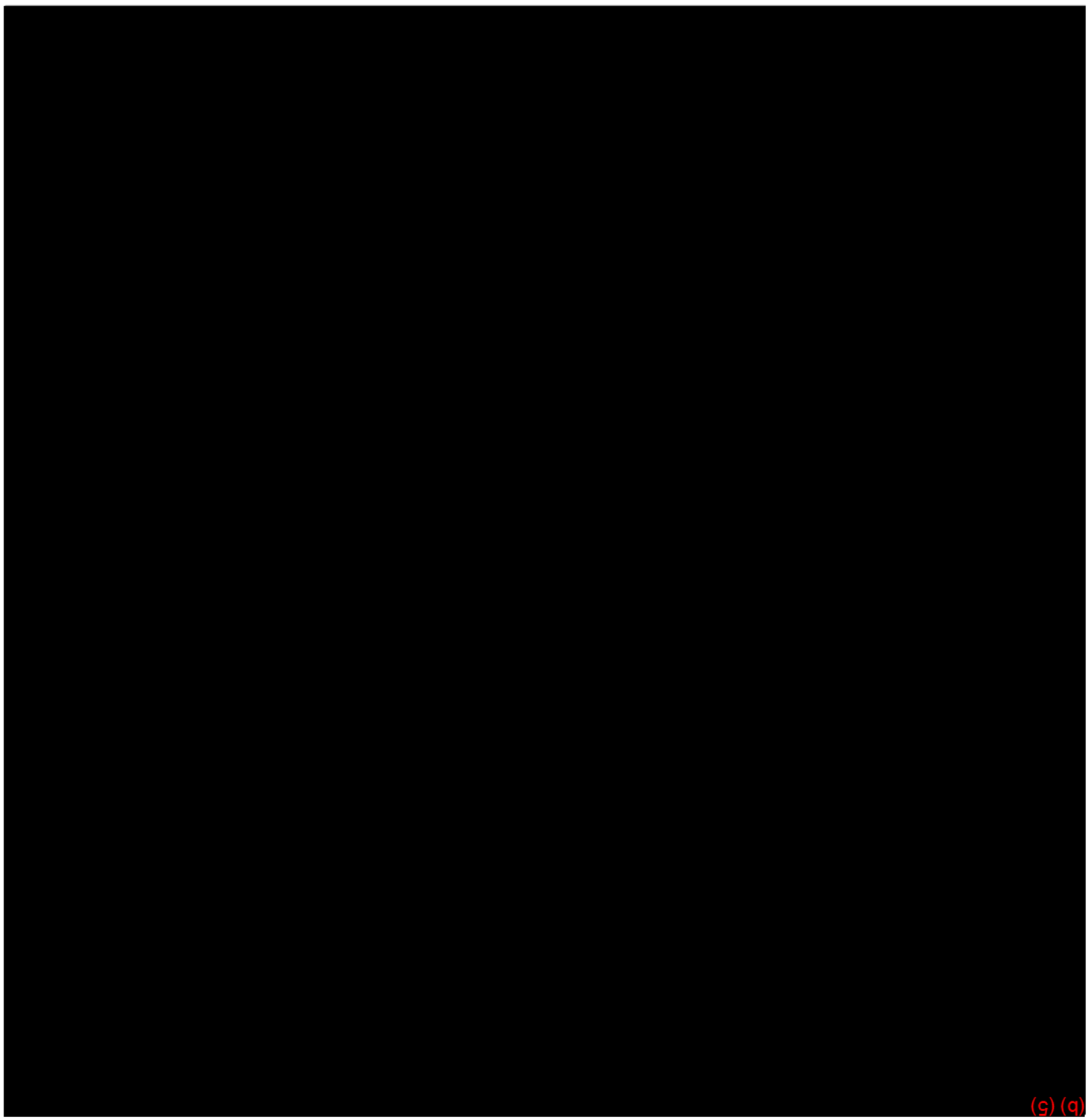
AA-55128



AA-55128

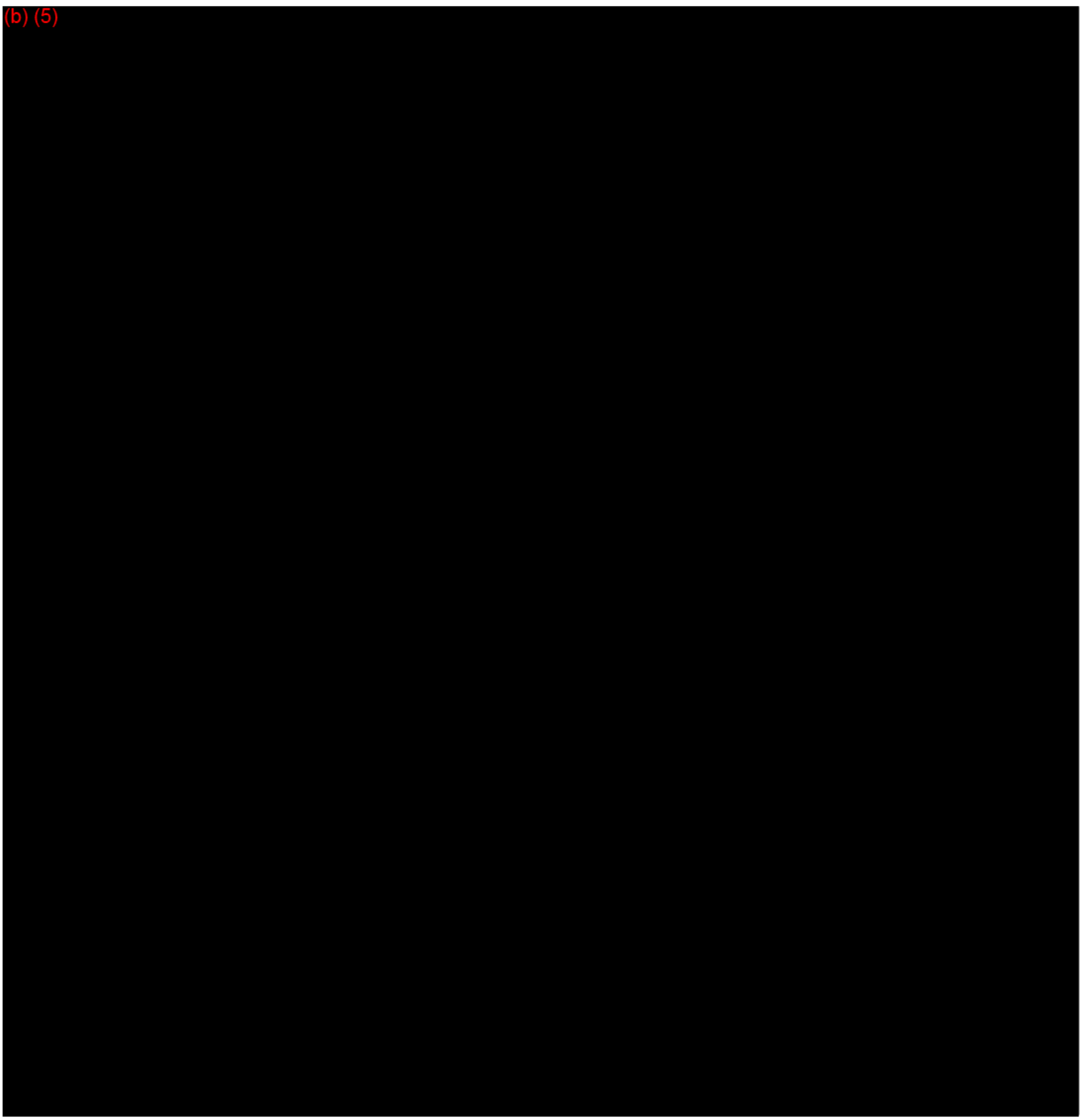


AA-55128



(g) (q)

AA-55128



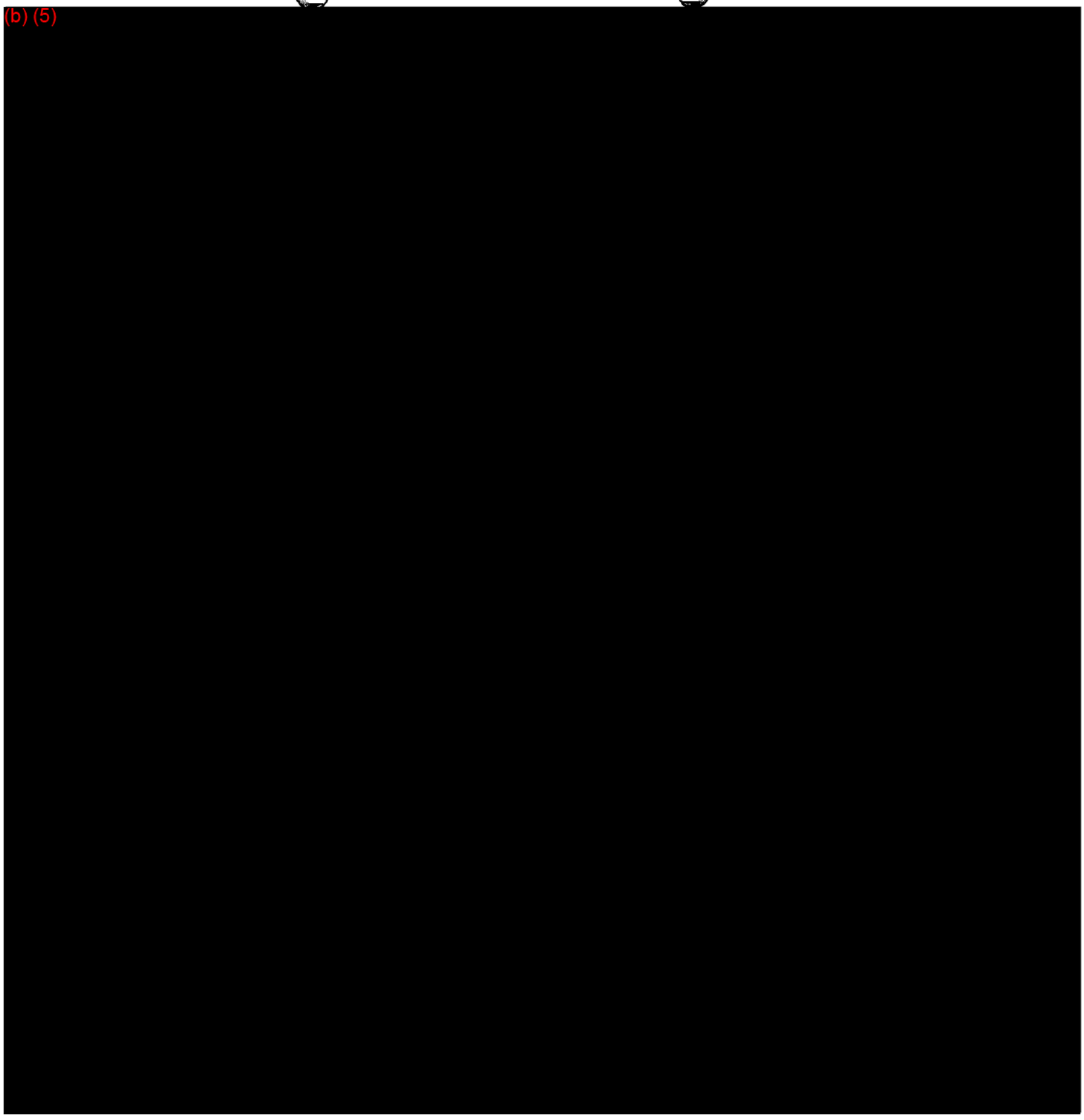
UNITED STATES DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Alaska Region
4230 University Drive
Suite 300
Anchorage, Alaska 99508-4626

Telephone (907) 271-4131 Fax (907) 271-4143

FAX TRANSMITTAL COVER SHEET

(b) (5)

[redacted]


(b) (5)

Hopewell, Dennis

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

(b) (5)

[redacted]

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

(b) (5)

3-26-84

(b) (5)

[redacted]

(b) (5)

[redacted]

9-JP-84

United States Department of the Interior

OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

RIR file

IN REPLY REFER TO:
BLM-AK-0124

May 14, 1984

MEMORANDUM

TO: Mike Finley
Assistant Regional Director, Operations
Alaska Region
National Park Service

FROM: Deputy Regional Solicitor
Alaska Region

SUBJECT: Possible Transfer of the Alaska Railroad.

(b) (5)

[redacted]

(b) (5)

[redacted]

2841 (960)
AROO

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

2841 (960)
AROO

(b) (5)

960:GBauer:cje:4/5/83
LKB#13*U

DRAFT

2841 (960)
AROO

(b) (5)

[redacted]

DRAFT

Hopewell, Dennis <dennis.hopewell@sol.doi.gov>

Conveyance of Railroad Right-of-way at Potter Hill

1 message

Hopewell, Dennis <dennis.hopewell@sol.doi.gov> Wed, Dec 12, 2012 at 5:15 PM
To: Steven Scordino <steven.scordino@sol.doi.gov>, Margaret McDaniel <mmcdanie@blm.gov>
Bcc: Dennis Hopewell <dennis.hopewell@sol.doi.gov>

(b) (5)

(b) (5) [redacted]

BLM.AK.4458
(LLAK944200)

December 12, 2012

Memorandum

To: Margaret McDaniel, Land Law Examiner,
Bureau of Land Management, Alaska State Office

From: Dennis J. Hopewell, Senior Attorney

Subject: Alaska Railroad Transfer – Potter Hill

Introduction

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

4230 University Drive
Suite 300
Anchorage, Alaska 99508–4626
(907) 271–4131

BLM.AK.4458
(LLAK944200)

December 20, 2012

Memorandum

To: Margaret McDaniel, Land Law Examiner,
Bureau of Land Management, Alaska State Office

From: Dennis J. Hopewell, Senior Attorney

Subject: Alaska Railroad Transfer – Potter Hill

(b) (5)

[redacted]

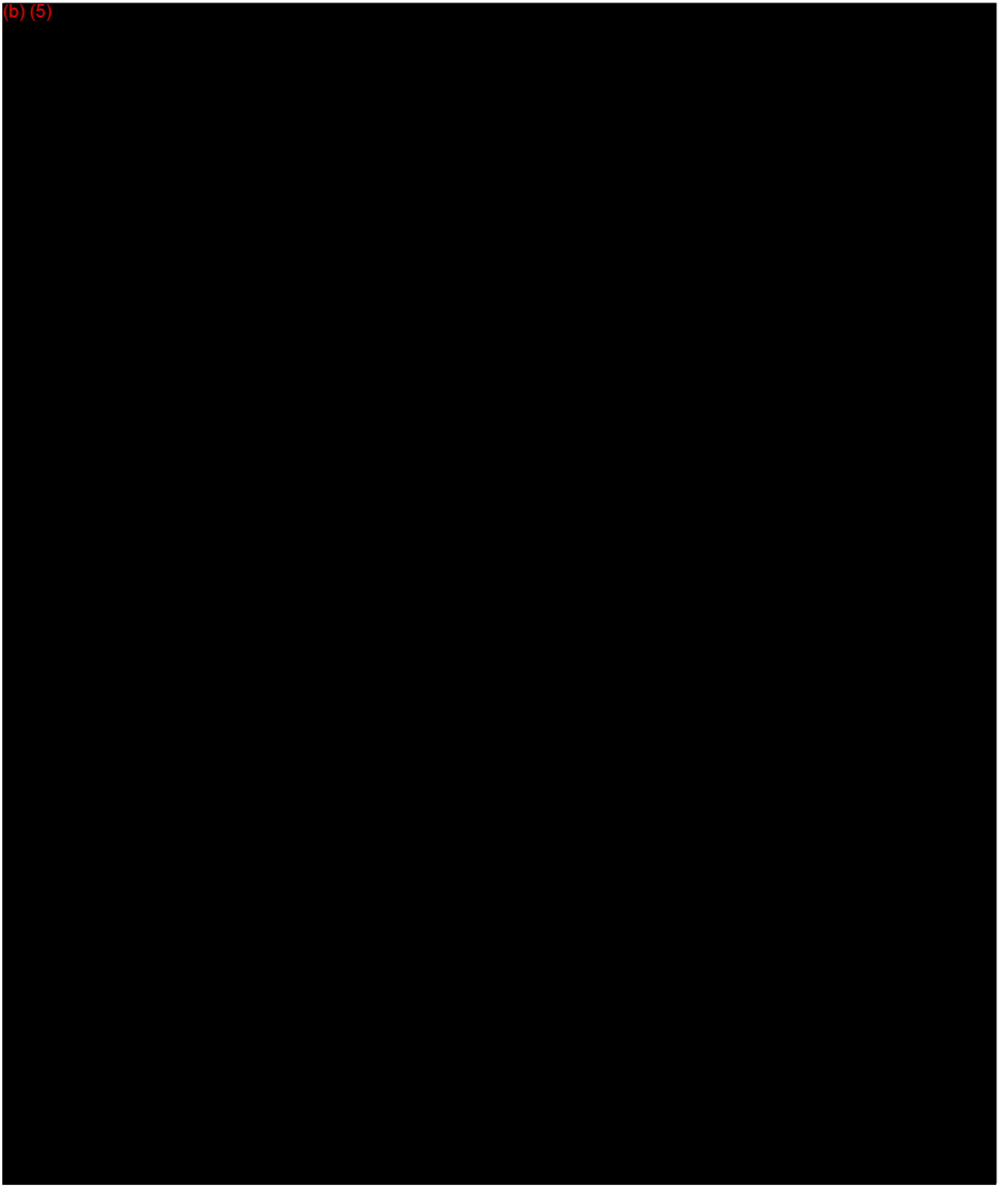
A

Background

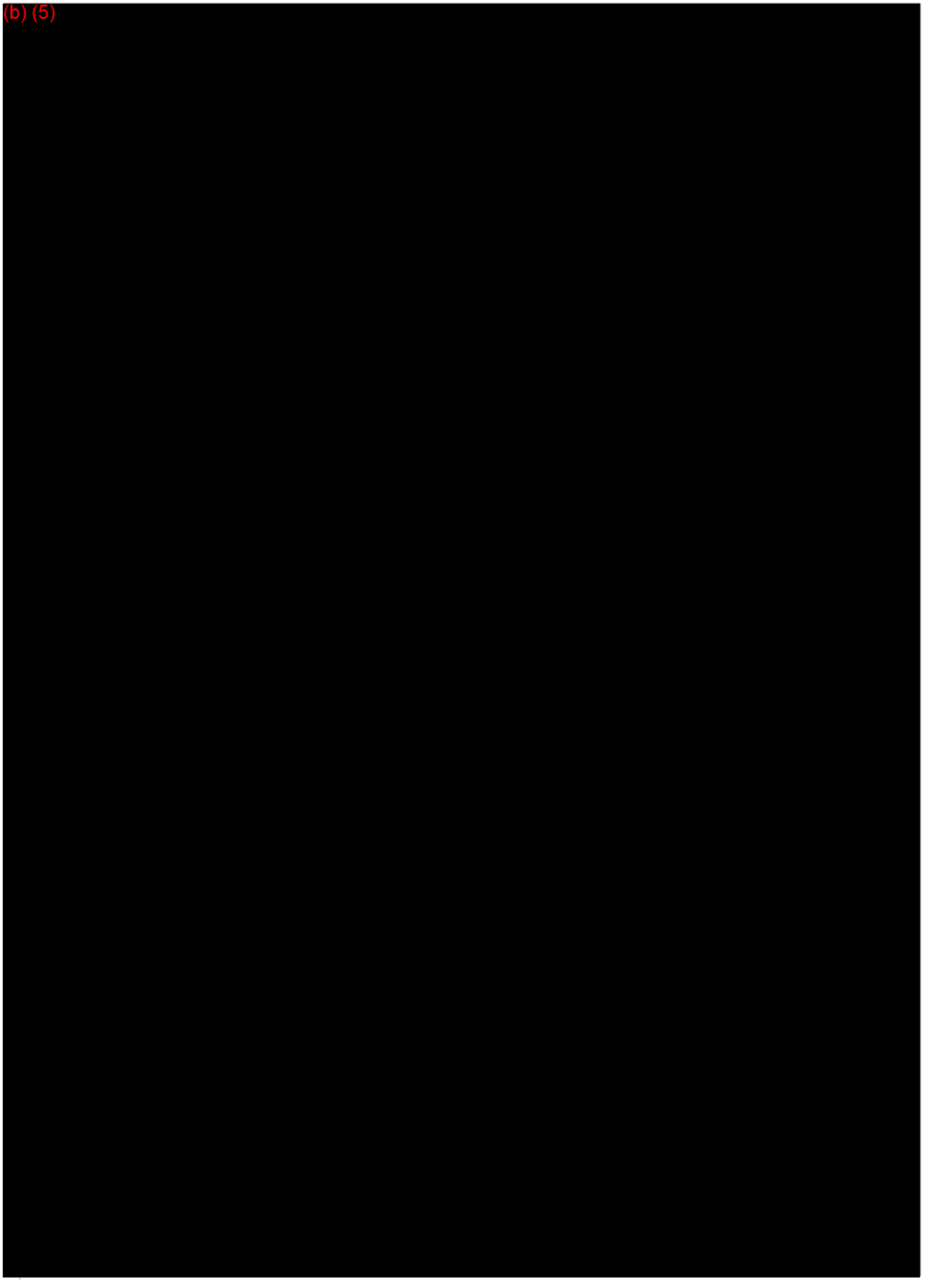
(b) (5)

[redacted]

(b) (5)



(b) (5)



(b) (5)

5/2/83

on Fri 4-29 spoke w O'Leary abt many RR transfer issues, incldg

potential pros w. N. allmts & fact that I wd be respdg ~~to~~ to formal op reqst & wd. consult w. sum sur to ans.

also told him we had formal op. reqst on Chickaloon spur issue [Harrison]

talked abt pr. convey^s - told him BLM is going to examine deeds ~~where~~ to see if anythg oth than ~~an~~ ~~pot~~ excl. use ie. resv? ___

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

FILE

IN REPLY REFER TO:

July 20, 1983

MEMORANDUM

To: State Director
Bureau of Land Management
Alaska State Office

From: Attorney
Office of the Regional Solicitor
Alaska Region

Subject: Impact of the Alaska Railroad Transfer Act on Native Allotments (960)

INTRODUCTION

You have requested our opinion on various Native allotment issues which have arisen due to passage of the Alaska Railroad Transfer Act of 1982 (ARTA), P.L. 97-468. For Native allotments which encompass a portion of the railroad right-of-way, the following questions require analysis:

1. Can BLM proceed with adjudication of Native allotments not approved prior to the passage of ARTA?

2. Can BLM presently issue Certificates for Native allotments?

3. What affect does ARTA have on Native allotments which were administratively approved, legislatively approved, or certificated prior to passage of ARTA?

SHORT ANSWERS

While each of your questions will be discussed in some depth, concise answers are set out in this paragraph. As a beginning point, BLM has both the authority and the duty to

adjudicate Native allotments. Certificates of Allotment can be issued as long as an appropriate reservation for the railroad right-of-way is made in the Certificate. Previously conveyed and/or approved Native allotments are subject to the exclusive-use easement which must be transferred pursuant to ARTA but, upon transfer, the reservation of a future right-of-way imposed pursuant to 43 U.S.C. 975d will no longer have any viability.

DISCUSSION

I.

Responsibility and Authority to Adjudicate

Section 606(b)(2) of ARTA not only authorizes the Department of the Interior to adjudicate pending Native allotments but requires that the adjudication be completed within three years. In specific, section 606(b)(2) provides:

> The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this title. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act....

The BLM can, consequently, apply its normal procedures to the adjudication of Native allotments potentially encompassing a portion of the Alaska Railroad right-of-way. Where the Native allotment applicant's use and occupancy does not predate the railroad right-of-way, the application can still be granted. While Native allotments are limited to vacant, unappropriated and unreserved lands,[1/] the Alaska Railroad's right-of-way did not appropriate or reserve the fee in such a way as to require exclusion of a strip of land from an allotment. The Alaska Railroad, 65 IBLA 376 (1982).[2/] However, an appropriate

---

1/ 43 CFR 2561.0-3.

2/ The Railroad has requested reconsideration of this decision but, unless and until the decision is reversed, it is binding upon the Department of Interior.

right-of-way reservation must be made in the subsequent conveyance document. [3/] Id. This same conclusion is reached if the potentially exclusive-use criteria set out at 43 CFR 2561.0-5 is applied. Since a Native allotment applicant's use and occupancy of land encompassing a portion of the Alaska Railroad's right-of-way cannot be "potentially exclusive of others," unless it was initiated prior to the Railroad's location of the right-of-way, the right-of-way interest must necessarily be excluded from the allotment.

II.

Issuance of Certificates

Issuance of a Certificate of Allotment, which is the title document for Native allotments, [4/] is also allowed by ARTA. This is most clearly seen in section 606(b)(4)(B) of ARTA where claims of valid existing rights, such as Native allotment applications, are accorded the same protection and treatment as lands already conveyed out of federal ownership. To us, this indicates a congressional recognition that rights to certain land had vested. With Native allotments, rights become vested when the requisite use and occupancy is completed and a timely application is filed. United States v. Donald E. Flynn & Heirs of Henry Orock, 53 IBLA 208 (1981). An even stronger case exists for Native allotments finally approved by the Department prior to passage of ARTA and those Native allotments legislatively approved by section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487 (94 Stat. 2371). As stated in the Regional Solicitor's memorandum of March 10, 1981, " ... title passes upon legislative approval, be it equitable title or legal title."

Authority to convey is also implicit in section 606(b)(2) of ARTA. That section, set out above, mandates that the entire administrative adjudication process be completed within three years. Such a process ordinarily

---

3/ The appropriate language for an exclusive-use easement will be set out in the next section.

4/ See, State of Alaska, 45 IBLA 318 which holds that a Certificate of Allotment passes restricted legal title to the allottee.

includes all necessary adjudication work, administrative appeals and issuance of a title document. Thus, it appears that approval and conveyance of lands under valid existing claims was contemplated in ARTA. Section 605(b)(2) which limits disposition of the Railroad's real property to disposals "required by law," does not, however, have direct bearing on the question of BLM's authority to convey. That section applies to transactions by the Department of Transportation and not the BLM. In any case, conveyance to a Native allotment applicant who has vested a right to a particular tract of land is, in our opinion, "required by law."

While issuance of a Certificate of Allotment is, consequently, proper, the Certificate must expressly reserve a site specific right-of-way to the United States for use by the Alaska Railroad of all existing railroad rights-of-way. The Alaska Railroad, supra. Such a railroad reservation is, by its nature, exclusive of competing or inconsistent uses and appears to be the type of exclusive-use easement which section 606(b)(4)(B) of ARTA delineates as the minimum interest to be transferred under ARTA. Since Congress identified the nature of the Railroad's minimum interest in ARTA as an exclusive-use easement, we suggest that your reservation be worded substantially as follows:

> Reserving to the United States an exclusive-use easement for the Alaska Railroad, more particularly described as [give 200-foot width and the appropriate legal description of the railroad right-of-way if one can be obtained].

III.

ARTA's Affect on Previously Conveyed and/or Approved Native Allotments

As already stated, section 606(b)(4)(B) of ARTA provides that if the Alaska Railroad is transferred out of federal ownership, the minimum interest to be conveyed for the railroad right-of-way is an exclusive-use easement. Thus, in every instance where a previously approved or conveyed allotment includes railroad right-of-way, an exclusive-use easement will be transferred and the Native allotment will be subject to the exclusive-use easement even if there is no mention of

a railroad right-of-way in the approval document or Certificate of Allotment. This is consistent with our view, expressed above, that an allotment applicant could not normally have potentially exclusive use of the railroad right-of-way and would take the allotment subject to the existing right-of-way.

However, the right to an additional right-of-way in the future, pursuant to 43 U.S.C. 975d, dies with the transfer of the Alaska Railroad. Section 615(a)(1) of ARTA specifically repeals 43 U.S.C. 975, et seq. in its entirety and there will, consequently, be no authority for the United States to construct additional railroad rights-of-way in Alaska. In addition, section 609 of ARTA provides that any future right-of-way must be obtained from the current land holder under other applicable laws. For federal lands, the legislative history clarifies that future rights-of-way will be processed under such laws as the Federal Policy and Management Act of 1976, 43 U.S.C. 1701, et seq., and not via use of 43 U.S.C. 975d. Congressional Record, H 10695 (December 21, 1982). Moreover, it is our opinion that the 43 U.S.C. 975d reservations contained in prior conveyances are not transferrable. Thus, if and when the Alaska Railroad is transferred, the 43 U.S.C. 975d reservation will no longer have any viability. Until transfer, BLM should continue to reserve a site specific right-of-way for existing railroad rights-of-way as well as the 43 U.S.C. 975d reservation for future rights-of-way.

CONCLUSION

In summary, it is our opinion that BLM can proceed with adjudication and certification of Native allotments provided a site specific, two-hundred-foot, exclusive-use easement is reserved to the United States for the Alaska Railroad. Previously approved and/or certificated Native allotments are also subject to the exclusive-use easement but, once the Alaska Railroad is transferred, the 43 U.S.C. 975d reservation will no longer be viable.

Dennis J. Hopewell

cc: Area Director, BIA, JAO

bcc: Patent Section (965)
Railroad Project (960)
Chief, Lands Operations (965)
Allotment Coordinator (930)

LAW OFFICES OF
WICKWIRE, LEWIS, GOLDMARK
& SCHORR
A PROFESSIONAL CORPORATION

500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104

(206) 622-9603

THOMAS J. BREWER
DAVID C. CROSBY
CHARLES A. GOLDMARK
JOHN W. HANLEY, JR.
B. GERALD JOHNSON
KEVIN F. KELLY
O. YALE LEWIS, JR.
WENDY F. LIEBOW
CHRISTOPHER G. OECHSLI
GREGORY M. O'LEARY
JOHN W. PHILLIPS
JON M. SCHORR
JAMES WICKWIRE
PEGGY J. WILLIAMS

September 16, 1983

Mr. Dennis J. Hopewell
Office of the Solicitor
Alaska Region
United States Department of the
Interior
701 "C" Street
Box 34
Anchorage, Alaska 99513

Dear Dennis:

Thanks for forwarding to me copies of the memoranda on § 975d right-of-way reservations and on the impact of the Alaska Railroad Transfer Act on Native allotments. I think the opinion on the non-transferability of the floating § 975d reservation will be particularly useful in removing a cloud from private property in Alaska and averting any wild schemes in the future to exercise the reservation. There are a few minor points in the opinions that I would like to discuss with you next time I am in Anchorage and we have a chance to get together.

I am sorry for the delay in acknowledging receipt of these opinions, but I was on vacation (in France and Italy) for the month of August. Mary is still in Italy doing research for a book and will be back in late October. I do not know when I will be in Anchorage again, but, assuming the railroad issues begin to move after the USRA appraisal is out, I anticipate I will be in Anchorage sometime this Fall and will look you up then.

Regards,

WICKWIRE, LEWIS, GOLDMARK
& SCHORR

Gregory M. O'Leary

GOL:js

RECEIVED
REGIONAL SOLICITOR, USDI
SEP 20 1983
ANCHORAGE, ALASKA

U.S. Department
of Transportation

**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

January 25, 1984

Dennis J. Hopewell, Esq.
Office of the Regional Solicitor
Bureau of Land Management
U. S. Department of Interior
701 C Street, Box 34
Anchorage, Alaska 99513

Jack McGee, Esq.
Assistant Attorney General
Department of Law, Transp. Section
State of Alaska
Pouch K
Juneau, Alaska 99811

Gregory M. O'Leary, Esq.
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

Dear Dennis, Greg, and Jack,

As we agreed last Wednesday, enclosed are marked up copies of the proposed Interim Conveyance Fee Title, Patent, Exclusive Use Easement Deed and License documents required by Section 604(b) of ARTA. These enclosures contain both FRA's and the ARR's suggestions.

I assume that you are also exchanging your comments today as we agreed. Further, it is my understanding that Dennis will prepare revised composite revisions of each document for distribution at our "lawyers' drafting" session scheduled for 9:00 a.m., Monday, January 30th, in a conference room at Dennis' offices.

It seems to me that these are primarily technical drafting matters not necessitating any major policy decisions although the "fitting" of some of the various real estate interests into the documents may surface certain outstanding disputes which still remain to be resolved. We will be prepared to commit our clients to final forms of these "concept documents", and I assume that you will be authorized to do the same. Hence, I trust that we will be able to finalize as many of the documents as possible on Monday so that BLM's conveyance instruments preparation project under Gary Seitz's direction can begin in a timely fashion on February 1st.

With best wishes.

Sincerely,

G. Joseph King
Special Counsel
for The Alaska Railroad

DRAFT
Revised
JAN 16 1984

DEED FOR

EXCLUSIVE USE EASEMENT ~~DEED~~
AND FOR TITLE TO RAILROAD-RELATED IMPROVEMENTS AND FACILITIES

WHEREAS

The State of Alaska

is entitled to a conveyance pursuant to Sec. 604 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2559), of 1) an exclusive use easement, as defined in subsection 603(6) of the Alaska Railroad Transfer Act, for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve, and 2) title to all railroad-related improvements and facilities within such right-of-way, more particularly described as follows:

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall be not less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N½SW¼NE¼ of Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed)

T. 14 S., R. 7 W.
Secs. 4, 26, and 35.

T. 15 S., R. 7 W.
Secs. 1 and 2.

which begins at Alaska Railroad milepost ____ and ends at Alaska Railroad milepost ____, extending approximately Approximately 31.7 miles, and containing approximately ____ acres.

DRAFT

1) title to all railroad-related improvements and facilities from milepost ____ to milepost _____, and 2)

DRAFT
Revised
JAN 1 6 1984

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska,

containing approximately .4 acres.

(Add description of railroad-related improvements as set forth in Exhibit 3, as amended)

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska ~~above named claimant~~, an exclusive use as defined in section 603(6) of the Alaska Railroad Transfer Act, easement, which affords the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

DRAFT

DRAFT
Revised
JAN 1 6 1984

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right, ~~in~~ in the easement holder's discretion, ~~and~~ to fence (subject to the concurrence of the Secretary of the Interior, as limited by section 608(d) of the Alaska Railroad Transfer Act) ~~Interior) to fence~~ all or part of the lands subject to this easement and to realign and affix track, roadbed, fixtures, ~~and~~ and other improvements structures to such lands and to exclude other persons from all or part of such lands.

no hack as closely as poss

The exclusive use easement granted, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the aforementioned lands subject to such easement ~~as~~ were utilized ~~on the aforementioned lands~~ as of January 14, 1983.

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted,

Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560), the following easements for

DRAFT

DRAFT
Revised
JAN 1 6 1984

administration by the Secretary of the Interior, ~~which use shall not interfere with railroad operations and support functions:~~ which are identified in the report required by section 605(a) of the Alaska Railroad Transfer Act, and which such easements and use of such easements shall not interfere with operations and support functions of the railroad, its successors and assigns:

The grant of the herein described lands is subject to the following reservations, conditions and limitations:

(1) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Secs. 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska; and

DRAFT

DRAFT
Revised
JAN 16 1984

(2) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sec. 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska.

(3) Laws and regulations for the protection of park values pursuant to Sec. 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574), but the Secretary of the Interior shall not act pursuant to said section without consulting the Governor of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions.

Provided that, if the State of Alaska discontinues use of all or part of those properties heretofore described, such properties or part thereof (including permanent improvements to the property) pursuant to section 610 of the Alaska Railroad Transfer Act, shall revert to the United States, and jurisdiction over that property shall be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve. The Attorney General of the United States, upon the request of the Secretary of Transportation or the Secretary of the Interior, shall institute appropriate proceedings to enforce this reversion in the United States District Court for the District of Alaska.

DRAFT

DRAFT
Revised
JAN 16 1984

The State of Alaska shall be considered to have discontinued use, pursuant to subsection 610(b) of The Alaska Railroad Transfer Act, when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effected of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

DRAFT

DRAFT
Revised
JAN 16 1984

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, 1984, in Anchorage, Alaska.

UNITED STATES OF AMERICA

~~Secretary of Transportation~~

By: _____

John Riley, Administrator,
Federal Railroad Administration,
for the Secretary of Transportation

DRAFT

JAN 2 0 1984

LICENSE

WHEREAS

THE STATE OF ALASKA

is entitled to an exclusive license pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982, (96 Stat. 2556, 2559) pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights, to the following described rail properties:

(parcel description)

DRAFT

AND

A right-of-way extending not less than one hundred (100) feet on either side of ~~the~~ any main line or branch line of the Alaska Railroad, (except ~~those areas of a lesser width resulting from military jurisdiction or non-Federal ownership of lands abutting the main line or branch line rights of way~~)* within the following described lands:

(right-of-way description)

*Where the right-of-way is a lesser width than 200 feet, specify that part of the right-of-way with particularity.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska, an exclusive license which, pursuant to section 604(b)(4) of the Alaska Railroad Transfer Act, affords the holder the following:

The exclusive right to use, occupy, and directly receive all benefits of the rail properties described above for the operation of the State-Owned Railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation.

DRAFT

EXCEPTING AND RESERVING TO THE UNITED STATES from the license so granted:

1. Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560) the following easements for administration are reserved to the United States under the jurisdiction of the Secretary of the _____. Such easements for administration and use of such easements shall not interfere with ~~railroad~~ operations and support functions of the railroad.

JAN 2 0 1984

(List Easements Here)

THE LICENSE GRANTED ON THE ABOVE DESCRIBED LANDS IS SUBJECT TO:

1. Unresolved claims of valid existing rights, pending conveyance in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights.

Delete

I don't think we can do this

DRAFT

1. Specify with particularity as to party, date, duration and identification of origin of valid leases, permits, etc. (e.g. document number, act or other origin of valid leases, permits, etc.)

2. Valid leases, permits, and other instruments issued before (date of transfer) (pursuant to Sec. 604(b)(4) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560)).

2. The requirements of Section 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574) that the portion of rail properties within the boundaries of the Chugach National Forest shall be subject to the laws and regulations for the protection of forest values. (If applicable)

and that the Secretary of Agriculture shall not act pursuant to said Section 608(d) without consulting the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions.

OK

except, however, where such conveyance includes any part of the railroad's existing right-of-way, the United States reserves for, grants, and conveys to the State not less than an exclusive use easement as defined in Section 603(b) of the Alaska Railroad Transfer Act in said right-of-way.

JAN 2 0 1984

Upon any conveyance or final administrative adjudication of any of the rail property described above, that portion of the license granted herein for such property shall automatically terminate for such property (pursuant to Sec. 604(b)(4) of the Alaska Railroad Transfer Act of 1982, (96 Stat. 2556, 2560)).

The provisions of Section 606(e) of the Alaska Railroad Transfer Act are incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

DRAFT

UNITED STATES OF AMERICA

~~Secretary of Transportation~~

By: _____

John Riley, Administrator
Federal Railroad Administration,
for the Secretary of Transportation

DRAFT
Revised
JAN 1 6 1984

PATENT

WHEREAS

The State of Alaska is ~~in~~ entitled to a Land Patent pursuant to Sec. 604 of the Alaska Railroad Transfer Act of January 14, 1983 (96 Stat. 2556, 2559) for the ~~surface~~ real property ~~and subsurface estates of the lands~~ described below:

(Land Description)

The
there is, therefore, granted by the UNITED STATES OF AMERICA, unto the State of Alaska, the real property above-described, including the surface and subsurface estates, together with all structures, facilities, track, roadbed, tenements, appurtenances, hereditaments, improvements, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property;

NOW KNOW YE, ~~that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the State of Alaska the lands described above~~ TO HAVE AND TO HOLD the same, together with all the

DRAFT

DRAFT
Revised
JAN 16 1984

rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the State of Alaska, ~~and to~~ its successors, and assigns, forever:

PROVIDED THAT, under Section 610 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575), this conveyance is subject to the following conditions:

1. If, within ten years after the date of transfer to the State, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements) shall revert to the United States, or (at the option of the State) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its ~~the~~ conversion prevents continued operation of the railroad (pursuant to Section 610(a) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

2. If the State discontinues use of any land within the right-of-way, the States interest in such land shall revert to the

DRAFT

DRAFT

Revised

JAN 1 6 1984

United States (Section 610(b) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)). The State shall be considered to have discontinued use, pursuant to section 610(f) of the Alaska Railroad Transfer Act, when:

a. The Governor of Alaska delivers to the Secretary of the Interior, a notice of such discontinuance including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for any transportation, communication, or transmission purposes, of any kind whatsoever.

3. If, within five years after the date of transfer to the State, the State sells or transfers all or substantially all of the State-owned Railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State

DRAFT

DRAFT
Revised
JAN 16 1984

shall be paid into the general fund of the Treasury of the United States, (Section 610(e) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

The Attorney General of the United States, upon the request of the Secretary of Transportation, or the Secretary of Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce section 610 of the Alaska Railroad Transfer Act ~~this reversion~~ in the United States District Court for The District of Alaska.

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

1 Specify with particularity as to party, date, duration and identification of origin of granted federal rights-of-way (e.g. document number, act, or other origin of granted federal rights-of-way).

1. ~~(Granted federal rights-of-way), and~~

2. Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560), ~~the~~ which are identified in the report required by section 605(a) of the Alaska Railroad Transfer Act following easements for administration are reserved to the United States under the jurisdiction of the Secretary of the _____. Such easements for administration and use of such easements shall not interfere with ~~railroad~~ operations and support functions of the railroad.

DRAFT

(4)

DRAFT
Revised
JAN 16 1984

(List Easements Here)

THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO:

Specify with particularity as to party, date, duration and identification of origin of third party rights (e.g. document number, act, or other origin of third party rights).

1. ~~(Third party rights (Interior granted); and~~

Specify with particularity as to party, date, duration and identification of origin of valid existing rights (e.g. document number, act, or other origin of valid existing rights).

2. ~~valid existing rights therein, if any, including but not limited to those created by any lease, license, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.~~

DRAFT

DRAFT
Revised
JAN 16 1984

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, 1984, in Anchorage, Alaska.

UNITED STATES OF AMERICA

~~Secretary of Transportation~~

By: _____

John Riley, Administrator
Federal Railroad Administration,
for the Secretary of Transportation

DRAFT

DRAFT
Revised
JAN 1 6 1984

INTERIM CONVEYANCE
FEE TITLE

WHEREAS

The State of Alaska

is entitled to a ~~interim~~ conveyance in fee, pursuant to Sec. 604 ~~(a)~~ of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2559), for the real property ~~surface and subsurface estates of the lands~~ described below:

Seward Meridian, Alaska (Unsurveyed) *

T. 4 N., R. 1 W.

Secs. 13 and 24.

Containing approximately 81 acres.

AND

The surface and subsurface estates of a right-of-way extending not less than one hundred (100) feet on both sides of the centerline of any main line or branch line of

*These legal descriptions should reference and not be inconsistent with the Executive Order(s), Public Land Order(s) or other transfer document(s) by which the railroad acquired the interest in the land.

DRAFT

including the surface and subsurface estates,
together with all structures, facilities, track, roadbed, tenements, appurtenances, hereditaments, improvements, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage, and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property;

DRAFT
Revised
JAN 16 1984

the Alaska Railroad (except ~~those areas of a lesser width resulting from military jurisdiction or non-Federal ownership of lands abutting the main line or branch line right-of-way~~)*

within the following lands:

Seward Meridian, Alaska (Unsurveyed)

T. 4 N., R. 1 W. → Alaska Railroad

Secs. 1, 12, 13, 24, 25, 26, and 36, which begins at ~~ARR~~ milepost ____ and ends at ~~ARR~~ milepost ____, ~~containing~~ extending approximately 5.02 miles and containing approximately ____ acres.

Alaska Railroad

~~Approximately 5.02 miles.~~

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the State of Alaska the ~~surface and subsurface estates in the land~~ real property above-described; TO HAVE AND TO HOLD the said ~~estates~~ real property with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the State of Alaska, its successors and assigns, forever:

PROVIDED THAT, under Section 610 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575), this conveyance is subject to the following conditions:

*Where the right-of-way is a lesser width than 200 feet, specify that part of the right-of-way with particularity.

DRAFT

DRAFT
Revised
JAN 16 1984

1. If, within ten years after the date of transfer to the State, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements) shall revert to the United States, or (at the option of the State) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its ~~the~~ conversion prevents continued operation of the railroad (pursuant to Section 610(a) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

2. If the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States (Section 610(b) of the Alaska Railroad Transfer of 1982 96 Stat. 2556, 2575)). The State shall be considered to have discontinued use as provided in Section 610(f) of the Alaska Railroad Transfer Act when:

   a. The Governor of Alaska delivers to the Secretary of the Interior, a notice of such discontinuance

DRAFT

DRAFT
Revised
JAN 16 1984

including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for any transportation, communication, or transmission purposes, of any kind whatsoever.

3. If, within five years after the date of transfer to the State, the State sells or transfers all or substantially all of the State-owned Railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State shall be paid into the general fund of the Treasury of the United States, (Section 610(e) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

The Attorney General of the United States, upon the request of the Secretary of Transportation, or Secretary of Interior, or

DRAFT

DRAFT
Revised
JAN 16 1984

Secretary of Agriculture, shall institute appropriate proceedings to enforce ~~this reversion~~ Section 610 of the Alaska Railroad Transfer Act in the United States District Court for The District of Alaska.

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

Specify with particularity as to party, date, duration and identification of origin of granted federal rights-of-way (e.g. document number, act, or other origin of federal rights-of-way).

1. ~~(Granted federal rights-of-way);~~ and

2. Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560), the following easements for administration which are identified in the report required by Section 605(a) of the Alaska Railroad Transfer Act, are reserved to the United States under the jurisdiction of the Secretary of the _____. Such easements for administration and use of such easements shall not interfere with ~~railroad~~ operations and support functions of the railroad.

(List Easements Here)

DRAFT

DRAFT
Revised
JAN 16 1984

THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO:

1. ~~Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage~~ of the unsurveyed land hereinabove described;

Delete

1. Specify with particularity as to party, date, duration and identification of origin of existing right (e.g., document number, act, or other origin of existing right).

2. Valid existing rights therein, if any, including but not limited to those created by any lease, license, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.

2. Specify with particularity as to party, date, duration and identification of origin of third party rights (e.g. document number, act, or other origin of third party rights).

3. ~~Third-party rights (Interior granted); and~~

4. The requirements of Section 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574) that the portion of rail properties within the boundaries of the Chugach National Forest shall be subject to the laws and regulations for the protection of forest values, and that the Secretary of Agriculture shall not act pursuant to said subsection 608(d) without consulting the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions.

DRAFT

Pursuant to Subsection 606(b)(2) of the Alaska Railroad Transfer Act, the Secretary of Interior shall complete the survey of these lands not later than January 14, 1988, and, pursuant to Subsection 604(b)(3) of the Alaska Railroad Transfer Act, upon completion of the survey of any of said lands, the Secretary of Interior shall issue a patent therefor.

DRAFT
Revised
JAN 16 1984

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

Secretary of Transportation

By

John Riley, Administrator,
Federal Railroad Administration,
for the Secretary of Transportation

DRAFT

WLG&S Draft No. 1

DEED OF EXCLUSIVE USE EASEMENT AND TITLE TO RAILROAD RELATED IMPROVEMENTS

WHEREAS

the State of Alaska

is entitled to a conveyance pursuant to Sec. 604 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2559), of (1) an exclusive-use easement (as defined in Sec. 603(b) of said Act) in and for that portion of the right-of-way (as defined in Sec. 603(11) of said Act) of the Alaska Railroad within the Denali National Park and Preserve; and (2) title to railroad-related improvements & facilities within such portion of the right-of-way, more particularly described as follows:

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall be not less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N½SW¼ NE¼ of Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed)

T. 14 S., 7 W.
Secs. 4, 26, and 35.

T. 15 S., R. 7 W.
Secs. 1 and 2.

Approximately 31.7 miles.

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska.

Containing approximately .4 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, an exclusive-use easement (as defined in Sec. 603(b) of said Act) which affords the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes

and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement;

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior. (Sec. 608(d) of the Alaska Railroad Transfer Act of 1982, 96 Stat. 2556, 2574.)

THE EXCLUSIVE-USE EASEMENT HEREBY GRANTED, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the lands subject to the exclusive-use easement were utilized as of January 14, 1983. (Sec. 604(b)(1) of the Alaska Railroad Transfer Act of 1982, 96 Stat. 2556, 2559.)

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted pursuant to Sec. 604(c)(2) of the Alaska Railroad

Transfer Act of 1982 (96 Stat. 2556, 2560), the following easements for administration by the Secretary of the Interior, use of which shall not interfere with operations and support functions of the State-owned railroad (as defined in Sec. 603(14) of said Act):

(List easements here)

THE GRANT OF THE HEREIN DESCRIBED LANDS is subject to the following reservations, conditions and limitations:

(1) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Secs. 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska; and

(2) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sec. 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska.

(3) Laws and regulations for the protection of park values pursuant to Sec. 608(d) of the Alaska Railroad Transfer Act

of 1982 (96 Stat. 2556, 2574); however, the Secretary of the Interior shall not act pursuant to said subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

pursuant to section 610 of ARTA

PROVIDED THAT, ~~if the State (as defined in Sec. 603(13) of the Alaska Railroad Transfer Act of 1982, 96 Stat. 2556, 2558),~~ of the State discontinues use of all or part of those properties heretofore described, such properties or part thereof (including permanent improvements to the property) shall revert to the United States. The State shall be considered to have discontinued use when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after

such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

BE IT FURTHER KNOWN that the United States hereby GIVES, GRANTS AND CONVEYS to the State of Alaska, its successors and assigns title to and in the following railroad-related improvements within the right-of-way ~~described above:~~ including, but not limited to:

ARA will verify these & be resp to these... State wants these listed. due to uniqueness of convey.

Approximate Location by Railroad Milepost		
(1)	sec./map	All track situated on or within said right-of-way, and all fixtures, ~~machines~~, ~~tools~~, ~~parts~~, ~~ties~~ and other things of whatever nature attached ~~or situated adjacent~~ to said ~~track~~ ROW and used, owned or held by the Alaska Railroad. (facilities, tracks, roadbed)
(2)	323.6	Powder House, approximately 200 feet from right of way and access trail.
(3)	33.4	Carlo Section House facility and supporting utility, storage, and fuel system; gravel bluff.
(4)	352.9 to 353.5	Moody slide drainage facility of ditches and flumes.

(5)	347.5 to 348.1	Denali Park Station warehouse, microwave site, power house, and all supporting utility systems.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of the Transportation has set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

AR4:U2

WLG&S Draft No. 1

INTERIM CONVEYANCE

WHEREAS

State of Alaska

is entitled to an Interim Conveyance pursuant to Sec. 604 of the Alaska Railroad Transfer Act of January 14, 1983 (96 Stat. 2556, 2559) for the real property described below:

(Land Description)

NOW KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE, GRANT AND CONVEY, unto the State of Alaska, its assigns and successors the real property described above TO HAVE AND TO HOLD the same forever.

THE RIGHT, TITLE, AND INTEREST HEREBY GRANTED and conveyed in and to the real property described above are the full and

complete right, title and interest of the United States in and to said real property, subject to administrative easements reserved for agencies of the United States as described below; AND, IN ADDITION TO AND NOT IN DEROGATION OF THE FOREGOING, said right, title and interest hereby granted and conveyed are not less than an exclusive-use easement (as defined in Section 603(b) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2557)) in all of said real property within a right-of-way (as defined in section 603(1)) of said Act) in which land or any interest in such land had been conveyed from Federal ownership prior to January 14, 1983, or was on that date subject to valid existing rights of a party other than a Village Corporation; AND, where the real property described above is within a right-of-way (as defined in section 603(11) of said Act) that was on January 13, 1983, embraced within a land selection filed in the Department of the Interior by a Village Corporation (as defined by section 603(15) of said Act), such real property hereby granted and conveyed is free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

PROVIDED THAT, under Section 610 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575), this conveyance is subject to the following conditions:

1. If, within ten years after (date of transfer), 1984, the Secretary of Transportation finds that all or part

of the real property transferred to the State of Alaska under said Act, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States, or at the option of the State ~~(as~~ defined in section 603(14) of said Act) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad (pursuant to Section 610(a) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

2. If, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States (Section 610(b) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)). The State shall be considered to have discontinued use when:

a. The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance,

including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

4. Except as provided in section 610(a) through (d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575-76), if, within five years after (date of

transfer), 1984, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State shall be paid into the general fund of the Treasury of the United States, (Section 610(e) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

EXCEPTING FROM THE REAL PROPERTY SO GRANTED and reserving through the United States to the Secretary of _____ the following easements for administration pursuant to section 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560). The use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of said Act:

(List easements here; designate by Secretary)

THE GRANT OF THE ABOVE-DESCRIBED REAL PROPERTY IS SUBJECT TO the following rights-of-way and easements granted by the United States prior to this conveyance:

(List granted rights of rights-of-way, easements)

"REAL PROPERTY," AS USED HEREIN, means land and all of the appurtenances, hereditaments, improvements, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land, EXCEPT FOR (1) unexercised reservations to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska as provided by the Act of March 12, 1914 (43 U.S.C. §§ 975 et seq.); and (2) the right of the United States to exercise its power of eminent domain.

Upon completion of the survey of the real property hereby granted and conveyed, the Secretary of Transportation will issue a patent therefor. (Section 604(b)(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2559-60.)

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the department to be hereunto affixed on this _____ day of _____, 1984, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

ARR2:U7

WLG&S Draft No. 1

PATENT

WHEREAS

the State of Alaska

is entitled to a Patent pursuant to Sec. 604 of the Alaska Railroad Transfer Act of January 14, 1983 (96 Stat. 2556, 2559) for the real property described below:

(Land Description)

NOW KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE, GRANT AND CONVEY, unto the State of Alaska, its assigns and successors the real property described above TO HAVE AND TO HOLD the same forever.

THE RIGHT, TITLE, AND INTEREST HEREBY GRANTED and conveyed in and to the real property described above are the full and

complete right, title and interest of the United States in and to said real property, subject to administrative easements reserved for agencies of the United States as described below; AND, IN ADDITION TO AND NOT IN DEROGATION OF THE FOREGOING, said right, title and interest hereby granted and conveyed are not less than an exclusive-use easement (as defined in Section 603(b) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2557)) in all of said real property within a right-of-way (as defined in section 603(1)) of said Act) in which land or any interest in such land had been conveyed from Federal ownership prior to January 14, 1983, or was on that date subject to valid existing rights of a party other than a Village Corporation; AND, where the real property described above is within a right-of-way (as defined in section 603(11) of said Act) that was on January 13, 1983, embraced within a land selection filed in the Department of the Interior by a Village Corporation (as defined by section 603(15) of said Act), such real property hereby granted and conveyed is free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

PROVIDED THAT, under Section 610 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575), this conveyance is subject to the following conditions:

use actual date if possible

1. If, within ten years after (date of transfer), 1984, the Secretary of Transportation finds that all or part

of the real property transferred to the State of Alaska under said Act, ~~except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is~~ converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States, or at the option of the State (as ~~defined in section 603(14) of said Act~~) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad (pursuant to Section 610(a) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

2. If, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States (Section 610(b) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)), ~~The State shall be considered to have discontinued use~~ when:

   a. The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance,

including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. pursuant to section 610(b)(2) of ARTA, Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

5. 4. Except as provided in section 610(a) through (d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575-76), if, within five years after (date of

transfer), 1984, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State shall be paid into the general fund of the Treasury of the United States, (Section 610(e) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575)).

EXCEPTING FROM THE REAL PROPERTY SO GRANTED ~~and reserving~~ RESERVING through the United States to the Secretary of _____ the following easements for administration pursuant to section 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560). The use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of said Act:

(List easements here; designate by Secretary)

THE GRANT OF THE ABOVE-DESCRIBED REAL PROPERTY IS SUBJECT TO the following rights-of-way and easements granted by the United States prior to this conveyance:

(List granted rights of rights-of-way, easements if any)

"REAL PROPERTY," AS USED HEREIN, means land and all of the appurtenances, hereditaments, improvements, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land, EXCEPT FOR (1) unexercised reservations to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska as provided by the Act of March 12, 1914 (43 U.S.C. §§ 975 et seq.); and (2) the right of the United States to exercise its power of eminent domain.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the department to be hereunto affixed on this _____ day of _____, 1984, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Date: _____

WLG&S Draft No. 1

LICENSE

WHEREAS

STATE OF ALASKA

is entitled to an exclusive license pursuant to Sec. 604(b)(1)(A) of the Alaska Railroad Transfer Act of 1982, (96 Stat. 2556, 2559), pending review and settlement or final administrative adjudication of claims of valid existing rights, to the following described real property:

(parcel description)

AND

A right-of-way (as defined in Sec. 603(11) of said Act) within the following described lands:

(right-of-way description)

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of alaska, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy, and directly receive all benefits

of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation.

EXCEPTING AND RESERVING TO THE UNITED STATES from the license so granted:

1. Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560) the following easements for administration are reserved through the United States to the Secretary of the _____. Use of such easements shall not interfere with railroad operations and support functions.

(list easements here)

THE LICENSE GRANTED FOR, TO AND ON THE ABOVE DESCRIBED LANDS IS SUBJECT TO:

1. The following unresolved claims of valid existing rights (as defined in Sec. 603(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2756, 2757), pending conveyance in accordance with the review and

how many?

settlement or final administrative adjudication of such claims of valid existing rights:

(describe claims of valid existing rights)

2. Valid leases, permits, and other instruments issued before (date of transfer) (pursuant to Sec. 604(b)(4) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560)).

3. The real property described above is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574,) is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

Upon conveyance of any of the real property described above, that portion of the license granted herein extending to the real property so conveyed shall terminate for such property (pursuant to Sec. 604(b)(4) of the Alaska Railroad Transfer Act of 1982,

(96 Stat. 2556, 2560)). Upon or before termination of this license, or a portion of it, the Secretary of Transportation will issue to the State of Alaska an interim conveyance or patent for ~~all~~ the right-of-way (as defined by Sec. 603(11) of said Act) subject to this license, as required by Sections 604 and 606(b) of said Act.

include quotation to 606(e) of ARTA.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

AR3:U5

WLG&S Draft No. 1

Clause to Be Inserted in Patent, Interim Conveyance, and Licence for Real Property in Chugach National Forest

ok

The real property described above is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574), is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

ROW breadth of convey doc -
St. contemporary asking for sep. tract convey docs? & poss sep. ROW doc (20) by region

- description of ROW adding milepost to otherwise valid legal descrip

ARR3:U4

East cadastral survey - will centerline survey be used in IC?

ATTORNEY WORKING GROUP DRAFT [redacted]

Clause to Be Inserted in Patent, Interim Conveyance, and License for Real Property in Chugach National Forest

The real property described above* (or a portion thereof), is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

insert subject to all such laws and...

*This would be most properly inserted following the "subject to" portion of the deed.

960*LBrooks*mo*2.1.84
0229f

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT

DRAFT

Clause to Be Inserted in Patent, Interim Conveyance, and License for Real Property in Chugach National Forest

The real property described above (or a portion thereof), is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

This would be most properly inserted following the "subject to" portion of the deed.

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

THE ALASKA RAILROAD
Pouch 7-2111
Anchorage, Alaska 99510

February 10, 1984

Dennis J. Hopewell, Esq.
U. S. Dept. of Interior
Office of Regional Solicitor
701 C Street, Box 34
Anchorage, Alaska 99513

Dear Mr. Hopewell:

Enclosed are the FRA revised versions of the attorney working group's draft concept documents. These have been prepared and reviewed jointly by FRA and ARR counsel.

The enclosed documents reflect FRA's opinion of how the final documents should appear, so the extraneous comments from the previous draft have been omitted. Where editorial comments by FRA were thought to be helpful, they are provided as noted by asterisks.

Please feel free to confer with Mr. King, Mr. Wong, or myself as to any items or issues you believe need clarification or discussion.

Very truly yours,

Jeanne Riley
Alaska Railroad
Real Estate Attorney

cc:
Greg O'Leary
Jack McGee
Dave Walsh
Joe King
Tom Allison

RECEIVED
REGIONAL SOLICITOR, USDI
FEB 13 1984
ANCHORAGE, ALASKA

THE ALASKA RAILROAD
Post Office Box 7-2111
Anchorage, Alaska 99510

February 10, 1994

Dennis J. Hopewell, Esq.
U. S. Dept. of Interior
Office of Regional Solicitor
701 C Street, Box 34
Anchorage, Alaska 99513

Dear Mr. Hopewell:

Enclosed are the FRA revised versions of the attorney working group's draft concept documents. These have been prepared and reviewed jointly by FRA and ARR counsel.

The enclosed documents reflect FRA's opinion of how the final documents should appear, so the extraneous comments from the previous draft have been omitted. Where editorial comments by FRA were thought to be helpful, they are provided as noted by asterisks.

Please feel free to confer with Mr. King, Mr. Wong, or myself as to any items or issues you believe need clarification or discussion.

Very truly yours,

Jeanne Riley
Alaska Railroad
Real Estate Attorney

cc:
Greg O'Leary
Jack McGee
Dave Walsh
Joe King
Tom Allison

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT DRAFT

INTERIM CONVEYANCE

WHEREAS, the State of Alaska is entitled to an interim conveyance pursuant to Section 604 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, et. seq.; hereinafter ARTA), for the real property described below:

(Parcel Descriptions)

AND

A right-of-way, not less than 100 feet on both sides of the center line of the tracks, as provided in Section 603 (11)(a) of ARTA, within the following described lands:

(Right-of-way descriptions) *

AND

A right-of-way, as provided in Section 603(11)(b) of ARTA, within the following described lands:

(Right-of-way descriptions) *

NOW KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE, GRANT AND CONVEY, unto the State of Alaska, its successors and assigns, the real property described above TO HAVE AND TO HOLD the same forever.

*THE GRANT in and to the real property described above is for the entire right, title, and interest of the United States;

~~*The working group draft was modified by the BLM to more succinctly track the precise wording of ARTA.~~

* Right-of-way descriptions will include mileage and acreage, if possible.

AND, IN ADDITION TO AND NOT IN DEROGATION OF THE FOREGOING, where ~~real property~~ land within the right-of-way, as defined in Section 603(11) of ARTA, or any interest in such ~~property~~ land, ~~have~~ has been conveyed from Federal ownership prior to January 14, 1983, or was on that date subject to valid existing rights of a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties shall grant not less than an exclusive-use easement, as defined in Section 603(6) of ARTA.

PROVIDED THAT, under Section 610 of ARTA, this conveyance is subject to the following conditions:

1. If, within ten years after (the date of transfer), 1984*, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States, or at the option of the State, the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad (Section 610(a) of ARTA).

*Use actual date if possible - if later this turns out to be impractical, change to "after the date of transfer to the State."

2. If, after (the date of transfer), 1984, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States, pursuant to Section 610(b) of ARTA, when:

DRAFT

a. The Governor of Alaska delivers to the Secretary of the Interior, a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such

DRAFT

action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

3. Except as provided in Section 610(a) through (d) of ARTA, if, within five years after (date of transfer), 1984, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State shall be paid into the general fund of the Treasury of the United States (Section 610(e) of ARTA).

RESERVING to the Secretary of the Interior, the Secretary of Defense, or the Secretary of Agriculture, as applicable, ~~EXCEPTING AND RESERVING~~ from the real property so granted, ~~to the United States, under the jurisdiction of the designated Secretary,~~ the following existing easements for administration pursuant to Section 604(c)(2) of ARTA. Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

(List easements here; designate by Secretary)

~~Some minor changes to the working group draft were made in this provision.~~

DRAFT

*THE GRANT OF THE ABOVE-DESCRIBED REAL PROPERTY IS SUBJECT TO the following rights granted by the United States prior to transfer:

(List granted rights, if any)

***"REAL PROPERTY," AS USED HEREIN, means the above-described land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land, EXCEPT FOR (1) unexercised reservations to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska as provided by the Act of March 12, 1914 (43 U.S.C. 975 et. seq.); and (2) the right of the United States to exercise its power of eminent domain.

*It has been agreed that third-party interests created by the ARR will not be listed in the conveyance documents. Such obligations will be assumed and protected contractually. The working group wording was modified slightly to make the lead-in sentence more general.

**The State desires this language to cover all possible gaps between the bill of sale and this deed. The BLM views the language as inappropriate, unnecessary, and asks that it be deleted. The language, unlike the rest of language used in the conveyance documents, is not from the Act. Such general definitions have no place in a conveyance document absent an express statutory provision.

* Upon completion of the survey of the real property hereby granted and conveyed, the Secretary of Transportation will issue a patent therefor. (Sections 604 (b)(2) and (3) and 606 (b)(2)).

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused ~~the~~ its seal ~~of the Bureau~~ to be hereunto affixed on this _____ day of _____, 1984, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

_____

~~Survey clause modified to reflect BLM approval and filing requirements.~~

* Because ARTA does not appear to require the BLM approval and filing, FRA/ARR suggest this modification in conformity with the language of ARTA.

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT

PATENT

DRAFT

WHEREAS, the State of Alaska is entitled to a Land Patent pursuant to Section 604 of the Alaska Railroad Transfer Act of January 14, 1983 (96 Stat. 2556, et. seq.; hereinafter ARTA),

(Parcel Descriptions)

AND

A right-of-way, not less than 100 feet on both sides of the center line of the tracks, as provided in Section 603 (11)(a) of ARTA, within the following described lands:

(Right-of-way descriptions)*

AND

A right-of-way, as provided in Section 603(11)(b) of ARTA, within the following described lands:

(Right-of-way descriptions)*

NOW KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE, GRANT AND CONVEY, unto the State of Alaska, its successors and assigns, the real property described above TO HAVE AND TO HOLD the same forever.

*THE GRANT in and to the real property described above is for the entire right, title and interest of the United States;

~~*The working group draft was modified by the BLM to more succinctly track the precise wording of ARTA.~~

* Right-of-way descriptions will include mileage and acreage, if possible.

AND, IN ADDITION TO AND NOT IN DEROGATION OF THE FOREGOING, where ~~real property~~ land within the right-of-way, or any interest in such ~~property~~ land, as defined in Section 603(11) of ARTA, ~~have~~ has been conveyed from Federal ownership prior to January 14, 1983, or was on that date subject to valid existing rights of a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties shall grant not less than an exclusive-use easement, as defined in Section 603(6) of ARTA.

PROVIDED THAT, under Section 610 of ARTA, this conveyance is subject to the following conditions:

1. If, within ten years after (the date of transfer), 1984*, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States, or at the option of the State, the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad (Section 610(a) of ARTA).

*Use actual date if possible - if later this turns out to be impractical, change to "after the date of transfer to the State."

2. If, after (the date of transfer), 1984, the State discontinues use of any land within the right-of-way the State's interest in such land shall revert to the United States, pursuant to Section 610(b) of ARTA, when:

DRAFT

a. The Governor of Alaska delivers to the Secretary of the Interior, a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

b. The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such

DRAFT

action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

3. Except as provided in Section 610(a) through (d) of ARTA, if, within five years after (date of transfer), 1984, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State and any net liabilities incurred by the State shall be paid into the general fund of the Treasury of the United States (Section 610(e) of ARTA).

RESERVING to the Secretary of the Interior, the Secretary of Defense, or the Secretary of Agriculture, as applicable, ~~EXCEPTING AND RESERVING~~ from the real property so granted, ~~to the United States, under the jurisdiction of the designated Secretary,~~ the following existing easements for administration pursuant to Section 604(c)(2) of ARTA. Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

(List easements here; designate by Secretary)

~~Some minor changes to the working group draft were made in this provision.~~

DRAFT

*THE GRANT OF THE ABOVE-DESCRIBED REAL PROPERTY IS SUBJECT TO the following rights granted by the United States prior to transfer:

(List granted rights, if any)

**"REAL PROPERTY," AS USED HEREIN, means the above-described land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land, EXCEPT FOR (1) unexercised reservations to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska as provided by the Act of March 12, 1914 (43 U.S.C. 975 et. seq.); and (2) the right of the United States to exercise its power of eminent domain.

*It has been agreed that third-party interests created by the ARR will not be listed in the conveyance documents. Such obligations will be assumed and protected contractually. The working group wording was modified slightly to make the lead-in sentence more general.

**The State desires this language to cover all possible gaps between the bill of sale and this deed. The BLM views the language as inappropriate, unnecessary, and asks that it be deleted. The language, unlike the rest of language used in the conveyance documents, is not from the Act. Such general definitions have no place in a conveyance document absent an express statutory provision.

FEB 3 1984

DRAFT

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused ~~the~~ its seal ~~of the Bureau~~ to be hereunto affixed on this _____ day of _____, 1984, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

_____

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT DRAFT

LICENSE

WHEREAS the State of Alaska is entitled to an exclusive license pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, et. seq.; hereinafter ARTA), pending conveyance in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights, to the following described real properties:

(Parcel Descriptions)

AND

A right-of-way, not less than 100 feet on both sides of the center line of the tracks, as provided in Section 603 (11)(a) of ARTA, within the following described lands:

(Right-of-way descriptions)*

AND

A right-of-way, as provided in Section 603(11)(b) of ARTA, within the following described lands:

(Right-of-way descriptions)*

~~*The BLM strongly urges that the actual and full language from Sec. 603(11) be utilized. This would be consistent with the general approach taken throughout these documents to directly recite the Act.~~

* Right-of-way descriptions will include mileage and acreage, if possible.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska, an exclusive license for, to, and on the real property described above, which license affords the exclusive right to use, occupy, and directly receive all benefits of the real properties described above for the operation of the State-owned Railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna, Inc., Cook Inlet Region, Inc., and Toghotthele Corporation.

DRAFT

RESERVING to the Secretary of the Interior, the Secretary of Defense, or the Secretary of Agriculture, as applicable, ~~EXCEPTING AND RESERVING~~ from the real property so granted, ~~to the United States, under the jurisdiction of the designated Secretary,~~ the following existing easements for administration pursuant to Section 604(c)(2) of ARTA. Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

(List easements here; designate by Secretary)

~~Some minor changes to the working group draft were made.~~

FOR, TO, AND

DRAFT

THE LICENSE GRANTED ON THE ABOVE-DESCRIBED REAL PROPERTY IS SUBJECT TO:

1. The following unresolved claims of valid existing rights (pursuant to Section 603(3) of ARTA), pending conveyance in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights.

   (List claims by BLM serial number)

2. Valid leases, permits, and other instruments issued before (date of transfer) (pursuant to Sec. 604(b)(4) of ARTA). (if any)

3. If Chugach National Forest lands are involved, standard provision will be used.

Upon conveyance of any of the real property described above, that portion of the license granted herein extending to the real property so conveyed shall terminate for such property (pursuant to Sec. 604(b)(4) of ARTA).

Upon or before termination of this license, or a portion of it, the Secretary of Transportation will issue to the State of

Alaska an interim conveyance or patent for the right-of-way (as defined by Section 603(11) of ARTA), subject to this license or the portion of the license terminated, as required by Sections 604 and 606(b) of ARTA.

Pursuant to Section 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the above-described properties subject to the license for damage resulting from use by the State of the land under such license in a manner not authorized by this license.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused ~~the~~ its seal ~~of the Department~~ to be hereunto affixed on this _____ day of _____, 1984, in _____.

UNITED STATES OF AMERICA

_____

Secretary of Transportation

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT

DRAFT

Clause to Be Inserted in Patent, Interim Conveyance, and License for Real Property in Chugach National Forest

The real property described above (or a portion thereof), is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

This would be most properly inserted following the "subject to" portion of the deed.

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT

DRAFT

Clause to Be Inserted in Patent, Interim Conveyance, and License for Real Property in Chugach National Forest

The real property described above (or a portion thereof), is situated within the boundaries of the Chugach National Forest and, pursuant to Section 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

This would be most properly inserted following the "subject to" portion of the deed.

FEB 3 1984

ATTORNEY WORKING-GROUP DRAFT

DRAFT

DEED FOR EXCLUSIVE-USE EASEMENT
AND RAILROAD IMPROVEMENTS

WHEREAS the State of Alaska is entitled to a conveyance pursuant to Section 604(b)(1)(D) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, et. seq.; hereinafter, ARTA), of (1) an exclusive-use easement *in and for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve, and (2) title to railroad-related improvements and facilities within such portion of the right-of-way; which right-of-way, improvements and facilities are more particularly described as follows:

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall not be less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N1/2SW1/4NE1/4 of Section 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

~~*Working group references to ARTA definitions removed from opening clause because they are defined infra and because they tend to confuse the introductory clause.~~

FEB 3 1984

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed) DRAFT

T. 14 S., R. 7 W.

Sections 4, 26, and 35.

T. 15 S., R. 7 W.

Sections 1 and 2.

*Approximately 31.7 miles; containing approximately _____ acres.

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Section 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska.

Containing approximately .4 acres.

*Right-of-way description will include mileage and acreage if possible.

AND

DRAFT

~~Title to and in the following~~ The railroad-related improvements within the above-described right-of-way, including, but not limited to, the following:

	Approximate Location by Railroad Milepost	
(1)		Denali Park Depot
(2)	323.6	**Powder House, approximately 200 feet from right-of-way and access trail.

~~List of improvements moved from the end of the attorney's working draft to beginning since they are part of the interests conveyed and are subject to the same following conditions. BLM does not agree to the specific listing of these improvements. They will not be responsible for their accuracy or the adequacy of their description.~~

~~**The Powder House, Carlo Section House, and a portion of the Moody Slide drainage are not within the right-of-way and cannot be conveyed.~~

FEB 3 1984

(3)	33.4	*Carlo Section House facility and supporting utility, storage, and fuel system; gravel bluff.
(4)	352.9 to 353.5	*Moody slide drainage facility of ditches and flumes.
(5)	347.5 to 348.1	Denali Park Station warehouse, microwave site, ~~power house~~, and all supporting utility systems.
(6)		All track situated on or within said right-of-way, and all fixtures, facilities, trackwork, roadbed, and other things of whatever nature attached to said right-of-way, and used, owned or held by the Alaska Railroad.

NOW KNOW YE, that there is, granted, given, and conveyed by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, title to the above improvements and an exclusive-use easement (pursuant to Section 603(6) of ARTA), which affords the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes.

~~*The Powder House, Carlo Section House and a portion of the Moody slide drainage are not within the right-of-way and cannot be conveyed.~~

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

DRAFT

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior pursuant to Section 608(d) of ARTA.

THE EXCLUSIVE USE EASEMENT HEREBY GRANTED, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the above-described lands were utilized ~~subject to the exclusive use easement~~ as of January 14, 1983 (Section 604(b)(1) of ARTA).

~~EXCEPTING AND~~ RESERVING TO ~~THE UNITED STATES~~ THE SECRETARY OF THE INTERIOR from the interests in lands so granted pursuant to Section 604(c)(2) of ARTA the

DRAFT

following existing easements for administration by the Secretary of the Interior. Use of which easements and the such easements shall not interfere with operations and support functions of the State-owned railroad (as defined in Section 603(14) of ARTA).

THE GRANT OF THE HEREIN DESCRIBED INTERESTS IN LANDS is subject to the following reservations, conditions, and limitations:

(1) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sections 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska;

(2) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Section 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska; and

(3) Laws and regulations for the protection of park values pursuant to Section 608(d) of ARTA. The Secretary of the Interior shall not act pursuant to said subsection without consulting with the Governor of the State of Alaska or in

such a manner as to unreasonably interfere with continued or expanded operation and support functions authorized under ARTA.

PROVIDED THAT, pursuant to Section 610 of ARTA, if the State of Alaska discontinues use of all or part of those properties heretofore described, such properties or part thereof (including permanent improvements to the property) shall revert to the United States. Pursuant to Section 610(b) of ARTA, the State of Alaska shall be considered to have discontinued use when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to

establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has set his/her hand and caused its ~~the~~ seal ~~of the Department~~ to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

_____

FEB 3 1934

AND

DRAFT

~~Title to and in the following~~ The railroad-related improvements within the above-described right-of-way, including, but not limited to, the following:

Approximate Location by Railroad Milepost	
(1)	Denali Park Depot
(2) 323.6	**Powder House, approximately 200 feet from right-of-way and access trail.

~~*List of improvements moved from the end of the attorney's working draft to beginning since they are part of the interests conveyed and are subject to the same following conditions. BLM does not agree to the specific listing of these improvements. They will not be responsible for their accuracy or the adequacy of their description.~~

**The Powder House, Carlo Section House, and a portion of the Moody slide drainage are not within the right-of-way and cannot be conveyed.

FEB 3 1984

(3)	33.4	*Carlo Section House facility and supporting utility, storage, and fuel system; gravel bluff.
(4)	352.9 to 353.5	*Moody slide drainage facility of ditches and flumes.
(5)	347.5 to 348.1	Denali Park Station warehouse, microwave site, ~~power house~~, and all supporting utility systems.
(6)		All track situated on or within said right-of-way, and all fixtures, facilities, trackwork, roadbed, and other things of whatever nature attached to said right-of-way, and used, owned or held by the Alaska Railroad.

NOW KNOW YE, that there is, granted, given, and conveyed by the UNITED STATES OF AMERICA, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, title to the above improvements and an exclusive-use easement (pursuant to Section 603(6) of ARTA), which affords the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes.

~~*The Powder House, Carlo Section House and a portion of the Moody slide drainage are not within the right-of-way and cannot be conveyed.~~

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

DRAFT

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior pursuant to Section 608(d) of ARTA.

THE EXCLUSIVE USE EASEMENT HEREBY GRANTED, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the above-described lands were utilized ~~subject to the exclusive use easement~~ as of January 14, 1983 (Section 604(b)(1) of ARTA).

~~EXCEPTING AND~~ RESERVING TO ~~THE UNITED STATES~~ THE SECRETARY OF THE INTERIOR from the interests in lands so granted pursuant to Section 604(c)(2) of ARTA the

DRAFT

following existing easements for administration by the Secretary of the Interior, which easements and the use of such easements shall not interfere with operations and support functions of the State-owned railroad (as defined in Section 603(14) of ARTA).

THE GRANT OF THE HEREIN DESCRIBED INTERESTS IN LANDS is subject to the following reservations, conditions, and limitations:

(1) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sections 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska;

(2) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Section 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska; and

(3) Laws and regulations for the protection of park values pursuant to Section 608(d) of ARTA. The Secretary of the Interior shall not act pursuant to said subsection without consulting with the Governor of the State of Alaska or in

such a manner as to unreasonably interfere with continued or expanded operation and support functions authorized under ARTA.

PROVIDED THAT, pursuant to Section 610 of ARTA, if the State of Alaska discontinues use of all or part of those properties heretofore described, such properties or part thereof (including permanent improvements to the property) shall revert to the United States. Pursuant to Section 610(b) of ARTA, the State of Alaska shall be considered to have discontinued use when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to

establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has set his/her hand and caused ~~the~~ its seal ~~of the Department~~ to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

_____

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERN

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

March 6, 1984

Dennis J. Hopewell
U.S. Department of Interior
Office of the Solicitor
Alaska Region
701 C Street
P.O. Box 34
Anchorage, AK 99513

RECEIVED
REGIONAL SOLICITOR, USDI
MAR 0 8 1984
ANCHORAGE, ALASKA

Dear Mr. Hopewell:

Enclosed are the state's latest draft of the conveyance documents. These drafts are dated 3/6/84.

There does not appear to be any major substantive differences between these drafts and BLM's latest drafts. What differences there are between the two sets of drafts go to matters of organization and logical arrangement.

It is the state's position that two overall considerations ought to inform these documents. First, the documents should be self-contained. By this I mean that it should not be a prerequisite to understanding the effect of a given document that one be intimately familiar with the subtiles of ARTA. Of course, a document cannot be fully understood without a reference to an ARTA provision, but once the provision is consulted, the meaning of the document should be crystal clear. This approach will lessen confusion and lower the probability of litigation. The second consideration is clearity and logical arrangement. The clearer and more logically organized the document, the less chance there is for misunderstandings to arise.

I think both the state and BLM are close to agreement on a final set of drafts. After you have had a chance to go over this latest set of documents a meeting of the attorneys involved may or may not be necessary. Differences that might exist may well be able to be resolved over the phone. If not, a meeting may be appropriate.

If you have any questions or comments about these drafts, please do not hesitate to contact either Greg O'Leary or myself.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc

Enclosures

cc: Gregg O'Leary
Joe King

Interim Conveyance

Whereas, pursuant to Sec. 604(b)(1)(B) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA") the State of Alaska is entitled to an interim conveyance for real property of the Alaska Railroad that falls within the classification created by Section 604(b)(1)(B), including both railroad land within the right-of-way of the Alaska Railroad (railroad right-of-way lands) and other railroad lands (railroad parcels); this interim conveyance is hereby issued for the real property described below:

I. Railroad Parcels:

(The description of the real property contained within the railroad parcels conveyed by this interim conveyance is set out in Appendix A.)

II. Railroad Right-of-Way:

(The description of the railroad property contained within the railroad right-of-way conveyed by this interim conveyance is set out in Appendix B.)

Now know ye that United States of America has given and granted, and by these presents in conformity with ARTA does give, grant and convey unto the State of Alaska, its assigns and successors the real property described above to have and to hold

forever. The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions set out below. The force and effect of this interim conveyance is to vest in the State of Alaska exactly the same right, title and interest in and to the real property described above as the State of Alaska would have received had it been issued a patent for said real property; and pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad shall not be less than an exclusive-use easement as defined in Section 603(6) of ARTA.

Upon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the State of Alaska pursuant to section 604(b)(2) and (3) of ARTA.

Reservations and Conditions

1. Pursuant to Section 610 of ARTA, this conveyance is subject to following conditions:

   (a) If, within ten years after the date of transfer, the Secretary of Transportation finds that all or part

of the real property transferred to the State of Alaska under said Act, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in section 603(14) of ARTA) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad pursuant to Section 610(a) of ARTA.

(b) Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

(i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(ii) The State has made no use of the land for a continuous period of eighteen years for transporta-

tion, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following easements for administration are reserved to the United States through the Secretary of _____:

(List easements here; designate by Secretary)

The use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

(The descriptions of previously granted rights and interests and their relationship to appropriate parcels or right-of-way segments are set out in Appendix C.)

4. Pursuant to Sec. 604(c)(1) of ARTA, there is reserved to the United States any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. All terms used in this conveyance that are defined in Section 603 of ARTA have the same meaning herein as provided in said section.

2. "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

(a) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(b) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(c) subjacent and lateral support of the lands subject to the easement; and

(d) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

3. "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(a) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(b) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line

or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

4. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

3/6/84

Patent

Whereas, pursuant to Section 604(b)(2) and Section 604(b)(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA"), the State of Alaska is entitled to a patent for real property of the Alaska Railroad that falls within the classifications created by Section 604(b)(2) and Section 604(b)(3), including both railroad lands within the right-of-way of the Alaska Railroad (railroad right-of-way lands) and other railroad lands (railroad parcels); this patent is hereby issued for the real property described below:

I. Railroad Parcels:

(The description of the real property contained within the railroad parcels conveyed by this patent is set out in Appendix A.)

II. Railroad Right-of-way:

(The description of the railroad property contained within the railroad right-of-way conveyed by this patent is set out in Appendix B.)

Now know ye, that the United States of America, has given and granted, and by these presents in conformity with ARTA does give, grant and convey, unto the State of Alaska, its assigns and successors the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions below. And, pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad shall not be less than an exclusive-use easement as defined by Section 603(6) of ARTA.

Reservations and Conditions

1. Pursuant to Section 610 of ARTA, this conveyance is subject to following conditions:

   (a) If, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as

defined in section 603(14) of ARTA) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad pursuant to Section 610(a) of ARTA.

b) Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

ii) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within

such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following easements for administration are reserved to the United States through the Secretary of _____:

(List easements here and relate them to appropriate parcel or right-of-way segment; designate by Secretary)

The use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

(The descriptions of previously granted rights and interests and their relationship to appropriate parcels or right-of-way segments are set out in Appendix C.)

4. Pursuant to Section 604(c)(1) of ARTA, there is reserved to the United States any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. All terms used in this conveyance that are defined in Section 603 of ARTA have the same meaning herein as provided in said section.

2. "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

   (a) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

   (b) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission

purposes and associated support functions for which the surface of such lands is used;

(c) subjacent and lateral support of the lands subject to the easement; and

(d) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

3. "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(a) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(b) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

4. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

3/6/84 EL

Exclusive License

Whereas, pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq. hereinafter referred to as "ARTA"), the State of Alaska is entitled to an exclusive license for real property of the Alaska Railroad that falls within the classification created by Sec. 604(b)(1)(C), including both railroad lands within the right-of-way of the Alaska Railroad (railroad right-of-way lands) and other rail lands (railroad parcels); this exclusive license is hereby issued for the real property described below:

I. Railroad Parcels:

(The description of the real property contained within the railroad parcels conveyed by this license is set out in Appendix A.)

II. Railroad Right-of-way:

(The description of the real property contained within the railroad right-of-way conveyed by this license is set out in Appendix B.)

Now know ye, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy, and directly receive all benefits

of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation. This license is subject to the Conditions and Reservations set out below.

Conditions and Reservations

1. Pursuant to Sec. 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560) the following described easements for administration are reserved to the United States under the jurisdiction of the Secretary of the _____. Use of such easements shall not interfere with railroad operations and support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

   List easements here.

2. Pursuant to Sec. 604(b)(4) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560), the exclusive license granted herein is subject to any valid leases, permits and other instruments issued before the date of transfer of the railroad to the state.

3. This license is subject to settlement or final adjudication of the unresolved claims of valid existing rights as defined in section 603(3) of ARTA. A listing of these unresolved claims is set out in Appendix C.

(These unresolved claims should be listed in Appendix C by BLM serial number along with a description of land subject to each claim.)

The exclusive rights granted by this license as set out above take precedence over any unresolved claim of a valid existing right.

4. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted for any lands herein shall terminate upon the conveyance of such lands following the settlement or relinquishment of any of the unresolved claims of valid existing rights described in paragraph 2 above. This license shall terminate only to the extent of the claim or claims settled or adjudicated.

5. If the real property that is the subject of any unresolved claim listed in paragraph 2 above is located within the railroad's right-of-way and if the final adjudication of the claim is in favor of the claimant and against the Alaska Railroad, the license granted herein shall automatically terminate for such property upon conveyance of that property

pursuant to Sec. 604(b)(4) of ARTA. If as the result of such a conveyance, any lands within the railroad's right-of-way or any interest in such lands are conveyed from federal ownership, the state shall, concurrently with the conveyance to the claimant, receive nothing less than an exclusive use easement in such lands pursuant to Sec. 606(b)(4)(B) ARTA.

6. If the final adjudication of any unresolved claim listed in paragraph 2 results in a denial of the claim and in favor of the Alaska Railroad, that land previously subject to the claim shall, pursuant to Section 604(b)(2) of ARTA, be conveyed to the state by an interim conveyance or patent. Upon such conveyance, the license granted herein for the property subject to the conveyance shall terminate pursuant to Sec. 604(b)(4).

7. At the time all or a portion of this license is terminated, the United States Department of Transportation shall issue to the state a notice of termination identifying the real property that is no longer subject to the license and each conveyance that has caused full or partial termination of the license.

8. Pursuant to section 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the

above-described properties subject to this license for damage resulting from use by the State of land under this license in a manner not authorized by this license.

Definitions

1. "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

   A. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

   B. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

   C. subjacent and lateral support of the lands subject to the easement; and

D. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

2. "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

A. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

B. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to

3/6/84

be hereunto affixed on this _____ day of _____,

in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

~~2/20/84~~
3/6/84

DEED FOR EXCLUSIVE USE EASEMENT
AND RAILROAD
RELATED IMPROVEMENTS

WHEREAS, State of Alaska is entitled to a conveyance pursuant to Section 604(b)(1)(D) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter "ARTA") of:

(1) an exclusive-use easement in and for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve; and

(2) title to railroad-related improvements within such portion of the right-of-way, which right-of-way and improvements are more particularly described as follows:

RIGHT-OF-WAY

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall be not less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N½SW¼ NE¼ of Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed)

T. 14 S., R. 7 W.
Secs. 4, 26, and 35.

T. 15 S., R. 7 W.
Secs. 1 and 2.

~~2/2/24~~
3/6/84

Approximately 31.7 miles.

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska.

Containing approximately .4 acres.

IMPROVEMENTS

Approximate Location by Railroad Milepost		
(1)		All track situated on or within said right-of-way, and all fixtures, machines, tools, parts, ties and other things of whatever nature attached or situated adjacent to said track and used, owned or held by the Alaska Railroad.
(2)	323.6	Powder House, approximately 200 feet from right of way and access trail.
(3)	334	Carlo Section Hosue facility and supporting utility, storage, and fuel system; gravel bluff.
(4)	352.9 to 353.5	Moody slide drainage facility of ditches and flumes.
(5)	347.5 to 348.1	Denali Park Station warehouse, microwave site, power house, and all supporting utility systems.

Now know ye, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, an exclusive-use easement (as defined in Sec. 603(b) of ARTA) in the above-described right-of-way, which exclusive-use easement affords the easement holder the following:

3/6/84

(1) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3) subjacent and lateral support of the lands subject to the easement;

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior as provided by section 608(d) of ARTA.

BE IT FURTHER KNOWN that the United States hereby gives, grants and conveys to the State of Alaska, its successors and assigns title to and in the above described railroad-related improvements within the right-of-way described above.

3/6/84

The Exclusive-use easement granted herein is subject to the Conditions and Reservations set out below.

Conditions and Reservations

1. Pursuant to Section 604(b)(1) of ARTA, the exclusive-use easement hereby granted, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the lands subject to the exclusive-use easement were utilized as of January 14, 1983.

2. Pursuant to Section 604(c)(2) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2560), the following easements for administration are reserved to the United States for administration by the Secretary of Interior:

   (List easements here)

   The use of the above easements shall not interfere with the operations and support functions of the state-owned railroad as defined in Section 603(14) of the Alaska Railroad Transfer Act.

3. The exclusive-use easement herein granted in the above described lands is subject to the following previously granted rights-of-way:

(a) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Secs. 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska; and

(b) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sec. 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska.

4. Pursuant to Section 608(d) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2574), the exclusive-use easement herein granted in the above-described lands is subject to the laws and regulations for the protection of forest and park values.

However, the Secretary of the Interior shall not take any action pursuant to said Section 608(d) without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under ARTA.

5. Pursuant to Section 610 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, 2575), the exclusive-use easement in

3/6/84

the above-described lands is subject to the following conditions:

a) If the State discontinues use of all or part of those properties heretofore described, such properties or part thereof (including permanent improvements to the property) shall revert to the United States. The State shall be considered to have discontinued use when:

(i) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and quitclaim deed thereto; or

(ii) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such

2/22/84
3/6/84

action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

FILE COPY

IN REPLY REFER TO:

March 16, 1984

Greg O'Leary, Attorney
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

Jack McGee
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Joe King - RCC4
FRA, U.S. DOT
400 7th Street, S.W.
Washington, D.C. 20590

Dear Greg, Jack and Joe:

As discussed with Greg, I thought it might be beneficial to illustrate what the BLM proposes to do in order to achieve the level of specificity agreed to when the four of us met together on March 13 and 14, 1984.

There are several possible approaches. One is to lump all the similar types of interests together by township. An illustration of this is as follows:

Right-of-Way, as defined by Section 603(11) of ARTA, in:

T. 15 N., R. 1 W.
Sec. 5

All right, title and interest
Lot 15
SE 1/4 SW 1/4 SE 1/4

All Minerals
Lots 4, 13, 18, 32, 40, 41, 48, 49, 52 & 63

DJH/cv

Oil and Gas
Lots 64 and 66

Not Less Than An Exclusive Use Easement
Lots 3, 4, 13, 14, 17, 18, 25, 26, 31, 32, 40, 41, 48, 49, 52, 53, 63, 64, 65, 66

Alternatively, the legal description can be set out consecutively. This would also be done by township and is illustrated as follows:

Right-of-Way, as defined by section 603(11) of ARTA, in:

T. 15 N., R. 1 W.

Sec. 5

Lot 3 - not less than an exclusive use easement

Lots 4, 13 & 14 - not less than an exclusive use easement and all minerals

Lot 15 - all right, title and interest

Lot 17 - not less than an exclusive use easement

Lot 18 - not less than an exclusive use easement and all minerals

Lots 25, 26 & 31 - not less than an exclusive use easement

Lots 32, 40, 41, 46, 48, 49 & 52 - not less than an exclusive use easement and all minerals

Lot 53 - not less than an exclusive use easement

Lot 64 - not less than an exclusive use easement and all oil and gas

Lot 65 - not less than an exclusive use easement

Lot 66 - not less than an exclusive use easement and all oil and gas

SE 1/4 SW 1/4 SW 1/4 - all right, title and interest

The alternative to one of the approaches illustrated above is to just list the bare legal descriptions. This would appear as follows:

Right-of-Way as defined by section 603(11) of ARTA in:

T. 15 N., R. 1 W.,

Sec. 5

Lots 3, 4, 13, 14, 15, 17, 18, 25, 26, 31, 32, 40, 41, 46, 48, 49, 52, 53, 64, 65 & 66

SE 1/4 SW 1/4 SW 1/4

We think it is apparent that this latter illustration, containing no specificity, does not satisfactorily tell either the State or any third party what right, title and interest is transferred.

In the absence of the level of specificity agreed to during our meeting, the draft patent and draft IC would have to be modified to clearly set out the terms of section 606(b)(4)(B). This would require specific language stating that where land has been conveyed from federal ownership prior to January 14, 1983 or was on that date subject to valid existing rights of a party other than a village corporation, then the conveyance to the State of the Federal interest in such properties shall convey not less than an exclusive-use easement.

As a final note, please keep in mind that the illustrations presented in this letter are my illustrations only and do not represent a final commitment on the appropriate legal description. The illustrations are also taken from an area near Anchorage and represents one of the most complex ownership patterns found along the right-of-way. Moreover, nothing in the illustrations should be construed as an intention on our part to continue any controversy over the Railroad's current scope of ownership. Rather, I have attempted to set out legal descriptions that best implement ARTA.

Please let me know which of the two modes of specifying the interests conveyed is preferable. Also, please do not hesitate to make recommendations or other comments.

Sincerely,

Dennis J. Hopewell
Deputy Regional Solicitor

cc: Gary Seitz, Chief,
Railroad Project, BLM (960)

Sandy Thomas, Supervisory Law
Examiner, Railroad Project, BLM (960)

DEED FOR EXCLUSIVE USE EASEMENT AND RAILROAD RELATED IMPROVEMENTS

WHEREAS, State of Alaska is entitled to a conveyance pursuant to Section 604(b)(1)(D) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter "ARTA") of title to all railroad-related improvements within that portion of the right-of-way of the Alaska Railroad within Denali National Park and Preserve, and of an exclusive-use easement in and for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve as more particularly described as follows:

IMPROVEMENTS

Approximate Location by Railroad Milepost		
(1)		All track situated on or within said right-of-way, and all fixtures, machines, tools, parts, ties, buildings, road bed and other things of whatever nature attached or situated adjacent to said track and used, owned or held by the Alaska Railroad.
(2)	352.9 to 353.5	Moody slide drainage facility of ditches and flumes.
(3)	347.5 to 348.1	Denali Park Station, warehouse, microwave site, power house, and all supporting utility systems.

RIGHT-OF-WAY

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall be not less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N½SW¼ NE¼ of Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed)

T. 14 S., R. 7 W.
Secs. 4, 26, and 35.

T. 15 S., R. 7 W.
Secs. 1 and 2.

Approximately 31.7 miles.

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska.

Containing approximately .4 acres.

Now know ye, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, an exclusive-use easement (as defined in Sec. 603(b) of ARTA) in the above-described right-of-way, which exclusive-use easement affords the easement holder the following:

(1) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for

transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3) subjacent and lateral support of the lands subject to the easement;

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior as provided by section 608(d) of ARTA.

move up to page 2

BE IT FURTHER KNOWN that the United States hereby gives, grants and conveys to the State of Alaska, its successors and assigns title to and in the above described railroad-related improvements within the right-of-way described above.

The Exclusive-use easement granted herein is subject to the Conditions and Reservations set out below.

Reservations and Conditions

1. Pursuant to Section 604(b)(1) of ARTA, the exclusive-use easement hereby granted, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the lands subject to the exclusive-use easement were utilized as of January 14, 1983.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States for administration by the Secretary of Interior:

(List easements here)

Such easements and the use of such easements shall not interfere with the operations and support functions of the state-owned railroad as defined in Section 603(14) of ARTA.

3. The exclusive-use easement herein granted in the above described lands is subject to the following previously granted rights-of-way:

(a) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916),

which crosses the railroad right-of-way within Secs. 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska; and

(b) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sec. 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska.

4. Pursuant to Section 608(d) of ARTA, the exclusive-use easement herein granted in the above-described lands is subject to the laws and regulations for the protection of park values.

However, the Secretary of the Interior shall not take any action pursuant to said Section 608(d) without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under ARTA.

5. Pursuant to Section 610 of the ARTA, the exclusive-use easement in the above-described lands is subject to the following conditions:

a) If the State discontinues use of all or part of those properties heretofore described, such properties or

part thereof (including permanent improvements to the property) shall revert to the United States. The State shall be considered to have discontinued use when:

(i) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and quitclaim deed thereto; or

(ii) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

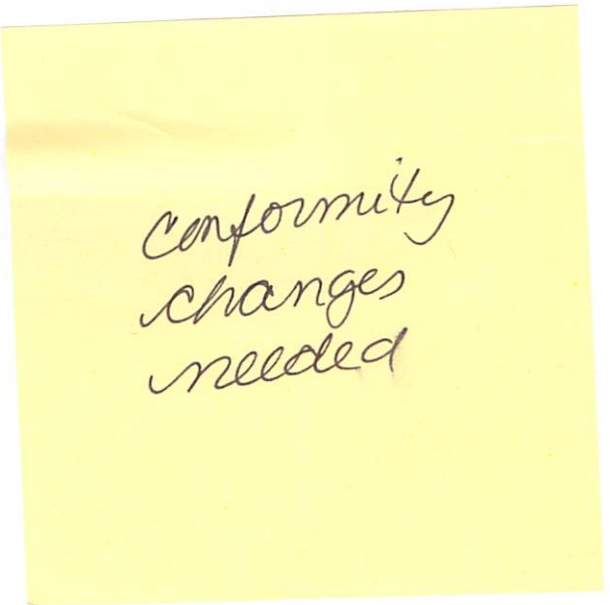
_____

Accepted:

STATE OF ALASKA

_____

Dated: _____


conformity
changes
needed

Exclusive License

Whereas, pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq. hereinafter referred to as "ARTA"), the State of Alaska is entitled to an exclusive license for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this exclusive license is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-way: as defined by Section 603(1) of ARTA;

Now know ye, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy, and directly receive all benefits

of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation. This license is subject to the Conditions and Reservations set out below.

Reservations and Conditions

1. Pursuant to Sec. 604(c)(2) of ARTA the following described existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of the _____:

add> (List easements here & relate them to appropriate parcel or right-of-way segment; designate by Secretary)

Such easements and the use of such easements shall not interfere with railroad operations and support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

2. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted herein is subject to any valid leases, permits and other instruments issued before the date of transfer of the railroad to the state.

3. This license is subject to settlement or final adjudication of the unresolved claims of valid existing rights as defined in section 603(3) of ARTA. A listing of these unresolved claims is set out below:

(These unresolved claims should be listed by BLM serial number along with a description of land subject to each claim.)

During the term of this license the exclusive rights granted by this license shall not be diminished by any unresolved claim of a valid existing right.

4. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted for any lands herein shall terminate upon the conveyance of such lands following the settlement or relinquishment of any of the unresolved claims of valid existing rights described in paragraph 3 above. This license shall terminate only to the extent of the claim or claims settled or adjudicated.

5. If the real property that is the subject of any unresolved claim listed in paragraph 3 above is located within the railroad's right-of-way and if the final adjudication of the claim is in favor of the claimant and against the Alaska Railroad, the license granted herein shall automatically terminate for such property upon conveyance of that property

pursuant to Sec. 604(b)(4) of ARTA. If as the result of such a conveyance, any lands within the railroad's right-of-way or any interest in such lands are conveyed from federal ownership, the state shall, concurrently with the conveyance to the claimant, receive not less than an exclusive use easement in such lands pursuant to Sec. 606(b)(4)(B) of ARTA.

6. If the final adjudication of any unresolved claim listed in paragraph 3 is against the claimant and in favor of the Alaska Railroad, that land previously subject to the claim shall, pursuant to Section 604(b)(2) of ARTA, be conveyed to the state by an interim conveyance or patent. Upon such conveyance, the license granted herein for the property subject to the conveyance shall terminate pursuant to Sec. 604(b)(4).

7. At the time all or a portion of this license is terminated, the United States Department of Transportation shall issue to the state a notice of termination identifying the real property that is no longer subject to the license and each conveyance that has caused full or partial termination of the license.

8. Pursuant to section 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the

above-described properties subject to this license for damage resulting from use by the State of land under this license in a manner not authorized by this license.

Definitions

1. "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

A. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

B. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

C. subjacent and lateral support of the lands subject to the easement; and

D. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

2. "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

A. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

B. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to

be hereunto affixed on this _____ day of _____,

in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

Interim Conveyance

Whereas, pursuant to Sec. 604(b)(1)(B) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA") the State of Alaska is entitled to an interim conveyance for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this interim conveyance is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-Way as defined by Section 603(11) of ARTA ~~(b)~~:

Now know ye that United States of America has given and granted, and by these presents in conformity with ARTA does give, grant and convey unto the State of Alaska, its assigns and successors the real property described above to have and to hold

forever. The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions set out below.

Should be moved here

The force and effect of this interim conveyance is to vest in the State of Alaska exactly the same right, title and interest in and to the real property described above as the State of Alaska would have ~~received had it been issued a patent~~ for said real property; ~~and~~ pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad ~~shall~~ not be less than an exclusive-use easement as defined in Section 603(6) of ARTA.

OK McGee 4-11-84

Upon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the State of Alaska pursuant to section 604(b)(2) and (3) of ARTA.

THIS WILL DEFINETLY NEED TO BE CLEANED UP IF WE DON'T HAVE AN ADEQUATE LEVEL OF SPECIFICITY IN THE DESCRIPTION

.ons

n 610 of ARTA, this conveyance is subject

tions:

(a) Pursuant to Section 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in section 603(14) of ARTA) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

(b) Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

(i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(ii) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of _____:

(List easements here; designate by Secretary)

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

2. All of the terms used in this instrument that are defined in Section 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

A.) "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

(i) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(ii) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(iii) subjacent and lateral support of the lands subject to the easement; and

(iv) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

B.) "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(a) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(b) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to

be hereunto affixed on this _____ day of _____,

in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

Patent

Whereas, pursuant to Section 604(b)(2) and Section 604(b)(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA"), the State of Alaska is entitled to a patent for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this patent is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-way as defined by Section 603(11) of ARTA; drop in

Now know ye, that the United States of America, has given and granted, and by these presents in conformity with ARTA does give, grant and convey, unto the State of Alaska, its assigns and successors the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions below. And, pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad shall not be less than an exclusive-use easement as defined by Section 603(6) of ARTA.

Reservations and Conditions

1. Pursuant to Section 610 of ARTA, this conveyance is subject to following conditions:

   (a) Pursuant to Section 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in section 603(14) of ARTA) the State shall pay to the United States an

amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

b) Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

ii) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for

the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of _____:

(List easements here and relate them to appropriate parcel or right-of-way segment; designate by Secretary)

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Section 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

2. All of the terms used in this instrument that are defined in Section 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

A.) "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

(i) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(ii) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(iii) subjacent and lateral support of the lands subject to the easement; and

(iv) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

B.) "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(a) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(b) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

DEED FOR EXCLUSIVE USE EASEMENT AND RAILROAD RELATED IMPROVEMENTS

WHEREAS, State of Alaska is entitled to a conveyance pursuant to Section 604(b)(1)(D) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter "ARTA") of title to all railroad-related improvements within that portion of the right-of-way of the Alaska Railroad within Denali National Park and Preserve, and of an exclusive-use easement in and for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve as more particularly described as follows:

IMPROVEMENTS

Approximate Location by Railroad Milepost	
(1)	All track situated on or within said right-of-way, and all fixtures, machines, tools, parts, ties, buildings, road bed and other things of whatever nature attached or situated adjacent to said track and used, owned or held by the Alaska Railroad.
(2) 352.9 to 353.5	Moody slide drainage facility of ditches and flumes.
(3) 347.5 to 348.1	Denali Park Station, warehouse, microwave site, power house, and all supporting utility systems.

RIGHT-OF-WAY

A right-of-way extending not less than one hundred (100) feet on either side of the main or branch line tracks within the following lands, except that the right-of-way shall be not less than two hundred (200) feet on either side of the main line from Survey Station 16598 + 32.2 to Survey Station 16618 + 62.4, which is within lot 2 and the N½SW¼ NE¼ of Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska:

U.S. Survey No. 2177, Alaska

Fairbanks Meridian, Alaska (Surveyed)

T. 14 S., R. 7 W.
Secs. 4, 26, and 35.

T. 15 S., R. 7 W.
Secs. 1 and 2.

Approximately 31.7 miles.

AND

A right-of-way extending eight (8) feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station within Sec. 4, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska.

Containing approximately .4 acres.

Now know ye, that the United States hereby gives, grants and conveys to the State of Alaska, its successors and assigns title to and in the above described railroad-related improvements within the right-of-way described above.

BE IT FURTHER KNOWN, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, its successors and assigns, an exclusive-use easement (as defined in Sec. 603(b) of ARTA) in the

above-described right-of-way, which exclusive-use easement affords the easement holder the following:

(1) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3) subjacent and lateral support of the lands subject to the easement;

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. The right to fence the exclusive-use easement hereby granted is subject to the concurrence of the Secretary of the Interior as provided by section 608(d) of ARTA.

The Exclusive-use easement granted herein is subject to the Conditions and Reservations set out below.

Reservations and Conditions

1. Pursuant to Section 604(b)(1) of ARTA, the exclusive-use easement hereby granted, and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which the lands subject to the exclusive-use easement were utilized as of January 14, 1983.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States for administration by the Secretary of Interior:

(List easements here)

Such easements and the use of such easements shall not interfere with the operations and support functions of the state-owned railroad as defined in Section 603(14) of ARTA.

3. The exclusive-use easement herein granted in the above described lands is subject to the following previously granted rights-of-way:

(a) Right-of-way F-388, Denali Highway, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916),

which crosses the railroad right-of-way within Secs. 4, 10, and 15, T. 14 S., R. 7 W., Fairbanks Meridian, Alaska; and

(b) Right-of-way F-035299, granted to the Department of Highways, State of Alaska, under the provisions of the Act of August 27, 1958 (72 Stat. 916), which crosses the railroad right-of-way within Sec. 8, T. 13 S., R. 7 W., Fairbanks Meridian, Alaska.

4. Pursuant to Section 608(d) of ARTA, the exclusive-use easement herein granted in the above-described lands is subject to the laws and regulations for the protection of park values.

However, the Secretary of the Interior shall not take any action pursuant to said Section 608(d) without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under ARTA.

5. Pursuant to Section 610 of the ARTA, the exclusive-use easement in the above-described lands is subject to the following conditions:

a) If the State discontinues use of all or part of those properties heretofore described, such properties or

part thereof (including permanent improvements to the property) shall revert to the United States. The State shall be considered to have discontinued use when:

(i) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and quitclaim deed thereto; or

(ii) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation or the Secretary of the Interior, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

Exclusive License

Whereas, pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq. hereinafter referred to as "ARTA"), the State of Alaska is entitled to an exclusive license for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this exclusive license is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-way as defined by Section 603(11) of ARTA:

Now know ye, that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the State of Alaska, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy, and directly receive all benefits

of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation. This license is subject to the Conditions and Reservations set out below.

Reservations and Conditions

1. Pursuant to Sec. 604(c)(2) of ARTA the following described existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of the _____:

   List easements here.

   Such easements and the use of such easements shall not interfere with railroad operations and support functions of the State-owned railroad, as defined in Section 603(14) of ARTA.

2. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted herein is subject to any valid leases, permits and other instruments issued before the date of transfer of the railroad to the state.

3. This license is subject to settlement or final adjudication of the unresolved claims of valid existing rights as defined in section 603(3) of ARTA. A listing of these unresolved claims is set out below:

(These unresolved claims should be listed by BLM serial number along with a description of land subject to each claim.)

During the term of this license the exclusive rights granted by this license shall not be diminished by any unresolved claim of a valid existing right.

4. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted for any lands herein shall terminate upon the conveyance of such lands following the settlement or relinquishment of any of the unresolved claims of valid existing rights described in paragraph 3 above. This license shall terminate only to the extent of the claim or claims settled or adjudicated.

5. If the real property that is the subject of any unresolved claim listed in paragraph 3 above is located within the railroad's right-of-way and if the final adjudication of the claim is in favor of the claimant and against the Alaska Railroad, the license granted herein shall automatically terminate for such property upon conveyance of that property

pursuant to Sec. 604(b)(4) of ARTA. If as the result of such a conveyance, any lands within the railroad's right-of-way or any interest in such lands are conveyed from federal ownership, the state shall, concurrently with the conveyance to the claimant, receive not less than an exclusive use easement in such lands pursuant to Sec. 606(b)(4)(B) of ARTA.

6. If the final adjudication of any unresolved claim listed in paragraph 3 is against the claimant and in favor of the Alaska Railroad, that land previously subject to the claim shall, pursuant to Section 604(b)(2) of ARTA, be conveyed to the state by an interim conveyance or patent. Upon such conveyance, the license granted herein for the property subject to the conveyance shall terminate pursuant to Sec. 604(b)(4).

7. At the time all or a portion of this license is terminated, the United States Department of Transportation shall issue to the state a notice of termination identifying the real property that is no longer subject to the license and each conveyance that has caused full or partial termination of the license.

8. Pursuant to section 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the

above-described properties subject to this license for damage resulting from use by the State of land under this license in a manner not authorized by this license.

Definitions

1. "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

   A. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

   B. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

   C. subjacent and lateral support of the lands subject to the easement; and

D. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

2. "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

A. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

B. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to

be hereunto affixed on this _____ day of _____,

in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

Interim Conveyance

Whereas, pursuant to Sec. 604(b)(1)(B) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA") the State of Alaska is entitled to an interim conveyance for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this interim conveyance is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

Now know ye that United States of America has given and granted, and by these presents in conformity with ARTA does give, grant and convey unto the State of Alaska, its assigns and successors the real property described above to have and to hold

forever. The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions set out below. Pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad shall not be less than an exclusive-use easement as defined in Section 603(6) of ARTA.

The force and effect of this interim conveyance is to vest in the State of Alaska exactly the same right, title and interest in and to the real property described above as the State of Alaska would have received had it been issued a patent for said real property.

Upon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the State of Alaska pursuant to section 604(b)(2) and (3) of ARTA.

Reservations and Conditions

1. Pursuant to Section 610 of ARTA, this conveyance is subject to following conditions:

4a. Pursuant to Section 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in section 603(14) of ARTA) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

4b. Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

(i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(ii) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of _____:

(List easements here; designate by Secretary)

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

2. All of the terms used in this instrument that are defined in Section 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

A.) "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

(i) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(ii) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(iii) subjacent and lateral support of the lands subject to the easement; and

(iv) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

B.) "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(a) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(b) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to

be hereunto affixed on this _____ day of _____,

in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

Patent

Whereas, pursuant to Section 604(b)(2) and Section 604(b)(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq., hereinafter referred to as "ARTA"), the State of Alaska is entitled to a patent for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this patent is hereby issued for the real property described below:

Railroad Parcels:

Railroad Right-of-way as defined by Section 603(11) of ARTA:

Now know ye, that the United States of America, has given and granted, and by these presents in conformity with ARTA does give, grant and convey, unto the State of Alaska, its assigns and successors the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions below. And, pursuant to Section 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within right-of-way of the Alaska Railroad shall not be less than an exclusive-use easement as defined by Section 603(6) of ARTA.

Reservations and Conditions

1. Pursuant to Section 610 of ARTA, this conveyance is subject to following conditions:

   (a) Pursuant to Section 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in section 603(14) of ARTA) the State shall pay to the United States an

amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

b. Pursuant to section 610(b) of ARTA, if, after (date of transfer), 1984, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

(1) i) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) ii) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Section 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for

the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Section 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States under the jurisdiction of the Secretary of _____:

(List easements here and relate them to appropriate parcel or right-of-way segment; designate by Secretary)

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Section 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to said land.

2. All of the terms used in this instrument that are defined in Section 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

a. ~~A.)~~ "Exclusive-use easement," as used herein, means as provided by Section 603(6) of ARTA an easement which affords to the easement holder the following:

(1)

~~(i)~~ the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2)

~~(ii)~~ the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3)

~~(iii)~~ subjacent and lateral support of the lands subject to the easement; and

4

~~(iv)~~ the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

b.

~~B.~~) "Right-of-way," as used herein, means as provided in section 603(11) of ARTA:

(1)

~~(a)~~ an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(2)

~~(b)~~ an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, in _____.

UNITED STATES OF AMERICA

_____

Accepted:

STATE OF ALASKA

_____

Dated: _____

U.S. Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 14, 1984

EXPRESS MAIL

Dennis J. Hopewell, Esquire
Deputy Regional Solicitor
Alaska Region
U. S. Department of the Interior
701 C Street, Box 34
Anchorage, Alaska 99513

Jack McGee, Esquire
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Gregory O'Leary, Esquire
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

James B. Snow, Esquire
Office of the General Counsel
Natural Resources Division RM 24238
U. S. Department of Agriculture
14th and Independence Ave.,S.W.
Washington, D. C. 20250

Dear Dennis, Greg, Jack and Jim:

Now that the Attorney Working Group Final Drafts of the four real estate conveyance instruments required by Section 604(b) of ARTA appear to be inplace, it seemed timely to turn our attention to the other outstanding real estate issues.1/ The urgency of resolving these disputes--many of which surfaced last summer as the closing report was being put together--is that BLM will need to know the answers to these disputes as they proceed in preparing the conveyance instruments. Moreover, Dennis will be unavailable in July and August, and it is my opinion that his continuity in this process is critical to resolving these issues as expeditiously as possible as was the case with reaching the agreements embodied in the conveyance documents.

1/ I gather that Greg will soon be circulating a draft of a proposed quitclaim deed for the Tanana Valley Railroad.

RECEIVED
REGIONAL SOLICITOR, USDI
MAY 17 1984
ANCHORAGE, ALASKA

May 14, 1984

EXPRESS MAIL

Dennis J. Hopewell, Esquire
Deputy Regional Solicitor
Alaska Region
U. S. Department of the Interior
701 C Street, Box 34
Anchorage, Alaska 99513

Jack McGee, Esquire
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Gregory O'Leary, Esquire
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

James B. Snow, Esquire
Office of the General Counsel
Natural Resources Division RM 2423B
U. S. Department of Agriculture
14th and Independence Ave., S.W.
Washington, D. C. 20250

Dear Dennis, Greg, Jack and Jim:

Now that the Attorney Working Group Final Drafts of the four real estate conveyance instruments required by Section 504(b) of ANTA appear to be in place, it seemed timely to turn our attention to the other outstanding real estate issues.1/ The urgency of resolving these disputes--many of which surfaced last summer as the closing report was being put together--is that BLM will need to know the answers to these disputes as they proceed in preparing the conveyance instruments. Moreover, Dennis will be unavailable in July and August, and it is my opinion that his continuity in this process is critical to resolving these issues as expeditiously as possible as was the case with reaching the agreements embodied in the conveyance documents.

1/ I gather that Greg will soon be circulating a draft of a proposed quitclaim deed for the Tanana Valley Railroad.

RECEIVED
REGIONAL SOLICITOR, USDI
MAY 17 1984
ANCHORAGE, ALASKA

The January 25, 1984 letter from Gary Seitz to John Cikota (a copy of which is annexed hereto for your ready reference) itemizes a number of issues which needs to be addressed. In addition, there are outstanding matters with the Park Service which relate to the width of the right-of-way to be conveyed with Denali National Park, whether certain railroad installed improvements fall within the right-of-way and the issue of the Southwestern boundary. I understand that the NPS representatives will forward a proposal to the FRA in an effort to resolve these issues. Of course, as BLM continues its work in preparing the conveyance instruments, additional items for discussion may surface.

These items certainly provide a full plate to be digested in and of themselves, and I trust that we can sit down and attempt to resolve them. I suggest that we address these issues either in Anchorage, Juneau or Seattle as soon as possible, preferably before the end of May.

In short, we all know that these outstanding issues will, in fact be resolved one way or another, even if not to everyone's mutual satisfaction on each issue. It is my conviction that the time to resolve them with finality has now arrived, and that with Dennis being out-of-pocket for a substantial portion of late summer, I firmly believe that it is in our clients' interest that we attempt to resolve them in the coming weeks. Hence, our clients should simply take the time to consider now these issues which first surfaced over a year ago, or delegate their resolution to counsel.

With best wishes.

Sincerely,

G. Joseph King
Special Counsel for
the Alaska Railroad

Enclosure

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

FILE

IN REPLY REFER TO:

May 18, 1984

Jack McGee, Esq.
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Dear Jack:

Pursuant to our telephone conversation of earlier today, I am writing you regarding the Department of Agriculture's (DOA) concerns over the final Railroad conveyance forms. While I share your concerns about reopening the drafting process, there is still a definite and legitimate need to address the objections of a federal agency not represented in the drafting process. I appreciate your willingness to examine and to attempt to reach a mutually acceptable resolution of these issues.

DOA's chief concern is with the definition of real property. They point out that the term is not defined in ARTA and argue that it exceeds the definition of "rail properties" set out in ARTA. DOA's counsel also argues that the definition includes items such as profits, licenses, and operating agreements which are personal property and not real property. Their real concern, as I perceive it, is that the definition of real property is so broad that it may be construed to include Forest Service lands, such as the gravel sites under permit to the Railroad, which DOA does not believe are Railroad properties.

I believe we should address this problem in one of two ways. The definition of real property can be narrowed to interests which are undisputedly real and not personal property or a proviso can be added to the conveyances of land in Chugach National Forest which specifies that any property not listed in the legal description, specifically the gravel permits to the Railroad, are excluded from the definition. With this in mind

and with the benefit of further hindsight, I think the definition should in any case be modified by a reference to "the above-described lands" to avoid any fear and dispute that the conveyance document includes land not described in the legal description. With these suggestions in mind, I am enclosing several redrafts to the current definition.

DOA has also requested a one sentence addition to the special clause to be inserted in conveyances of Chugach National Forest lands. That sentence would become sentence two of the clause and would state:

> Such laws are those pertaining to the National Forest System including, but not limited to, the Organic Administration Act of June 4, 1897, as amended; the Multiple-Use Sustained-Yield Act of 1960; and the National Forest Management Act of 1976.

My view is that this adds clarity to the clause and would be useful in interpreting and enforcing the conveyance documents. In addition, DOA is the entity most concerned with this particular clause and my view is that we should defer to their reasonable request to add this one sentence.

DOA's other concerns relate to the selective inclusion of verbatim portions of some parts of ARTA and not others, and to the meaning of the subject to provisions. Their suggestion was that copies of ARTA be recorded with the deed rather than including the verbatim quotes and definitions. This was also BLM's view but the consensus of the attorney working group was different. We will address these DOA concerns ourselves as best we can.

The two other issues raised by DOA go beyond the form of the conveyance document but still need to be resolved at some point in time. These two issues are finalization of an MOU on future easements and their firm position, shared by BLM, that the gravel pits under permit to the Railroad are not Railroad property.

Thank you for your continuing willingness to work together in order to reach a mutually acceptable solution to these problems.

Sincerely,

Dennis

Dennis J. Hopewell
Deputy Regional Solicitor

Enclosure

cc: Gregory O'Leary, Esq.
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, WA 98104

Joseph King - RCC-4
Special Counsel for the Alaska Railroad
Federal Railroad Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions — Narrowing Option:

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, ~~franchises~~, ways, ~~waters~~, minerals, rights in land, ~~privileges~~, fixtures, ~~licenses~~, leaseholds, reversions, easements, ~~rights under operating trackage and joint facilities agreements~~, rents, issues, profits and other interests and items belonging to or in any way appertaining to ~~said land~~ the above-described land.

Such easements and the use of such easements shall not interfere with operations or support functions of the State-owned railroad, as defined in section 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

4. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions Addition of a caveat option:

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, road bed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to ~~said land~~ the above-described land, specifically excluding any and all ~~lands~~ National forest land under permit, lease or license to the - 5 - Alaska Railroad.

Dennis Hopewell

United States Department of Agriculture
Office of General Counsel
Washington, D.C. 20250

6 JUN 1984

RECEIVED
REGIONAL SOLICITOR, USDI
JUN 13 1984
ANCHORAGE, ALASKA

DJ&
Blm 124

Gregory O'Leary, Esquire
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

Jack McGee, Esquire
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Dear Greg and Jack:

At the suggestion of Joe King and Dennis Hopewell, I am writing you directly to facilitate resolution of various concerns that our Department has with respect to the railroad draft conveyances. Some of these issues have already been mentioned in Dennis Hopewell's letter of May 18, 1984.

I believe that it would be in the best interests of both the state and federal governments to delete the present definition of "real property" in the draft interim conveyance (IC). The conveyance authority of the Secretary of Transportation is in section 604(a) of ARTA and extends to "rail properties of the Alaska Railroad," a phrase defined at section 603(10). However, the draft IC defines real property differently than that just referenced for rail properties, and also includes items that are not real property under traditional common law uses of that term. Legal and practical problems for all parties would be the likely result of leaving in the present definition.

Normally, the authority of the United States to convey property is a federal question. However, the general meaning of what constitutes property is generally governed by reference to local law. See: United States ex rel. Tennessee Valley Authority v. Powelson, 319 U.S. 266 at 279 (1943); United States v. Causby, 328 U.S. 256 at 266 (1946). In this case, the conveyance power of the Secretary of Transportation is conferred by ARTA. She has authority to convey real property by an IC or exclusive license, but she cannot convey personal property by either means. What constitutes "real property" will generally be determined in accordance with state law.

To the extent that the definition of "real property" in the draft IC includes personal property, or goes beyond the conveyance authority at section 604(a) of ARTA, then there is a question as to the validity of the conveyance. While none of us are clairvoyant, it is not difficult to perceive future problems that might arise over this definition. For example, if the state ever tried to sell all or portions of the railroad, the questionable legality of the conveyance

will certainly affect the ability of a purchaser to get title insurance. Likewise, the odd mixture of realty and personalty in the present definition would leave open the question applicable law.

Another problem with the definition's list of real property items is not only what you may have named, but what you didn't. Applying the common law maxim of interpretation, expressio unius est exclusio alterius, if you don't list something, it may be excluded. I firmly believe you would be better off relying on the broad scope of real property under applicable law.

The bottom line is simple. Instead of the present definition, I recommend that the IC should convey, "Rail properties of the Alaska Railroad as defined in section 603(10) of ARTA which are real property under applicable federal and state law." Such a statement would unquestionably result in a valid conveyance which is the most important thing at this point. What constitutes real property will generally be broadly determined in accord with state law.

I also have problems with the verbatim references in the draft IC to provisions of ARTA. It is not necessary to quote the statute as long as the appropriate cross references are made. If everyone insists on quoting parts of the statute, then it might be desirable to insert an explanation in the document. Consider the following: "Unless otherwise indicated, words and phrases used in this instrument shall have the same meaning as those same words and phrases used in the Alaska Railroad Transfer Act, (Public Law 97-468). The quotation of portions of the Act in this instrument shall not be construed to amend or modify the Act, or affect the applicability of those portions of the Act which are not quoted."

Moving on to other subjects, I want to make sure that all parties are in agreement on the matter of those gravel pits on the Chugach National Forest which are currently under long term permit to the Railroad. While I understand that some in the state would still contend these properties fall within the definition of rail properties of the Alaska Railroad (a position USDA does not accept), it is also my understanding that the state and Forest Service have agreed to use a long term permit to provide the state continued use of the gravel pits. If that is the case, then the state will want to get in touch with Dalton DuLac about finalizing the permits. If this is not the case, I would like to know the current status.

The Forest Service also wants now to clarify the process and criteria for the identification of future easements across the railroad right-of-way. In July 1983, Assistant Secretary of Agriculture John Crowell wrote John Riley, FRA Administrator, and stated our desire to enter into a memorandum of understanding with the state on the subject of future easements. In that correspondence, we enclosed a first draft of a MOU of which I assume you both have a copy. We continue to believe it would now be desirable to resolve questions of future easements.

I would appreciate hearing the position of the state's legal counsel as soon as practicable. The Forest Service has asked me to be in Alaska on other business in July. If I'm in the state, I'd be happy to meet with either or both of you to discuss these issues further.

Thank you for your consideration.

Sincerely,

JAMES B. SNOW
Attorney
Natural Resources Division

2841 (960)

JUN 19 1984

John Cikota
Alaska Railroad Coordinator
Federal Railroad Administration
400 Seventh St. S.W.
Washington, D.C. 20590

Dear John,

Attached is our best estimate on the output dates for draft conveyance documents as you requested in our phone conversation 6/13/84.

At these dates the documents will be BLM's best effort and in final draft form subject to your review. When we submit these documents we will copy the State of Alaska and the attorney working group as agreed.

Sincerely,

/s/ Gary K. Seitz

Gary Seitz
Manager, Alaska Railroad
Transfer Project

Enclosure:
Document Work Chart

Courtesy copy to:

Greg O'Leary, Atty.
Wickwire, Lewis, Goldmark and Schorr
500 Maynard Bldg.
Seattle, Washington 98104

Tony Braden
State of Alaska, DNR
Alaska Railroad Project
Pouch 7035
Anchorage, Alaska 99510-7035

Joe King, Atty.
c/o Alaska Railroad - Room 312
Pouch 7-2111
Anchorage, Alaska 99510

Mark Hickey
State of Alaska
Department of Transportation and
Public Facilities
Pouch Z
Juneau, Alaska 99811

Jack McGee
State of Alaska
Department of Law
Pouch K
Juneau, Alaska 99811

cc:

Dennis Hopewell
Solicitor's Office--Module G

Alaska Program Staff (311)

D-150
Attn: Marvin LeNoue

960 ARR
6/15/84, Seitz

Alaska Railroad Transfer Document
Work Chart

Recording District	Document Type	Work Sequence	Target Date (for completion of BLM Draft)	Remarks
Seward	Patent	1	6/25	
	Int. Conv. (IC)	1	6/25	
	License	1	6/25	
	Chugach Pat.	1	6/25	
	Chugach IC	1	6/25	
	Chugach license	1	6/25	
Anchorage	Patent	7	7/31	
	IC	7	7/31	
	Chugach Pat.	7	7/31	
	Chugach IC	7	7/31	
	Chugach license	7	7/31	
	Military Patent	6	7/23	
	Military IC	6	7/23	
	Military license	6	7/23	
Palmer	Patent	3	7/13	
	IC		7/13	
	License	3.	7/13	
Talkeetna	Patent	2	7/2	
	IC	2	7/2	
	License	2	7/2	
Nenana	Patent	4	7/18	
	IC	4	7/18	
	License	4	7/18	
	Military Pat.	6	7/23	
	Military IC	6	7/23	
	Military license	6	7/23	
	Denali Park	4	7/18	
	(a) Excl. use ease deed (on surveyed land)	4	7/18	
	(b) Excl. Use ease deed (on unsurveyed land)	4	7/18	
Fairbanks	Patent	5	7/18	
	IC	5	7/18	
	License	5	7/18	
	Military Patent	6	7/23	
	Military IC	6	7/23	
	Military license	6	7/23	
	Tanana Valley QCD	5	7/18	

960:G.Seitz:sge:6/15/84:627i

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

FILE

IN REPLY REFER TO:

June 28, 1984

G. Joseph King - RCC4
Special Counsel for the
Alaska Railroad
FRA, U.S. DOT
400 - 7th Street, S.W.
Washington, D.C. 20590

Gregory O'Leary, Attorney
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

Jack McGee
Assistant Attorney General
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Dear Joe, Jack, and Greg:

I thought it would be beneficial for me to set down the status of some agreements and disagreements relating to the transfer of the Alaska Railroad prior to leaving this office for the months of July and August.

To begin with, the BLM has begun releasing draft conveyance documents with legal descriptions for review. Purely technical comments should be made directly to the BLM, preferably in writing, and need not come through the attorney working group. Legal issues should be pursued through the attorneys. In my absence, the Regional Solicitor, Jack Allen, will be handling the Railroad transfer issues himself. The drafts currently circulating are, of course, subject to any revisions agreed to with the Department of Agriculture. This is particularly so in regards to any change to the definition of real property. In addition, it is to be remembered that the level of specificity set out as example two in my letter of March 16, 1984 to the three of you has been agreed to and will be used by the BLM in the transfer documents.

We have also agreed on several minor issues. During a brief discussion at one of our conveyance document drafting sessions, it was agreed that a reservation for the Iditarod Historic Trail would be made in appropriate conveyance documents. Such a reservation is authorized by 16 U.S.C. 1246(h)(2), and is being set out in the draft conveyance documents. An exchange of right-of-way lands between the National Park Service and the Alaska Railroad to better accommodate each agency's needs has also been agreed to in concept. Details still need to be worked out.

Substantial disagreements on various legal issues still exist and I am increasingly concerned about their timely resolution. Foremost among our concerns are the trackless areas of the Chickaloon spur and nonexistent telephone and telegraph lines. As articulated in the Regional Solicitor's Opinion of June 14, 1983, absent a formal withdrawal or reservation, the Alaska Railroad gained its interest by a physical appropriation of the land and when the use and occupancy giving rise to the appropriation ended, the Railroad's only cognizable claim to the land also terminated. Accordingly, there was no "... interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed..." and the former track and telephone and telegraph lines are not rail properties as defined by section 603(10) of ARTA.

Two other issues arise in connection with telephone and telegraph lines. Where an existing telephone and telegraph line is within the 200-foot right-of-way we are of the opinion that only 200 feet, not 250 feet, is to be surveyed and transferred. This is because the exclusive use easement allows for the Railroad's communication and transmission uses as well as for transportation. Where only poles remain and the lines have been removed and the telephone and telegraph system is nonfunctional, we believe the appropriation of a right-of-way has died and there is only personal property (i.e., poles) to be conveyed.

Another area of disagreement is over townsite land at the old Moose Pass and Matanuska Railroad Townsites. We have examined this issue in some detail and are convinced that the Railroad can only validly claim the portions of the townsites set aside for the Railroad. We perceive no validity to the Railroad's claim to lots set aside for public purposes or disposal.

We also support the Forest Service in their position that forest lands leased to the Railroad are not rail properties within the meaning of section 603(10) of ARTA. Such forest lands are not held or claimed for the Alaska Railroad by the United States. Rather, they are lands held and administered for the United States by the Forest Service.

Another serious issue is the question of how to resolve these disputes. To date, there has been insufficient dialogue on these issues and no mechanism for resolving conflicting positions has been implemented. In order to avoid any accusation that the BLM acted improperly or without adequate authority, I have advised BLM not to include any of the above-referenced disputed land in any draft conveyance document until there is either a joint resolution of all affected parties or a final decision by an appropriately high ranking Interior official.

Again, in my absence, please contact Jack Allen directly concerning all Railroad transfer matters.

Sincerely,

Dennis J. Hopewell

Dennis J. Hopewell
Deputy Regional Solicitor
Alaska Region

cc: Paul Kirton, Esq., Div. of E&R, Solicitor's Office
Gary Seitz, Chief, Railroad Projects Office, BLM

bcc: Sandy Thomas, Railroad Projects Office, BLM
Jack Allen, Regional Solicitor, Alaska

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Not from St of AK / Juneau

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

RECEIVED
REGIONAL SOLICITOR, USDI

JUL 23 1984

July 19, 1984

Mr. James B. Snow, Attorney
Natural Resources Division
Office of General Counsel
United States Department of Agriculture
Washington, D.C. 20250

Re: Alaska Railroad Transfer

Dear Jim:

This letter is in response to your letter of June 6, 1984, concerning the form of conveyance instruments for the Alaska Railroad transfer and several matters related to conveyance of rail properties in the Chugach National Forest. To the extent we covered these matters in our telephone conversation of June 21, this letter will serve as a confirmation of that discussion.

Your June 6th letter raised a number of points about the wording of conveyance instruments. The most important of these expressed dissatisfaction with the definition of "real property" employed in the patent and interim conveyance ("IC"). As I understand your position, your concern is that the real-property definition in the conveyance document is broader than that encompassed by the term "rail properties" in section 604(b)(1)(B) in that some elements of the definition could be characterized as personalty. After our June 21 discussion, I believe we are in agreement that the real-property definition does not exceed the scope of "rail properties" as defined in section 603(10) of ARTA.

The broad definition of "real property" was developed by the parties to avert the risk that property of uncertain characterization would fail to transfer because it was not adequately identified as either realty or personalty. Because Congress clearly intended to transfer all "rail properties"--including all personalty and all realty within that definition--ARTA necessarily permits distribution of the property among the variou

instruments in such a way as to avoid inadvertent "gaps" between the bill of sale and real property conveyances. Section 604(b) indicates that, to the extent there is any doubt about the characterization of items as personalty or realty, they should be treated as realty and transferred by means of the patent and IC. Section 604(b)(1)(A) requires that the bill of sale be used to convey "all rail properties of the Alaska Railroad except any interest in real property." (Emphasis added.) Consequently, the statute expressly prohibits the conveyance of real property by the bill of sale, a restriction that makes sense because real property conveyances are to be recorded and are subject to section 610. By contrast, there is no similar express prohibition of the conveyance of personalty by means of the IC and portent. See section 604(b)(1)(C) and (2). This is significant and its import is to empower the Secretary to convey by those instruments the residue of rail properties not transferred by bill of sale. Where property is susceptible to characterization either as realty or personalty, the prudent approach under ARTA is to characterize it as realty, and that is what the parties have done.

This approach is consistent not only with ARTA's express terms, as indicated above, but with its legislative history as well. Congress intended that all "rail properties," as liberally construed, be transferred with the Alaska Railroad. See S. Rep. No. 97-479, 97th Cong., 2d sess. 8, 13-14 (June 22, 1982). At the same time, Congress recognized that the holdings of the Alaska Railroad were in a considerable state of confusion and that identification of the property to be conveyed would not be an easy matter. Id. Although Congress generally settled upon different conveyance documents for personal and real property, there is no indication in the statute that the Secretary of Transportation is burdened with the pointless requirement of identifying all possible property holdings of the Alaska Railroad and then adjudicate their nature as either personalty or realty according to common law or uncertain state rules. Even under traditional rules, some property is of uncertain status and Congress certainly did not intend this property to escape transfer because of "gaps" between coverage of the bill of sale and the real property instruments. Under these circumstances, and consistent with the general legislative intent, property of uncertain status must be covered by broad wording in the bill of sale or IC and patent. As noted above, the structure of section 604(b) indicates that the IC and patent are the preferable instruments to be used for this purpose, and the Secretary of Transportation undoubtedly has discretion to implement the statute in this fashion.

We also believe that Secretary Dole's action in adopting a broad definition of real property to assure conveyance of all "rail properties" would receive deference from the courts if challenged by a third party. A substantially similar definition was included in appendices B, C and D to the Alaska Railroad Transfer Report submitted by Governor Sheffield and Secretary Dole to Congress and the Alaska legislature in July, 1983 */. After submission of the report, Congress did not criticize or legislate to amend the definition of real property. Because the Secretary and the State were the principal drafters of ARTA, and because Congress has implicitly ratified the real property definition by acceptance of the Transfer Report, the courts would almost certainly defer to the Secretary's reasonable construction of ARTA as permitting a broad definition of real property in the conveyance documents. See, e.g., Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 408-409 (1961). Your June 21 letter does not assert that to date Secretary Dole has in any respect exceeded her authority or abused her discretion under ARTA and we believe that no third party could plausibly make such an assertion. The conveyance documents developed by the parties are merely an implementation of the plan already identified in the Transfer Report and its appendices and exhibits.

You raised a number of other pertinent points that we have carefully considered. We are aware that the ARTA conveyances do not conform to typical Interior Department documents. Nor is the ARTA transfer a typical conveyance of real property by the United States. We adopted a common commercial practice of defining the scope of real property in order to eliminate the risks discussed above. The Alaska Railroad transfer is more analogous to a commercial transaction than to a grant of public lands since it involves an operating railroad and a wide range of improvements and ancillary rights.

On another point, although federal law (specifically ARTA) controls whether the Secretary has the authority to convey the rail properties in the manner planned, to the extent Alaska law controls subsequent conveyances and land management, we foresee no difficulty. The ARTA conveyances are not inconsistent

---

*/ The definition in the conveyance instruments differs from that in appendices B, C and D in two respects. First, the exclusions in the appendices are not carried over to the definition section in the conveyance instruments. The first exclusion is, however, set forth under Reservations and conditions. Second, the phrase "facilities, trackwork, roadbed" was added.

with Alaska law and the Governor has been statutorily authorized to receive them. Although the ARTA conveyances need not conform to any state definition of real property, we believe all elements of the real-property definition can be classed as hereditaments and thereby would fall within the scope of the traditional real property definition. Cf. A.S..01.10.060(10).

Like you, we were concerned about the possibility of an unintentional narrowing of the scope of real property through the expressio unius or ejusdem generis maxims. We believe we eliminated this risk by referring to all appurtenances, hereditaments, and other interests and items belonging to the land. The definition was intentionally drafted to include some redundancy and overlap among its terms to avoid inadvertent exclusion of rail property.

You also commented that title insurance may be difficult to procure for a subsequent conveyance from the State to a third party. We do not anticipate a problem with respect to coverage because the conveyances as drafted are authorized by ARTA, collateral attack on the validity of the patent would be difficult to amount in any event, and title policies ordinarily exclude coverage of personalty conveyed with the realty. It is highly unlikely that, under even the most unpredictable reading of ARTA, a court would rule that a conveyance instrument failed to convey real property simply because it may also have conveyed what was later determined to be personalty.

As we discussed during our June 21 telephone conference, the verbatim references to ARTA and the use of language from the statute in the conveyance instruments were designed to protect both the State and the United States. For instance, it is necessary to make the exclusive-use-easement warranty and the possibility of reverter a part of the IC and patent. The attorney working group felt that the best way to avoid exceeding or narrowing the statutory authorization was to track the statute on such matters as closely as possible. Moreover, relevant statutory definitions were recited to maximize notice of the effect of the conveyances and to make them more comprehendible. While a general reference to definitions in ARTA along the lines you suggest is certainly appropriate and is in fact included in paragraph 2 of the definition we see nothing undesirable about setting forth the major, relevant definitions word for word.

For these reasons, the State believes that the current form of the conveyance instruments, which is the product of many hours of discussion among USDOT, the State, and BLM, is appropriate and consistent with ARTA. However, to address your concerns about the breadth of the definition and to reduce the possibility

of misinterpretation, the State is willing to accept the following revisions in the real-property definition:

> (1) For the word "herein" in the first line substitute: "with respect to the property described above . . .".
>
> (2) Delete "rights under operating, trackage and joint facility agreements . . ." (These are picked up by "ways" and "easements" to the extent they are real property interests.)

These proposed modifications are subject to the concurrence of the other interested parties in the process. By copy of this letter to Joe King and Dennis Hopewell, we solicit their responses to this proposal.

With respect to other matters, I look forward to discussing with you later this month in Juneau the questions relating to the State's possible willingness to accept long-term permits in lieu of fee conveyances of certain parcels in the Chugach National Forest. Because of the press of certification matters, we have not yet had time to review Mr. DuLac's draft permit and we would like to be able to do that before we meet. Also, as was explained over the phone, the approval of the specific contents of an MOU for future crossings in the forest will have to await action by the railroad corporation's board, which was set up to operate the Alaska Railroad by recently enacted legislation. I appreciate your recognition that this matter is necessarily a post-transfer issue, and I will do whatever is within my power to secure preliminary review and response of the draft MOU.

I hope that the proposal made above meets with your satisfaction, and I will look forward to seeing you in Juneau later this month.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack B. McGee
Assistant Attorney General

JBM:ebc

cc: Mr. Joseph King
Mr. Dennis Hopewell
Mr. Gregory M. O'Leary

12/28/84

disc. w. O'Leary –

Blm-yes ✓ 1) acceptance clause should be
"Accepted
ALASKA RAILROAD CORPORATION

By: ______________________
Its: ______________________
Dated: ______________________

Blm: leave as is ✓ 2) De Long Dock – Greg's understdg is that its not in conveyn doc – my understdg is that it is – we both agree it'll have to be left as is for now & resolved later – mult is in physical poss. – RR. nvr trans'd to mult

---

Blm-agrees, will do ✓ 3) Ft Wainwright – shld be 28 ft width – shld be all rt title & int. just like Fort Rich & Elemendorf less acq'd ld –

Blm-won't do – docs already run 4) to RR ROW in all ICs & lcs add – "within the following described lands" – after ROW & b/4 as dfd. (not that impo. to Greg)

I said: no ✓ 5) wtd to add to Denali convey that proviso spec's unsurveyed & wld be conformed to survey; I sd that true but lets not put it in the deed at this late stage

✓ 6) on QCDs: a) chg. estate to property
b) add to reference to map - "which shall be considered controlling"
c) delete "and" & he asked for substution of "including but not ltd to"; - he apprvd my suggn that we spec'd the maps are controlly & other gen. lang.

BLM - will do

✓ 7) multary easements: #13, milepost 125.4 Ft R & #3 - Power & Comm e. are to be dropped - but I wdd we needed to hear fr. ~~the~~ ~~the~~ FLA or Mil.

✓done - BLM: yes

✓ 8) say "unsurveyed" instd of "prot" where there's exterior survey or write letter

BLM: no

✓ 9) timing of release of finals - if rel'd b/4 Fri will not entertain any new comments

BLM - fri

✓ 10) row variances - No. Star & FBKS - 50 ft; extra 17 ft at & 28 ft at Ft Wainwright

BLM - will do

---

mtg. w. BLM - Broncyk, Lockard & Brooks

A) on Patent for Nenana - there is no dep row listing, State has asked for deletion of the § 610(b) reversion - our posit is that § 610(b) wld apply to the row w/i the exterior bdys of the parcel.

B) mult easmts (#7 above) - #3 & #13 will be deleted

C) Delong Dock (#2) - leave as is - I thk its RR prop. but too late to resolve - will have to be resolved after convey

D) NPS cmmts - relayed Stenmark's cmmt's - move 3 improvmts to ROW

E) ROW widths agreed to (#10 above) = NO Stan & Fbks @ Inte Airport - 50 ft; extra 17 ft along portions of Anch; & 28 ft at Ft Wainwright (& shld be all at Title & interest) - leave Anch Intl. alone -

F) accept'n clause - chgd. to Nenana & chg accept'n cl per #1 above)

G) won't chg "protracted" to "unsurveyed" cuz sec's not shown on township survey - not a protraction diagram but protracted sec's —

Dennis -
this is the
format we used

BOOK 37 PAGE 192
Seward Recording District

Patent

Seward Recording District

WHEREAS, pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556, et seq.; hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this patent is hereby issued for the real property described below:

Railroad Right-of-way as defined by Section 603(11) of ARTA:

U.S. Survey No. 242, Tract B - all right, title and interest.

Containing approximately 2.92 acres.

NOW KNOW YE that the United States of America, has given and granted, and by these presents in conformity with ARTA does give, grant and convey, unto the Alaska Railroad Corporation, its assigns and successors the real property described above to have and to hold forever.

The right, title and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions below. And, pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall not be less than an exclusive use easement as defined by Sec. 603(6) of ARTA.

Reservations and Conditions

1. Pursuant to Sec. 610 of ARTA, this conveyance is subject to the following conditions:

   a. Pursuant to Sec. 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real

COPY

AA55128

property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in Sec. 603(14) of ARTA) the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

b. Pursuant to Sec. 610(b) of ARTA, if, after January 5, 1985, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

(1) the Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication or transmission purposes. Pursuant to Sec. 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

COPY

Any interest in the Seward/Anchorage Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Tract B of U.S. Survey No. 242.

3. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, lease-holds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

   a. "Exclusive-use easement," as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

      (1) the exclusive right to use, possess and enjoy the surface estate of the land subject to this easement for transportation, communication and transmission purposes and for support functions associated with such purposes;

      (2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication and transmission purposes and associated support functions for which the surface of such lands is used;

      (3) subjacent and lateral support of the lands subject to the easement; and

COPY

AA 55128

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures and structures to such lands and to exclude other persons from all or part of such lands;

b. "Right-of-way," as used herein, means as provided in Sec. 603(11) of ARTA:

(1) an area extending not less than one hundred feet on both sides of the centerline of any main line or branch line of the Alaska Railroad; or

(2) an area extending on both sides of the centerline of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated January 5, 1985

COPY

AA55128

BOOK 102 PAGE 121
Valdez Recording District

Exclusive License

Valdez Recording District

WHEREAS, pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to an exclusive license for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this exclusive license is hereby issued for the real property described below:

Railroad Parcels:

U.S. Survey No. 3682, lots 2 and 3.

Containing: 8.39 acres.

U.S. Survey No. 5671, Alaska.

Containing: 65.00 acres.

Aggregating: 73.39 acres.

Railroad Right-of-way as defined by Section 603(11) of ARTA:

U.S. Survey No. 3682, lot 9.

Containing approximately: 0.20 mile or 4.84 acres.

Aggregate for parcels and right-of-way: 78.23 acres.

NOW KNOW YE that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the Alaska Railroad Corporation, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy and directly receive all benefits of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation. This license is subject to the Reservations and Conditions set out below.

COPY

AA55159

Reservations and Conditions

1. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted herein is subject to any valid leases, permits and other instruments issued before the date of transfer of the railroad to the State, specifically including:

   a. Any interest in the Richardson Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to U.S. Survey No. 5671.

   b. A right-of-way, A-061749, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within U.S. Survey No. 5671, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

2. This license is subject to settlement or final adjudication of the unresolved claims of valid existing rights as defined in Sec. 603(3) of ARTA. A listing of these unresolved claims is set out below:

Parcels

U.S. Survey No. 3682, lots 2 and 3 - State Selection A-057065.

U.S. Survey No. 5671 - State Selections A-057064 and A-057065.

Right-of-way

U.S. Survey No. 3682, lot 9 - State Selection A-057065.

During the term of this license the exclusive rights granted by this license shall not be diminished by any unresolved claim of a valid existing right.

3. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted for any lands herein shall terminate upon the conveyance of such lands following the settlement or relinquishment of any of the unresolved claims of valid existing rights described in paragraph 2 above. This license shall terminate only to the extent of the claim or claims settled or adjudicated.

COPY

AA55159

4. If the real property that is the subject of any unresolved claim listed in paragraph 2 above is located within the railroad's right-of-way and if the final adjudication of the claim is in favor of the claimant and against the Alaska Railroad, the license granted herein shall automatically terminate for such property upon conveyance of that property pursuant to Sec. 604(b)(4) of ARTA. If as the result of such a conveyance, any lands within the railroad's right-of-way or any interest in such lands are conveyed from federal ownership, the State shall, concurrently with the conveyance to the claimant, receive not less than an exclusive use easement in such lands pursuant to Sec. 606(b)(4)(B) of ARTA.

5. If the final adjudication of any unresolved claim listed in paragraph 2 is against the claimant and in favor of the Alaska Railroad, that land previously subject to the claim shall, pursuant to Sec. 604(b)(2) of ARTA, be conveyed to the State by an interim conveyance or patent. Upon such conveyance, the license granted herein for the property subject to the conveyance shall terminate pursuant to Sec. 604(b)(4).

6. At the time all or a portion of this license is terminated, the United States Department of Transportation shall issue to the State a notice of termination identifying the real property that is no longer subject to the license and each conveyance that has caused full or partial termination of the license.

7. Pursuant to Sec. 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the above-described properties subject to this license for damage resulting from use by the State of land under this license in a manner not authorized by this license.

Definitions

1. "Exclusive-use easement," as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

   a. the exclusive right to use, possess and enjoy the surface estate of the land subject to this easement for transportation, communication and transmission purposes and for support functions associated with such purposes;

   b. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication and transmission purposes and associated support functions for which the surface of such lands is used;

c. subjacent and lateral support of the lands subject to the easement; and

d. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

2. "Right-of-way," as used herein, means as provided in Sec. 603(11) of ARTA:

a. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

b. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (a) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated January 5, 1985

COPY

AA-5159

BOOK 37 PAGE 183
Seward Recording District

Interim Conveyance

Seward Recording District

WHEREAS, pursuant to Sec. 604(b)(1)(B) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to an interim conveyance for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this interim conveyance is hereby issued for the real property described below:

Railroad Parcels:

Beginning at Corner No. 1 of U.S. Survey No. 149 (Corner No. 10 of Alaska Railroad Terminal Tract); thence along the meanders of mean high water of Resurrection Bay (Alaska Tidelands Survey No. 174), N. 72°19'24" E., 758.91 feet; thence S. 78°17'00" E., 112.18 feet; thence N. 76°11'45" E., 290.36 feet; thence S. 66°00'55" E., 211.17 feet; thence N. 47°23'30" E., 303.58 feet; thence N. 78°15'45" E., 402.55 feet to Corner No. 4 of U.S. Survey No. 149 (Corner No. 1 of Alaska Railroad Terminal Yard Tract); thence South 3,700 feet, more or less, to the Directors line (the South line of Sec. 3, T. 1 S., R. 1 W., S.M.); thence West, along said Directors line to a point which bears South 3,230 feet, more or less, from Corner No. 1 of U.S. Survey No. 149 (Corner No. 10 of Alaska Railroad Terminal Tract); thence North 3,230 feet, more or less, to aforesaid Corner No. 1 of U.S. Survey No. 149, and the point of beginning.

Containing approximately: 155.00 acres.

That portion of U.S. Survey No. 149 described as follows:

COMMENCING at Corner No. 4, U.S. Survey No. 149, Seward, Alaska, as the POINT OF BEGINNING and known as ARR Corner No. 1; thence due north, a distance of Three Hundred Thirty and 00/100 (330.00) feet to W.C. No. 4; thence continuing north Six Hundred Fifty-Two and 04/100 (652.04) feet, along the east boundary of said survey, to ARR Corner No. 2;

COPY

AA-51128

thence S. 71°47' W., a distance of Two Hundred Twenty and 74/100 (220.74) feet to ARR Corner No. 3; thence N. 8°37' W., a distance of Four Hundred Thirty-Six and 81/100 (436.81) feet to ARR Corner No. 4; thence N. 81°23' E., a distance of Two Hundred and 00/100 (200.00) feet to ARR Corner No. 5; thence N. 8°37' W., a distance of Two Thousand Five Hundred Forty-Four and 35/100 (2,544.35) feet to ARR Corner No. 6; thence N. 33°52' W., a distance of Four Hundred Thirty and 08/100 (430.08) feet to ARR Corner No. 7; thence S. 29°03'30" W., a distance of Two Thousand Five Hundred Twenty-Three and 12/100 (2,523.12) feet, along the south boundary of the Alaska Central Railroad right of way as shown on U.S. Survey No. 149, to ARR Corner No. 8, thence along the west boundary of U.S. Survey No. 149, S. 00°01' W., a distance of Three Hundred Fifty-One and 97/100 (351.97) feet to ARR Corner No. 9, an existing iron pipe marking the corner of U.S. Survey Nos. 149, 241 and 242; thence S. 00°02' W., a distance of One Thousand Four Hundred Sixty-Four and 22/100 (1,464.22) feet to ARR W.C. No. 10; thence continuing a distance of Five Hundred Fifty-One and 22/100 (551.22) feet to W.C. No. 1, U.S. Survey No. 149; thence continuing a distance of One Hundred Fifty-Two and 46/100 (152.46) feet to ARR Corner No. 10, known as Corner No. 1, U.S. Survey No. 149; thence along the meander N. 72°20' E., a distance of Seven Hundred Fifty-Nine and 00/100 (759.00) feet; thence S. 78°17' E., a distance of One Hundred Twelve and 20/100 (112.20) feet; thence N. 76°12' E., a distance of Two Hundred Ninety and 40/100 (290.40) feet; thence S. 66°01' E., a distance of Two Hundred Eleven and 20/100 (211.20) feet; thence N. 47°24' E., a distance of Three Hundred Two and 92/100 (302.92) feet; thence N. 78°16' E., a distance of Four Hundred Two and 60/100 (402.60) feet to ARR Corner No. 1 and POINT OF BEGINNING.

Containing approximately: 144.50 acres.

That portion of Lot 1, Block 2, Townsite of Moose Pass, Alaska, described as beginning at the Easterly corner of said Lot 1 which corner lies S. 35°27' W., 66.82 feet from corner 10 of U.S. Survey No. 2676; thence N. 45°34' W., 72.73 feet to the point of beginning; thence S. 45°34' E., 72.73 feet to the Easterly corner of said Lot 1; thence S. 35°27' W., 283.96 feet; thence N. 45°34' W., 99.4 feet; thence in a Northeasterly direction 285 feet more or less to the point of beginning.

Containing approximately: 0.56 acre.

Alaska Northern Station Grounds

T. 5 N., R. 1 E., Seward Meridian, Alaska

Beginning at the SW corner which is an iron post 3 inches in diameter whence station 1750+68.4 of the Location Survey of the main line of the Alaska Northern Railway bears S. 28°17' E. a distance of 100 feet; thence N. 61°43' E. a distance of 1,320 feet to the SE corner which is an iron post 3 inches in diameter; thence N. 28°17' W., a distance of 660 feet to the NE corner which is an iron post 3 inches in diameter; thence S. 61°43' W. a distance of 1,320 feet to the NW corner which is an iron post 3 inches in diameter; thence S. 28°17' E. a distance of 660 feet to the SW corner, the point of beginning.

Containing approximately: 20.00 acres.

Aggregating approximately: 320.06 acres.

Railroad Right-of-way as defined by Section 603(11) of ARTA:

U.S. Survey No. 149 - not less than an exclusive use easement. Lot 2

Containing approximately: 0.61 mile or 14.79 acres.

U.S. Survey No. 241 - not less than an exclusive use easement. Lot 4

Containing approximately: 0.45 mile or 10.91 acres.

Seward Meridian, Alaska

T. 1 S., R. 1 W. Lot 1 and Parcel A

That portion more particularly described as:

Sec. 3, S2NW4, N2SW4, excluding Quit Claim Deeds AA-11333 and AA-39896 - not less than an exclusive use easement.

Containing approximately: 0.034 mile or 0.82 acre.

T. 1 N., R. 1 W.

Sec. 11, E2E2SE4SE4 - not less than an exclusive use easement;

Sec. 12, SW4SW4NW4NE4, W2W2SW4NE4, W2W2NW4SE4, S2SW4 - not less than an exclusive use easement;

Sec. 13, NW4NW4 - not less than an exclusive use easement;

AA55128

Sec. 14, E2NE4, S2SW4NE4, W2SE4, E2SW4 - not less than an exclusive use easement;
Sec. 23 - not less than an exclusive use easement;
Sec. 26, W2 - not less than an exclusive use easement;
Lot 7 Sec. 27, SE4SE4 - not less than an exclusive use easement;
Lot 5+6 Sec. 34, lot 1 - not less than an exclusive use easement.

Containing approximately: 4.86 miles or 117.81 acres.

T. 4 N., R. 1 W.
Sec. 1, N2 - not less than an exclusive use easement.

Containing approximately: 0.56 mile or 13.57 acres.

T. 5 N., R. 1 W.
Sec. 36 - not less than an exclusive use easement.

Containing approximately: 1.08 miles or 26.18 acres.

Aggregating approximately: 7.59 miles or 184.08 acres.

Total aggregate for parcels and right-of-way: 504.14 acres.

NOW KNOW YE that the United States of America has given and granted, and by these presents in conformity with ARTA does give, grant and convey unto the Alaska Railroad Corporation, its assigns and successors the real property described above to have and to hold forever. The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall not be less than an exclusive use easement as defined in Sec. 603(6) of ARTA.

The force and effect of this interim conveyance is to vest in the Alaska Railroad Corporation exactly the same right, title and interest in and to the real property described above as the Alaska Railroad Corporation would have received had it been issued a patent for said real property.

AA-51068

Upon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the Alaska Railroad Corporation pursuant to Secs. 604(b)(2) and (3) of ARTA.

Reservations and Conditions

1. Pursuant to Sec. 610 of ARTA, this conveyance is subject to the following conditions:

   a. Pursuant to Sec. 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in Sec. 603(14) of ARTA), the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

   b. Pursuant to Sec. 610(b) of ARTA, if, after January 5, 1985, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

      (1) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

      (2) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Sec. 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska

to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

   Any interest in the Seward/Anchorage Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Sec. 3, T. 1 S., R. 1 W.; Secs. 11, 12, 13, 14, 23, 26, 27 and 34, T. 1 N., R. 1 W.; and Sec. 1, T. 4 N., R. 1 W., Seward Meridian, Alaska.

3. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, lease-holds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

   a. "Exclusive-use easement," as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

(1) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3) subjacent and lateral support of the lands subject to the easement; and

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

b. "Right-of-way," as used herein, means as provided in Sec. 603(11) of ARTA:

(1) an area extending not less than one hundred feet on both sides of the centerline of any main line or branch line of the Alaska Railroad; or

(2) an area extending on both sides of the centerline of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated: January 5, 1985

AA55128

2841 (964/ARR)

Mr. Scott Taylor, Acting Director
Statewide Office of Land Management
University of Alaska
3354 College Road
Fairbanks, Alaska 99701

RECEIVED
REGIONAL SOLICITOR, USDI
SEP 16 1987
ANCHORAGE, ALASKA

Dear Mr. Taylor:

This is in response to your letter which requests the status of the lands described as Sec. 1, Township 1 South, Range 2 West, Fairbanks Meridian, Alaska, which contains the 40 acre junction grounds.

The quit claim deed which was issued to the Alaska Railroad Corporation on January 5, 1985 for the Tanana Valley Railroad was a conveyance without warranty or assurance of the level or existence of the Federal government's title in the property. The Alaska Railroad Corporation, therefore, received only what the Federal government owned on the date of transfer, January 5, 1985. For the following reasons, it is our opinion that all the Federal government owned in Sec. 1, T. 1 S., R. 2 W., on January 5, 1985, was a 200 foot wide exclusive use easement.

Our research indicates this land was withdrawn by Executive Order of March 22, 1906 for an agricultural experiment station and was granted to the Territory of Alaska by the Act of March 4, 1915 for educational uses. Because the transfer of the lands from the Secretary of Agriculture to the University of Alaska had been completed, these withdrawals were revoked on May 15, 1947, by Public Land Order 367. The only Federal interest on January 5, 1985 was, consequently, the existing railroad line.

As the result of this research, it is our conclusion that fee title to the junction grounds in Sec. 1 had vested in the University of Alaska and could not be conveyed to the Alaska Railroad Corporation. The University thus has full fee title

to this land subject only to a reservation of a 200 foot wide exclusive use easement for the right-of-way of the presently operating railroad. An exclusive use easement for that right-of-way was included in Interim Conveyance for the Fairbanks Recording District dated January 5, 1985. The only portion of the Tanana Valley Railroad affected by this reservation would be where the two rights-of-way overlap.

I hope this information eases your concerns. Should you have further questions, please call me.

Sincerely yours,

/s/ Stanley H. Bronczyk

Stanley H. Bronczyk
Chief, Branch of
State Adjudication

cc:

F. G. Turpin
President and Chief Executive Officer
Alaska Railroad
Pouch 7-2111
Anchorage, Alaska 99510

Carol Shobe
Chief, Title Administration
Alaska Department of Natural Resources
3601 C Street Suites 900-984
Anchorage, Alaska 99503

Regional Solicitor
(D. Hopewell)
(w/cy of incoming letter)

964:L.Brooks:sge:3/15/85:395u

FILE COPY

Dennis J. Hopewell
Deputy Regional Solicitor
U.S. Department of the Interior
Office of the Regional Solicitor
Alaska Region
701 C Street, Box 34
Anchorage, Alaska 99513
(907) 271-4131

Attorney for the Bureau of
Land Management

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

IBLA No. 81-426	:	F-24563
THE ALASKA RAILROAD	:	State Selection

RESPONSE TO
ORDER TO SHOW CAUSE

The Board has issued an Order requiring the parties to show cause why this appeal "should not be treated as moot and the petition for reconsideration dismissed." In response, the Bureau of Land Management (BLM) respectfully asserts that the appeal is indeed moot and the request for reconsideration should be dismissed.

The Alaska Railroad was conveyed out of federal ownership to the Alaska Railroad Corporation on January 5, 1985. Authority for the conveyance was the Alaska Railroad Transfer Act, 43 U.S.C. §§ 1201, et seq. The Alaska Railroad Corporation was established

and authorized to purchase and operate the Alaska Railroad by Ch. 153, Session Laws of Alaska (SLA) 1985. That Corporation was made an instrumentality of the State but given "... a legal existence independent of and separate from the state." Ch. 153, § 2, SLA 1985. Accordingly, the interests of the Alaska Railroad Corporation and the State of Alaska are not necessarily the same, and the pending petition for reconsideration is not automatically moot merely because there has been a transfer of the railroad. However, the request for reconsideration would definitely be moot if the new owner, the Alaska Railroad Corporation, did not wish to pursue the request.

In the BLM's opinion, there is, however, an additional factor making reconsideration moot at this time. The Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201, et seq., provided with specificity the level of interest to be conveyed to the purchaser of the Alaska Railroad and put to rest the issues of the extent of ownership raised by the Alaska Railroad. Where the fee interest was in federal ownership on January 5, 1985, the property, including railroad rights-of-way, was conveyed in fee; where there had been a prior conveyance or there remained a need to adjudicate a valid existing claim, all remaining federal interest, but not less than an exclusive-use easement, was conveyed. See, 45 U.S.C. § 1205(b)(4)(B). Since Congress specified exactly what level of

interest was to be conveyed, there remains no need to further address the issues raised by the former Alaska Railroad agency in its request for reconsideration.

For these reasons, the BLM respectfully urges the Board to dismiss the pending petition for reconsideration.1

DATED this 23rd day of April 1985, at Anchorage, Alaska.

Dennis J. Hopewell

DENNIS J. HOPEWELL
Deputy Regional Solicitor
Attorney for the Bureau of
Land Management

1/In any event, the BLM contends the petition for reconsideration should be rejected due to a failure to show sufficient grounds for reconsideration.

Dennis J. Hopewell
Deputy Regional Solicitor
U.S. Department of the Interior
Office of the Regional Solicitor
Alaska Region
701 C Street, Box 34
Anchorage, Alaska 99513
(907) 271-4131

Attorney for the Bureau of
Land Management

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

IBLA No. 81-426	:	F-24563
	:	
THE ALASKA RAILROAD	:	State Selection
	:	

ENTRY OF APPEARANCE

DENNIS J. HOPEWELL of the Office of the Regional Solicitor, United States Department of the Interior, 701 C Street, Box 34, Anchorage, Alaska 99513, hereby enters an appearance as attorney of record for the BUREAU OF LAND MANAGEMENT in the above-captioned proceeding. Please serve all notices, filings, or other documents in this proceeding on the undersigned counsel.

DATED this 22nd day of April 1985, at Anchorage, Alaska.

Dennis J. Hopewell

DENNIS J. HOPEWELL
Deputy Regional Solicitor
Attorney for the BLM

Dennis J. Hopewell, Deputy Regional Solicitor
U.S. Department of the Interior
Office of the Regional Solicitor
Alaska Region
701 C Street, Box 34
Anchorage, Alaska 99513
(907) 271-4131

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

IBLA No. 81-426	:	F-24563
	:	
THE ALASKA RAILROAD	:	State Selection
	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the Regional Solicitor, Alaska Region, and is a person of such age and discretion as to be competent to serve papers. That on April 23, 1985 she served copies of the attached ENTRY OF APPEARANCE and RESPONSE TO ORDER TO SHOW CAUSE on the following persons by placing said copies in a postpaid envelope, certified-return receipt requested, addressed to their last known addresses which are listed below, and by depositing said envelope and its contents in the United States mail at Anchorage, Alaska.

Larry Wood, Esq. and
William J. Wong, Esq.
Alaska Railroad
Pouch 7-2111
Anchorage, AK 99510

Barbara J. Miracle, Esq.
Assistant Attorney General
State of Alaska
1031 W. 4th Ave., Suite 200
Anchorage, AK 99501

Courtesy copies were mailed to:

Chief, Railroad Projects
Office (964)
Bureau of Land Management
Alaska State Office
701 C Street, Box 13
Anchorage, AK 99513

Paralegal (960)
Bureau of Land Management
Alaska State Office
701 C Street, Box 13
Anchorage, AK 99513

DATED: April 23, 1985

Mary Ann Woodward, Leg. Tech.

Statewide Office
(907) 474-7591

University of Alaska
Facilities Planning & Construction
3356 College Road
Fairbanks, Alaska 99701

May 1, 1985

Jeanne Riley, Acting Manager of Real Estate
The Alaska Railroad Corporation
Pouch 7-2111
Anchorage, Alaska 99501

RE: Alaska Railroad on University of Alaska-Fairbanks Campus

Dear Mrs. Riley:

Last January, the University had two areas of concern regarding the presence of Alaska Railroad on the University of Alaska-Fairbanks Campus:

1. Forty-acre junction grounds.

2. Two Hundred foot wide exclusive-use easement.

The enclosed letter from the Bureau of Land Management indicates title to the forty-acre junction grounds vested in the University of Alaska. As far as the two hundred foot easement is concerned, it appears as though we must work together to resolve the uncertainties as to location.

We have completed considerable research on the Railroad through the Fairbanks Campus. After examining all documents and maps available, I believe that the easement to which you are entitled is in a different physical location than the railroad tracks themselves. The enclosed diagram indicates the area of discrepancy. Of particular note is the area where the toe of the slope of an existing roadway comes within a few feet of the tracks themselves.

This summer, the University will resurface and provide shoulders for this roadway.

We would very much like to come to a mutual understanding regarding your easement throughout Campus. What I would propose to do would be to grant your two hundred foot easement where the tracks actually exist, with the exception of areas where University improvements are obviously in conflict with such an easement. The existing easement, where there are no tracks, would then be vacated. The derailment accident last fall, which must be cleaned up as soon as spring weather allows, indicates a need for this issue to be quickly resolved.

7

University of Alaska
Facilities Planning & Construction

If you agree that this is a reasonable approach to resolve the uncertainties about the respective interests of the Alaska Railroad and the University of Alaska, our next step would be to secure the detailed surveys necessary to establish the existing track route and areas of conflict. Is it reasonable to expect your crews to perform the necessary survey work in a timely fashion? If not, is it feasible for you to commit funds to secure this survey?

After you have reviewed the enclosed material, please advise me as to how you wish to proceed.

Sincerely,

John Dickinson, Manager
Educational Properties

mm
Enclosures

cc: Chancellor Pat O'Rourke
Gerry Neubert
Fred King
Scott Taylor
#0450

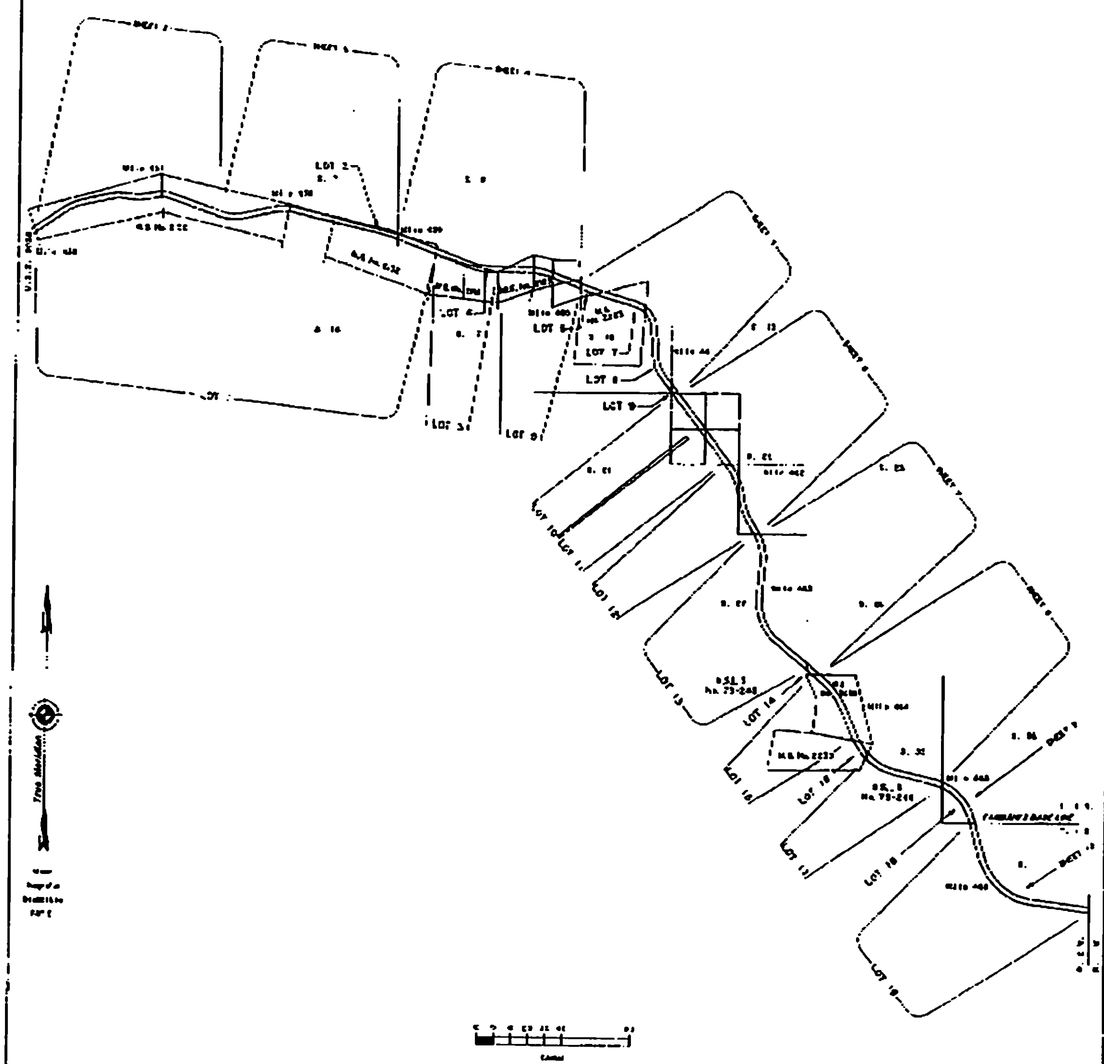
5.2.04/25.3

not to scale

9

Officially Filed: ORIGINAL

DATE MAY 22, 1990



Sheet 1 of 10 Sheets

U.S. SURVEY
No. 9069, ALASKA

COMPRISING 18 LOTS,

AND

THE DEPENDENT RESURVEY OF A PORTION OF

THE FAIRBANKS BASE LINE THROUGH RANGE 2 WEST

AND

THE DEPENDENT RESURVEY OF

A PORTION OF THE EAST BOUNDARY OF

TOWNSHIP 1 SOUTH, RANGE 2 WEST, FAIRBANKS MERIDIAN,

AND

THE DEPENDENT RESURVEY OF A PORTION OF

THE SUBDIVISIONAL LINES AND

THE SUBDIVISION OF SECTION 22 OF

TOWNSHIP 1 NORTH, RANGE 2 WEST, FAIRBANKS MERIDIAN,

AND

THE DEPENDENT RESURVEY OF PORTIONS OF MINERAL SURVEY

NOS. 1818, 2030, 2080, 2083, 2102, AND 2103,

SITUATED

ON THE ALASKA RAILROAD

APPROXIMATELY 6 MILES NORTHWEST OF

THE CITY OF FAIRBANKS

THE GEOGRAPHIC POSITION AT CORNER NO. 1, LOT 1,

IDENTICAL WITH CORNER NO. 2, LOT 10,

U.S. SURVEY NO. 9068, IS:

LATITUDE 64°51'23.46" NORTH

LONGITUDE 148°06'20.09" WEST

NAD 27

AREA: 254.76 ACRES

SURVEYED BY

WILLIAM F. SNESS, CADASTRAL SURVEYOR

MAY 21 THROUGH OCTOBER 13, 1987

UNDER SPECIAL INSTRUCTIONS DATED MAY 16, 1984,

APPROVED JUNE 8, 1984, AMENDED SPECIAL

INSTRUCTIONS DATED AND APPROVED JUNE 15, 1984,

AND SUPPLEMENTAL SPECIAL INSTRUCTIONS DATED

MARCH 3, 1987, APPROVED APRIL 27, 1987.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Robert H. Arndorfer 9 MAY 1990
Date

Deputy State Director for Cadastral Survey, Alaska

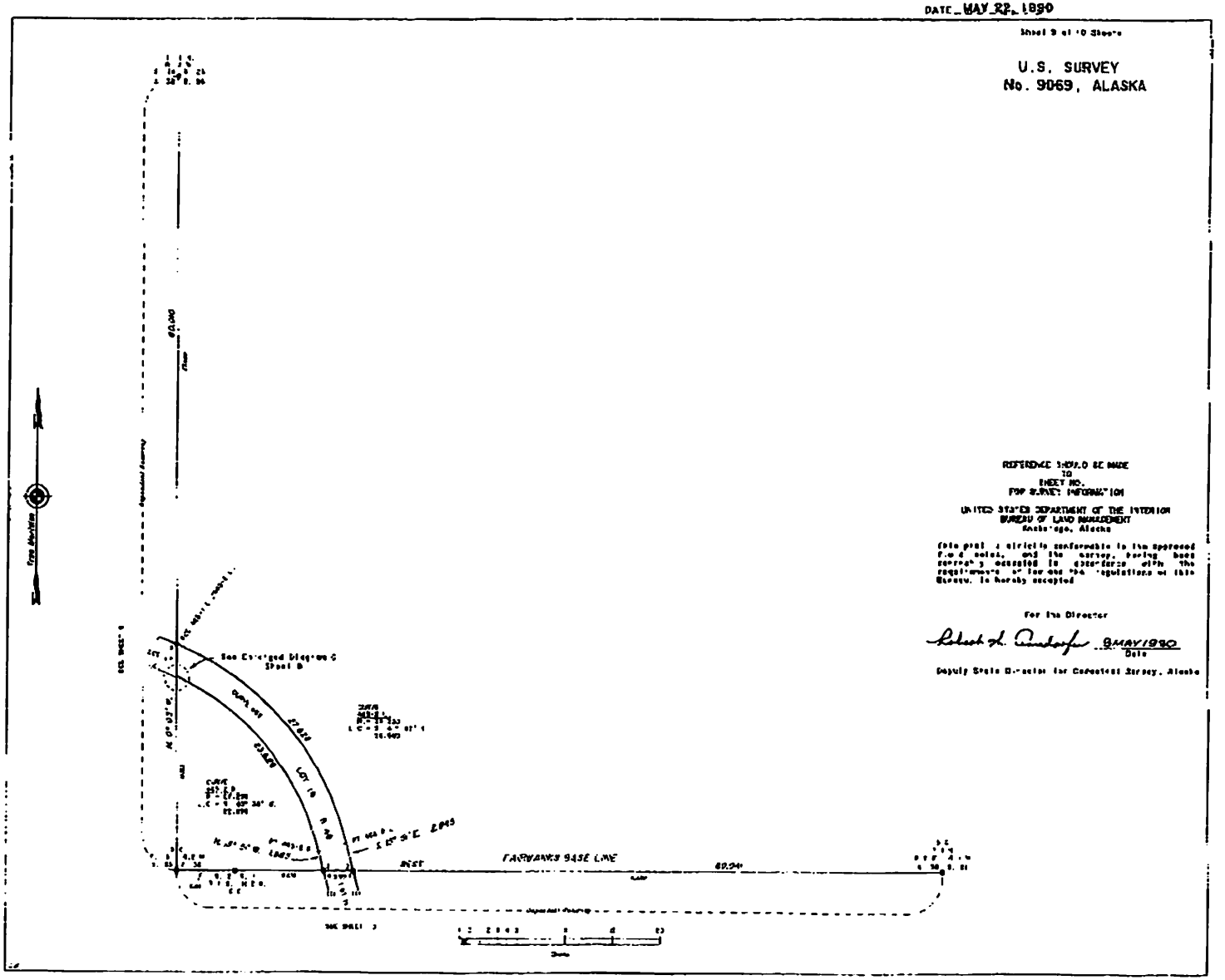
(10)

Officially Filed ORIGINAL

DATE MAY 22, 1990

Sheet 9 of 10 Sheets

U.S. SURVEY
No. 9069, ALASKA



REFERENCE SHOULD BE MADE TO SHEET NO. FOR SURVEY INFORMATION

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

This plat of survey is conformable to the approved field notes, and the survey, being duly reviewed, is accepted in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted

For the Director

Robert L. Lundquist 8 MAY 1990
Date

Deputy State Director for Cadastral Survey, Alaska

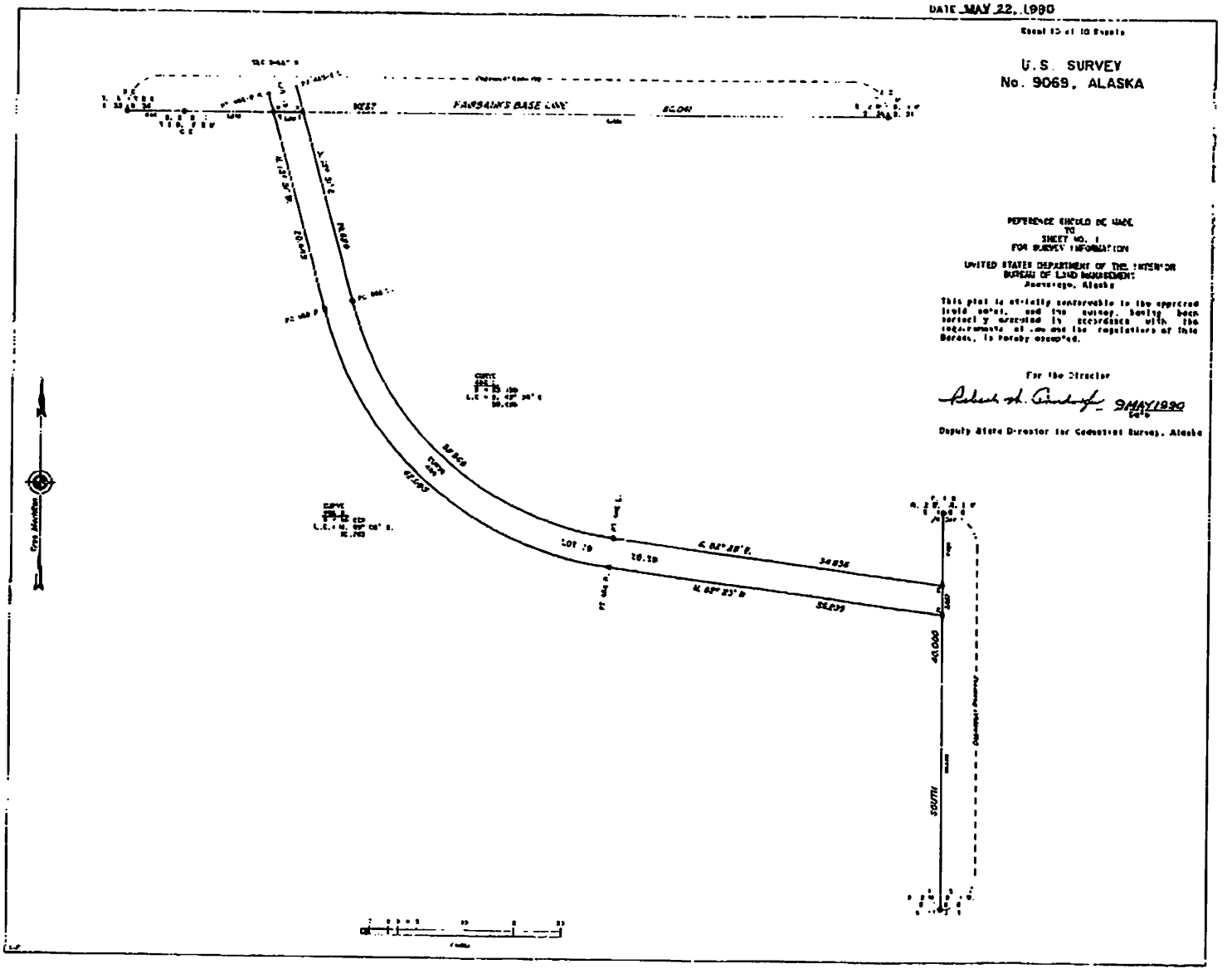
Nov-05-03 02:22P ARR LEGAL 2652443 P.11

Officially Filed ORIGINAL

DATE MAY 22, 1990

Sheet 15 of 16 Sheets

U.S. SURVEY
No. 9069, ALASKA



REFERENCE SHOULD BE MADE
TO
SHEET NO. 1
FOR SURVEY INFORMATION

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

This plat is officially conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

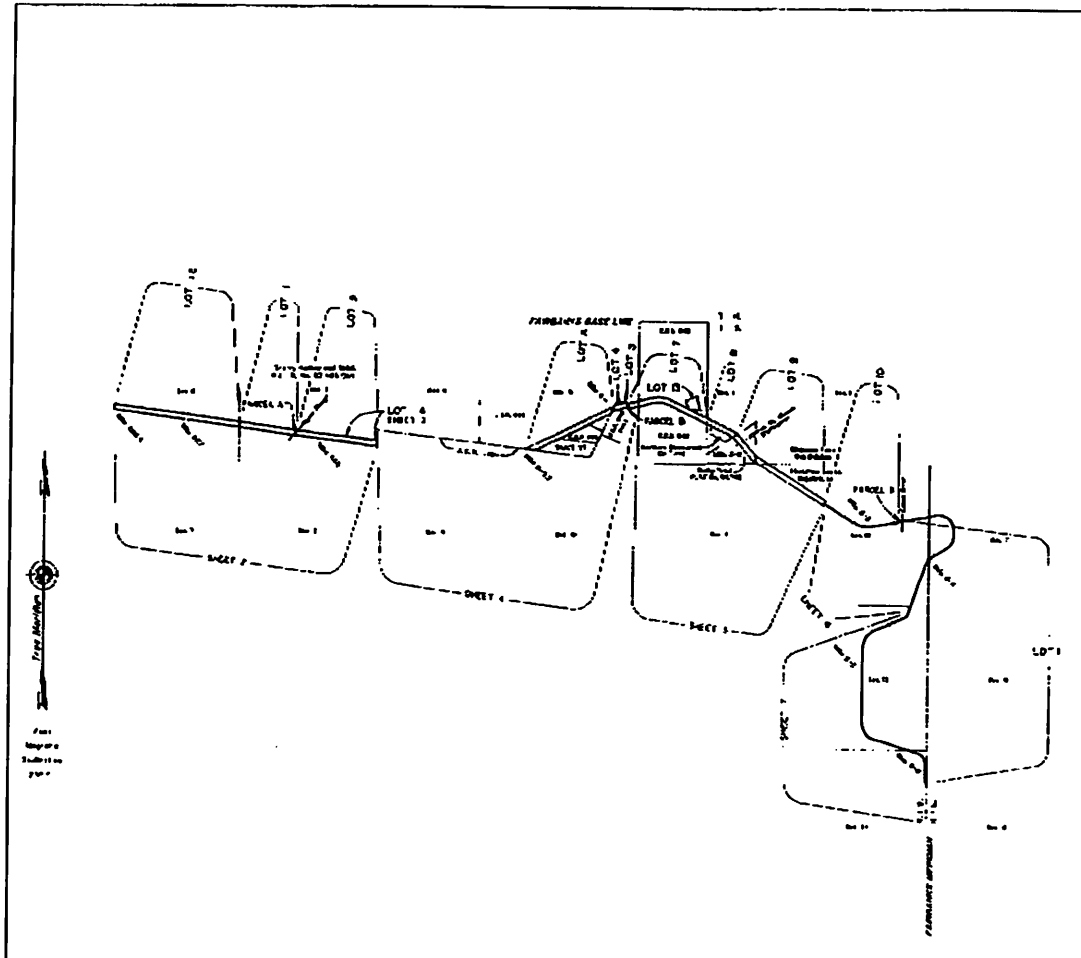
For the Director

Robert A. Arndt 9MAY1990
Date

Deputy State Director for Cadastral Survey, Alaska

12

Officially Filed ORIGINAL
DATE MARCH 10, 1993



Sheet 1 of 11 Sheets

U.S. SURVEY
No. 9070, ALASKA

COMPRISING 4 LOTS AND 3 PARCELS

AND

THE DEPENDENT RESURVEY OF

A PORTION OF THE FAIRBANKS MERIDIAN,

AND THE DEPENDENT RESURVEY OF

A PORTION OF THE FAIRBANKS BASE LINE,

AND

THE DEPENDENT RESURVEY OF

A PORTION OF THE SECTIONAL LINES

OF

TOWNSHIP 1 SOUTH, RANGE 1 WEST, FAIRBANKS MERIDIAN,

AND THE DEPENDENT RESURVEY OF

LINE 2-3, LOT 9, U. S. SURVEY NO. 9060

AND PORTIONS OF U. S. SURVEY NOS. 803,

808 AMENDED AND 848,

ALASKA RAILROAD,

IN THE CITY OF FAIRBANKS

THE GEOGRAPHIC POSITION OF

CORNER NO 1, LOT 1, 13,

LATITUDE: 64°51'12.05" NORTH
LONGITUDE: 147°43'58.83" WEST

NAD 27

AREA: LOTS = 21.93 ACRES
PARCELS = 0.74 ACRES

SURVEYED BY

ORRIN K. FREDERICK, CADASTRAL SURVEYOR
DARRELL S. BAIN, CADASTRAL SURVEYOR
RICHARD B. TANDLICH, CADASTRAL SURVEYOR

JULY 17 THROUGH MAY 29, 1985

UNDER SPECIAL INSTRUCTIONS
DATED MAY 6, 1984,
APPROVED JUNE 8, 1984.

AMENDED SPECIAL INSTRUCTIONS
DATED JUNE 15, 1984,
APPROVED JUNE 19, 1984.

SUPPLEMENTAL SPECIAL INSTRUCTIONS
DATED MARCH 9, 1987,
APPROVED APRIL 27, 1987.

IN THE STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

This plat of survey, conformable to the approved field notes, and the survey, fully and correctly represented, in accordance with the requirements of law and the regulations of the Bureau, is hereby accepted

For the Director

Deputy State Director for Cadastral Survey, Alaska

85A

13

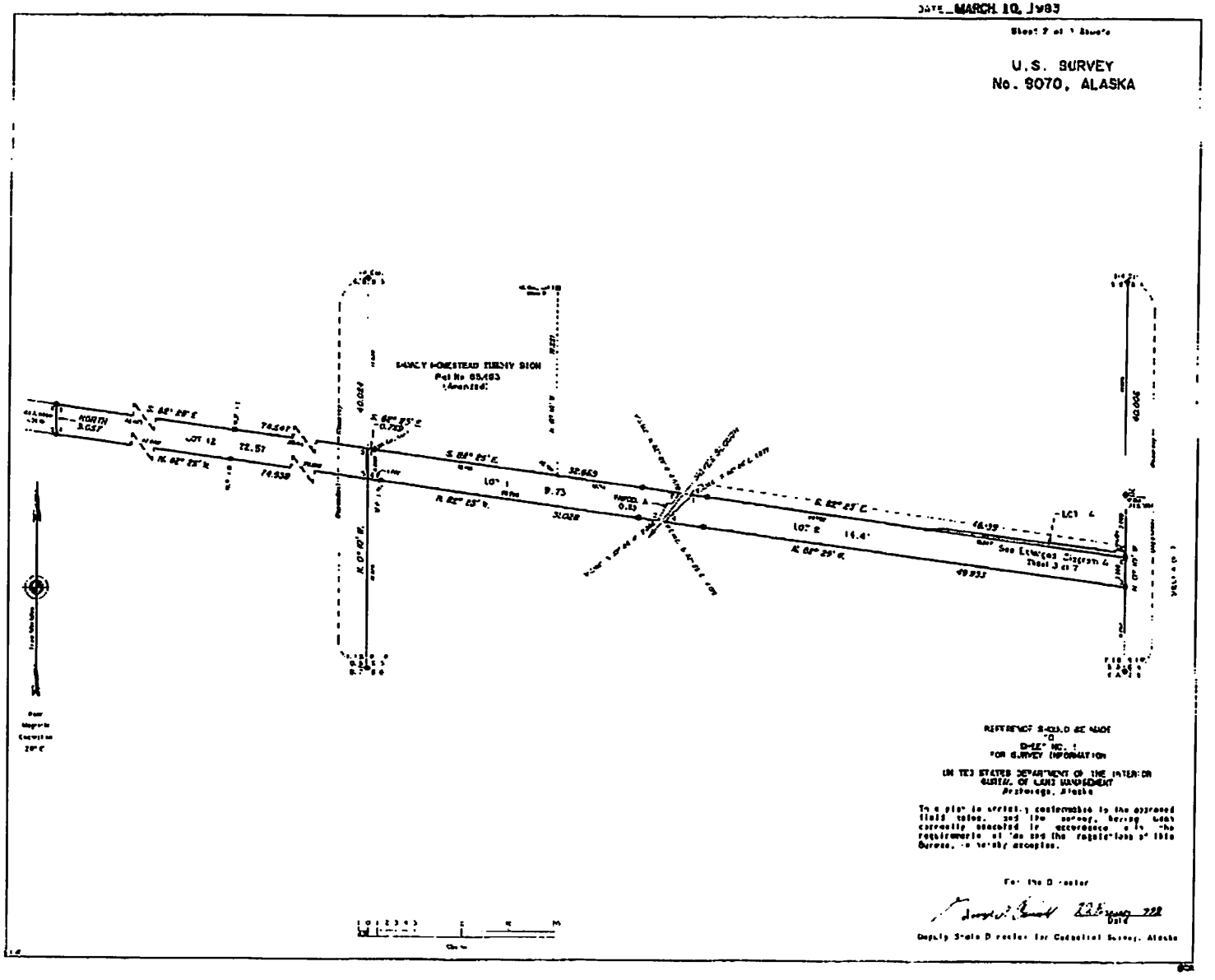
Nov-05-03 02:22P ARR LEGAL 2652443 P.13

Officially Filed ORIGINAL

DATE MARCH 10, 1983

Sheet 2 of 7 Sheets

U.S. SURVEY
No. 9070, ALASKA



REFERENCE IS MADE TO "D SHEET NO. 1 FOR SURVEY INFORMATION

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

This plat is officially conformable to the approved field notes, and the survey, herein, was currently executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Date

Deputy State Director for Cadastral Survey, Alaska

19

10-31-86 RR Pro.

- BLM issued dec on Sep 29 - RR threatening appl reportedly suing dec. says NA cert will issue only to "an excl. use cv" - RR wants it to say either an "approved cv" or "not less than an excl use cv"

- waited for return RR call all day

= finally spoke to P. Johnson at 4:45 who said appl put off til Mon - wh. she has computed as the last day - she says there are 2 pvs' one that the NA not adj'd & hence the BLM dec. is premat & I agree those are the facts & two, does it like the lang as ptd out above

- as to 2nd pt I said BLM did what only op of 7-20-83 said to do & that BRRC had been given the op. at the time it was with ---

---

- Phyllis will be gone Mon but has left instrs to appl - I can disc w. Larry

---

- I ind to determ NA status
- Appvd dec 12/17/79

To Jo Agnew, CIRI & AHTNA Sec
BLM, ASO ~~CO3~~

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
701 C Street, Box 34
Anchorage, Alaska 99513

1-16-87

Attached is the standard wording to be used for conveying telegraph & telephone (t&t) line easements to ARRC where the t&t line is outside the main 200 foot row and copies of some background material to be used in determining what t&t ~~lines~~ easements are to be conveyed. In short, the criteria for t&t easements is that they must have been in use in Jan of 1983. Areas where there were no poles or where there were poles but no lines in Jan. of 1983 will be considered unused & no conveyance will be made.

D. Hopewell

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

4-14-86

TO: ___960-ANCSA & STATE CONVEYANCES

___961-ANCSA ADJUDICATION

___962-CONVEYANCE SUPPORT

___964-STATE ADJUDICATION

X 964-RAILROAD PROJECT

___965-LANDS OPERATIONS

___965-NATIVE ALLOTMENT SECTION

___965-LANDS SECTION

FR: DEPUTY REGIONAL SOLICITOR

RE: General Wording for Telephone & Telegraph lines

X FOR YOUR INFORMATION ___ACTION

___COMMENT ___FILING

___CIRCULATION ___AS REQUESTED

The attached wording has been approved by the ARRC's attorney.

~~PROPOSED~~ UTILITY EASEMENT LANGUAGE
FOR TELEPHONE AND TELEGRAPH LINES
OUTSIDE OF RAILROAD RIGHT-OF-WAY

Telephone and Telegraph Right-of-Way:

_____ Meridian, Alaska

T. N., R. E.

Sec. _____ An easement fifty feet in width, twenty-five (25) feet each side of centerline, for a utility easement including, but not limited to, the right to use, possess, and enjoy the surface estate for communication and transmission purposes and for support functions associated with such purposes and the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the communication and transmission purposes and associated support functions for which the surface of such lands are used.

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
701 C Street, Box 34
Anchorage, Alaska 99513

FILE COPY

IN REPLY REFER TO:

October 4, 1984

DHL EXPRESS MAIL

Gregory M. O'Leary
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 98104

Dear Greg:

RE: Alaska Railroad Real Property Transfer

Your letter of September 28, 1984 does an excellent job of summarizing the basic portions of our meeting of September 21, 1984. There are, however, some points I wish to respond to and some additional information I wish to pass on. For convenience of reference, I will use the same numbers and headings that you used in your letter of September 28, 1984.

4. Description of Lands in the License Category. As discussed at our meeting, it has been BLM's policy to describe third-party claims as specifically as the patentee desires. However, it was my recommendation at the meeting that third-party claims on unsurveyed land, such as Native allotments, be identified more generally, because it avoids the serious problems that arise later if the description was wrong and we need to recover land to convey to the Native allottee. Rather than setting a hard and fast procedure, I recommend that BLM describe third-party claims as specifically as reasonably possible, but that in those few instances where there are very uncertain descriptions for third-party claims on unsurveyed land that a broader reference or description be used. While such a description has a slightly greater impact on the patentee's initial title, it is considerably easier to resolve future problems caused by a shift of the exact location of the third-party claim.

6. "Military" Conveyance Instruments. As correctly indicated in your letter, the BLM will remove the designation of "military" from the draft documents. However, at this point in time, it would be more convenient for the BLM, as well as the military who has reviewed the current set of draft documents, to leave this conveyance separate and not make it part of the larger Anchorage Recording District conveyance document.

7. Reservation to the United States Other Than Administrative Easements. As concerns the Iditarod National Historic Trail, the BLM still has this matter under consideration and I am

not yet able to make a final proposal to you. However, if BLM desires to retain this trail, it does appear that it would be appropriate to reserve it as an administrative easement since it is a linear easement that BLM will administer.

10. Chickaloon Branch. My clients inform me that the spurs to Jonesville, Eska and Moose Creek have all been included in the draft conveyance documents. However, the BLM remains firmly convinced that no easement from Sutton to Chickaloon should be conveyed. BLM also informs me that they would have great difficulty in providing a legal description for that claimed portion of a railroad right-of-way since the MTP's and other records do not show the location of the former track. It would thus be necessary for the ARR or FRA to provide such a description. This does not mean a possible compromise position is foreclosed. A quitclaim deed for the claimed right-of-way from Sutton to Chickaloon with an express waiver from the State of the warranty of an exclusive use easement and survey certainly has its appeal. In any case, discussion and negotiation on this issue should continue.

13. Tanana Valley Railroad Lands. BLM informs me that it has not been provided with an adequate description for the Tanana Valley Railroad lands. The BLM has some information, but the Railroad has not provided either an actual description or enough information so that BLM can come up with a description.

15. Tidelands and Navigability Issues. I did not mean to leave the impression, if I left it, that the BLM would necessarily agree to any claim the State might make to additional tidelands at Anchorage, Whittier, Seward and along the Turnagain Arm. It definitely seems to me that something more than an unresolved legal claim is necessary before that property can be transferred to the State under the Alaska Railroad Transfer Act. This is not to say that the BLM will not readily assist in the description and conveyance of tideland which is included in Public Land Orders, judicial decisions or otherwise undisputedly owned by the Alaska Railroad.

16. Telephone and Telegraph Lines. You should be advised that the BLM is adamant that nonexistent, abandoned telephone and telegraph lines are not proper for conveyance under the Alaska Railroad Transfer Act. From a purely practical standpoint, it seems very late in the process to contemplate description and transfer of lands that at present have not been either identified or legally described.

17. Reversionary Interests. This is one point where my recollection of what was agreed upon at the meeting varies somewhat from yours. As I remember it, you were going to write a

600

THOMAS J. BREWER
DAVID C CROSBY
CHARLES A GOLDMARK
JOHN W. HANLEY, JR
KATHERINE HENDRICKS
SARAH B IGNATIUS
D. GERALD JOHNSON
KEVIN F. KELLY
O. YALE LEWIS, JR.
WENDY F. LIEBOW
CHRISTOPHER O. OECHSLI
GREGORY M. O'LEARY
JOHN W. PHILLIPS
JON M. SCHORR
JAMES WICKWIRE

LAW OFFICES OF
WICKWIRE, LEWIS, GOLDMARK
& SCHORR
A PROFESSIONAL CORPORATION

800 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104

(206) 622-8000
FACSIMILE (206) 623-5018

November 26, 1984

Mr. Dennis J. Hopewell
Office of the Solicitor, Alaska Region
United States Department of the Interior
Box 34
701 "C" Street
Anchorage, Alaska 99513

Re: Alaska Railroad Transfer

Dear Dennis:

This letter is to confirm that the State of Alaska accepts the following accommodations proposed by BLM with respect to real property conveyances under the Alaska Railroad Transfer Act of 1982 "ARTA":

1. Matanuska/Chickaloon Branch Line. The Alaska Railroad Corporation ("the Corporation") will receive conveyance of the branch line right-of-way and associated spurs between Matanuska and Sutton, inclusive. The interests conveyed in such right-of-way will be not less than an exclusive-use easement, as required by Section 606(b)(4)(B) of ARTA. With respect to the branch line right-of-way beyond (or north and east of) Sutton, the Corporation will receive a quitclaim deed without any warranty or assurance of the level or existence of the Federal Government's title to such property. The Corporation will receive only such title as the United States presently has in the property described in the quitclaim deed. The State further waives the right to survey of the lands described in the quitclaim deed. The description of the property conveyed by the quitclaim deed will incorporate a map or plat to be prepared by FRA and BLM. Representatives of the State will want to review the quitclaim instrument and the attached plat at least two weeks before the date of transfer.

2. Former Tanana Valley Railroad Lands. The Corporation will receive conveyance of the former Tanana Valley Railroad lands by quitclaim deed without warranty or assurance of the level or existence of the Federal Government's title in such property. The Corporation will receive only what the Federal Government presently owns. The former Tanana Valley Railroad property now within the main line right-of-way of the Alaska Railroad is excepted from the foregoing accommodation. The main line right-of-way will also be conveyed by patent under ARTA, and the level of title in such right-of-way will not be less than an exclusive-use easement. The fact that the quitclaim deed and patent descriptions overlap (i.e., with respect to the portion of the Tanana lands within the main line right-of-way) will not be construed to eliminate the exclusive-use easement in the main line lands.

The State waives the right of survey under ARTA with respect to all former Tanana Valley Railroad properties other than the property presently within the main line right-of-way of the Alaska Railroad. The description of the property conveyed by the quitclaim deed will incorporate a plat to be prepared by BLM and FRA, and the State will have an opportunity to review the deed and the plat prior to the date of transfer.

3. Iditarod Trail. No portion of the Iditarod Trail will be reserved from the conveyances of rail property under ARTA.

4. Unused Telephone and Telegraph Rights-of-Way. The Corporation will receive all telephone and telegraph rights-of-way in use during January of 1983. It will not receive telephone and telegraph rights of way not in use as of January 1983. Although the telephone and telegraph rights-of-way which were used in January of 1983 have not yet been specifically identified in the conveyance instruments, identification will be completed prior the time of survey. The State agrees that any areas where there were poles but no line as of January 1983 will be treated as unused right-of-way.

5. Moose Pass Townsite. Those areas of the Moose Pass townsite that are not within the right-of-way of the Alaska Railroad will be conveyed to the State of Alaska pursuant to the Alaska Statehood Act. The State relinquishes its claim to such areas pursuant to ARTA.

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 34
Anchorage, Alaska 99513

IN REPLY REFER TO:

November 28, 1984

MEMORANDUM

TO: Chief, Railroad Project
BLM, ASO (960)

FROM: Deputy Regional Solicitor
Alaska Region

SUBJECT: Alaska Railroad Conveyance Documents

This memo will set out some agreements reached by the attorneys on various aspects of the transfer of the Alaska Railroad (ARR) and will provide guidance in the final preparation of the ARR real property conveyance documents. We have previously discussed all of these matters either at our meeting on November 26, 1984 or by telephone.

To begin with, Gregory O'Leary, consulting attorney for the State of Alaska, has advised me that the State has accepted our compromise package. Greg will be writing a letter which sets out the State's acceptance and I will forward a copy to you. What this compromise means to you is: 1) BLM is to remove all reference to the Iditarod Trail and related historic sites from the conveyance documents; 2) abandoned telephone and telegraph lines (where there are either no poles or no line) are not to be included in the conveyance documents; 3) the claimed right-of-way in Tanana Valley and from Sutton to Chickaloon will be conveyed by a quitclaim deed without warranty of an exclusive use easement and the State will waive survey; and 4) no reversionary interests will be transferred in the conveyance documents.

Second, there was a mutual misunderstanding in regards to the land at Matanuska Townsite. The land under BLM jurisdiction has not been made part of the ARR 3(e) process and will not be included in any ARR conveyance documents. If, however, it is established through the 3(e) adjudication of the land under BLM jurisdiction that any part of the land was used and occupied by the ARR, that land would then be transferred to the State.

Third, there is to be no blanket reservation of rights of re-entry to Federal Power Projects. Rather, only existing grants or licenses are to be protected in the conveyance documents.

Fourth, the two roads and the electrical line that go to an ARR parcel across land previously conveyed to Eklutna, need to be listed in the conveyance documents as easements appurtenant to

RECEIVED
REGIONAL SOLICITOR, USDI
APR 07 1987
ANCHORAGE, ALASKA

INTERIOR BOARD OF LAND APPEALS
UNITED STATES DEPARTMENT OF THE INTERIOR
4015 Wilson Boulevard
Arlington, Virginia 22203

IBLA No. 85-884	AA 55800, etc.
THE ALASKA RAILROAD CORPORATION, Appellant, v. EKLUTNA, INC., Appellee.	VILLAGE SELECTIONS; SEC. 3(e) DETERMINATIONS
IBLA No. 85-875 to 883 THE ALASKA RAILROAD CORPORATION, EKLUTNA, INC.	MEMORANDUM IN SUPPORT OF JOINT MOTIONS OF THE ALASKA RAILROAD CORPORATION, EKLUTNA, INC., AND BUREAU OF LAND MANAGEMENT TO REMAND SPECIFIED APPEAL AND TO STAY REMAINING APPEALS PENDING IMPLEMENTATION OF SETTLEMENT AGREEMENT

I. INTRODUCTION.

This memorandum is submitted by the Alaska Railroad Corporation ("ARC"), with the concurrence of Eklutna, Inc., ("Eklutna"), and the Alaska State Office of the Bureau of Land Management ("BLM"), the parties to IBLA No. 85-884 and IBLA Nos. 85-875 to 883 (consolidated), in support of their joint motions to remand the appeal related to the lands identified as highway maintenance sites (IBLA 85-883) and otherwise to stay the appeals in accordance with the schedule specified in the joint motions.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

The joint motions are filed in accordance with, and for the purpose of implementing, paragraphs 1.1.3, 1.1.4, 2.3, and 20 of a January 8, 1987, agreement settling these appeals entitled Agreement of Alaska Railroad Corporation and Eklutna, Inc., Settling Claims of Valid Existing Rights to Rail Properties of the Alaska Railroad and Providing for Conveyances Pursuant to the Alaska Native Claims Settlement Act and the Alaska Railroad Transfer Act of 1982 ("settlement agreement"), a copy of which is submitted herewith as Exhibit A. A stay of these appeals (other than IBLA 83-883, which is to be remanded immediately) is necessary because the settlement agreement is presently subject to a material contingency that the parties will attempt to satisfy before October 30, 1987. That contingency is discussed in greater detail below. If the contingency is not satisfied on or before October 30, 1987, the settlement agreement (paragraph 2.3) permits ARC an election to rescind or ratify the agreement at that time. If ARC were to elect rescission, the appeals the parties propose to stay would then be activated and proceed to decision before the Board. If the contingency is satisfied or if ARC were to ratify the agreement notwithstanding the failure of the contingency, all stayed appeals would then be vacated and the matter remanded to BLM for conveyances in accordance with the settlement.

The parties believe that it is likely that the outstanding contingency will be satisfied within the time-frame specified by the settlement agreement. Because of the importance of the

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

settlement agreement, and because in all likelihood it will eliminate this major controversy and its associated burdens and risks, the parties submit that their motions should be granted on the terms requested.

II. EXPLANATION OF THE SETTLEMENT AGREEMENT AND ITS BACKGROUND.

The ten appeals that are the subject of the two joint motions filed by the parties concern approximately 2,600 acres of Alaska Railroad reserves selected by Eklutna pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601 et seq., and also claimed by ARC pursuant to the Alaska Railroad Transfer Act of 1982 ("ARTA"), 43 U.S.C. §§ 1201 et seq. In substance, the appeals seek review of BLM decisions determining which lands within the various railroad reserves constitute "public lands" within section 3(e) of ANCSA, and therefore should be conveyed to Eklutna, and which lands are not within the public-lands definition, and therefore should be conveyed to ARC.[1] Adjudication of the "public lands" status of the railroad reserves was necessary because ARC's entitlement to receive former Federal Alaska Railroad "rail properties" under ARTA is

---

[1] IBLA 85-884 concerns the antecedent procedural issue whether BLM properly dismissed a private contest initiated by ARC against Eklutna. That appeal should be dismissed, rather than remanded, at the appropriate time because the contest proceeding is effectively terminated by the allocation of lands under the settlement. The contest appeal should be dismissed in part at this time to allow immediate conveyance of the highway maintenance site lands pursuant to subparagraph 1.1.3 of the settlement agreement; the remainder of the appeal should be stayed and subsequently decided or dismissed in accordance with the procedures set forth in the motion filed in IBLA 85-884.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

subject to claims of valid existing rights such as Eklutna's selections under ANCSA. See 45 U.S.C. §§ 1203, 1205(b).

In addition to requiring adjudication of valid existing rights to rail properties of the Alaska Railroad, Congress in ARTA empowered Native village corporations and the state-owned railroad (i.e., ARC) to settle conflicting land claims, directed the concerned parties to enter into discussions in a good-faith effort to reach settlements, and required the Secretary of the Interior to prepare a report on the subject. 45 U.S.C. § 1205(b)(1)(A). Section 1205(b) expresses a strong Congressional policy in favor of settlement of conflicting railroad/village corporation claims.[2] That section gives the real parties in interest with respect to disputed lands the ability to control allocation of the lands on a consensual basis without regard to their "public lands" status under ANCSA. ARTA thereby allows consideration of prospective needs and land values in the allocation process, rather than restricting conveyances to

---

[2] Section 1205(b)(2) provides that the Secretary of the Interior was to complete final administrative adjudication of Native village claims by January 14, 1985. As it turned out, this date fell a mere nine days after the railroad was transferred to ARC. The Board held in its order of October 30, 1985, in IBLA 85-884, that the specified completion date was directory only. Similarly, both Interior Department and United States Transportation Department officials responsible for administering the transfer of the Federal railroad and conveyance of rail properties have construed section 1205(b) to provide continuing settlement authority. The ten-month period referred to in section 1205(b)(1)(A) was intended to effect a moratorium on adjudication pending initial settlement efforts and the preparation of a report by the Secretary, but was not intended and has not been construed to be a limitation on settlement authority.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

patterns based on actual use by the Federal Alaska Railroad during the 1971-1974 selection period.

On January 8, 1987, after lengthy negotiations, officials of ARC and Eklutna executed the settlement agreement. The agreement recites that it was entered pursuant to 45 U.S.C. § 1205(b). See pp. 1-2, third recital; p. 42, ¶ 26. The agreement also recites that the parties each believe the settlement will serve their separate interests in a variety of ways (p. 2, fourth recital) and that it constitutes a final determination concerning allocation of the disputed properties (id., fifth recital).

The individual terms of the agreement are self-explanatory. Generally, they can be divided into two categories: those related to conveyances of Federal lands by the United States Departments of the Interior and Transportation, and those embodying private agreements between ARC and Eklutna that largely relate to post-conveyance land status and activity. The latter category concerns for the most part such matters as land use restrictions, access, realignment of right-of-way, construction of spur trackage on Eklutna lands, etc., and does not require implementation by the Interior or Transportation Department. In total, the agreement goes beyond the initial conveyances and establishes the foundation for a rational land-use regime on the allocated lands.

The provisions related to conveyance of Federal lands pursuant to ARTA and ANCSA are found in paragraphs 1, 3, 4, and 5 of the settlement agreement and the exhibits identified therein.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

Paragraph 1 and the related exhibits allocate the railroad reserves between Eklutna and ARC. Paragraph 4 requires conveyance to Cook Inlet Region Inc. of the subsurface estate of surface-estate lands going to Eklutna.[3] This provision assures implementation of section 14(f) of ANCSA, 43 U.S.C. § 1613(f), with respect to the lands conveyed under ANCSA. In paragraph 5, Eklutna relinquishes its selections of Alaska Railroad right-of-way pursuant to 45 U.S.C. § 1205(b)(4)(A)(i). Paragraph 3 specifies that "no conveyance shall be issued under this Agreement before the 301st day after [January 8, 1987] . . ." (i.e., November 5, 1987), and paragraph 5 contains similar language making Eklutna's relinquishment of right-of-way effective only as of the same date. Under both paragraphs, the contracting parties may jointly consent to earlier conveyances and relinquishment.

As an exception to the requirement that lands be conveyed on November 5, 1987, the parties agree in subparagraph 1.1.3 that certain highway maintenance sites at Eagle River (see Exhibit No. 1-7 to 1-9) will be conveyed to Eklutna immediately. The pending joint motions request remand with instructions to BLM to make such conveyances immediately. See paragraph 1 of motions. If a road right-of-way is granted by BLM over any portion of the highway maintenance site lands prior to their conveyance to Eklutna, subparagraph 1.1.4 gives Eklutna a right to rescind the

---

[3] Cook Inlet Region Inc. has appeared in the appeals initiated by ARC in IBLA 85-884 and by ARC and Eklutna in IBLA 85-875 to 883.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

settlement agreement in its entirety and return to the status quo ante with respect to adjudication.

The timing of conveyances specified in paragraphs 3 and 5 (with the exception of the schedule for conveyance of the highway maintenance sites) is designed to allow the parties sufficient time to satisfy the major outstanding contingency in the settlement agreement, which is the need to obtain an exclusive-use easement for realignment of trackage across a part of Fort Richardson, an installation of the Department of the Army. See paragraph 2.1 and Exhibit No. 5. This requirement relates to the planned utilization of Parcel C of the largely undeveloped, 1,700-acre Eagle River Powder Reserve. Parcel C, which is allocated to ARC (see paragraph 1.1.2 and Exhibit No. 1-9), is specifically configured to accommodate a future railroad classification yard. Construction of such a facility would require placement of new trackage on lands within Fort Richardson immediately to the south of Parcel C. See Exhibit 5. Because the potential for utilization of Parcel C as a classification yard is a central element of consideration to ARC under the settlement agreement, and because the parties could not bilaterally assure such potential use without the Army's consent, the parties agreed to a period of 295 days during which they would attempt to obtain the Army's commitment to the necessary easement. The parties have already initiated discussions with Fort Richardson's commanding officer and other public officials.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

If ARC does not receive within 295 days of execution of the agreement (i.e., by October 30, 1987) an unconditional commitment that the United States will convey the exclusive-use easement on Fort Richardson, paragraph 2.3 gives ARC an election either to void paragraph 2 and ratify the remainder of the settlement agreement or to rescind the agreement (except with respect to conveyance of the highway maintenance site lands). The election must be exercised during the period October 30, 1987, to November 4, 1987, although the parties may agree to extend or reduce the time for the election.

The conditional rights to rescind the agreement reserved to the parties by paragraphs 1.1.4 and 2.3, and the time period necessary to obtain the United States' commitment to the exclusive-use easement on Fort Richardson, make the stays of appeals requested by the joint motions necessary to implementation of the settlement agreement. The stipulation for dismissal, remand, and stay contained in paragraph 20 of the settlement agreement is mirrored in paragraphs 1 and 2 of the pending motions. These procedures assure that the adjudicatory status quo with respect to all lands other than the highway maintenance sites will be preserved until the settlement agreement can be fully implemented or is rescinded.

Paragraphs 3 through 10 of the joint motion filed in IBLA 85-875 to 883 contain specific provisions instructing BLM to convey lands in accordance with the settlement agreement following remand. Paragraphs 3 through 10 become effective only upon

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

remand, which, absent rescission, will occur on November 5, 1987, or earlier by stipulation of the parties submitted to the Board with a joint motion for earlier remand.

The provisions contained in paragraphs 3 through 10 establish that BLM's earlier decisions with respect to Eklutna's lands will remain effective, except where the need for easements or other interests identified in the 1985 BLM decisions has been eliminated by the settlement agreement. For example, easements required to create a buffer zone for the ARC's explosive storage facility are eliminated because the facility is being closed pursuant to paragraph 6 of the settlement agreement. See paragraphs 4-5 of the motion. By keeping the BLM decisions in effect except where otherwise noted insofar as they concern lands to be conveyed to Eklutna, the parties seek to avoid a waste of the earlier BLM work in connection with identification of easements and other interests and to eliminate the possible need for a duplicative, second series of such determinations after remand. The proposed language clarifies that BLM's only remaining function or obligation upon remand is to convey land to Eklutna and to notify the United States Department of Transportation that property to be received by ARC is available for conveyance. This approach is consistent with paragraphs 1, 3, 19 and 20 of the Settlement Agreement.

By contrast to the language saving the BLM determinations with respect to identification of easements and other interests where still relevant to Eklutna lands, the 1985 BLM decisions

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

will be completely vacated to the extent they concern lands identified in the settlement agreement for conveyance to ARC. See Joint Motion, 4(b)(iii), 5(b)(ii), and 6(b). Because the Secretary of Transportion is responsible for conveyances to ARC, 45 U.S.C. §§ 1203 and 1205, the proposed language merely calls for BLM to notify the Department of Transportation after remand of the availability of the lands for conveyance and to advise that Department that the lands are no longer subject to the 1985 BLM decisions. BLM presently has a cooperative arrangement with the Department of Transportation by which BLM prepares ARTA conveyance instruments for signature by the Secretary of Transportation or her delegate. The notification requirement therefore simply serves the purpose of advising Transportation Department officials that remand has occurred and that ARTA conveyance instruments to implement the settlement will be forthcoming.

Although the Interior Department is not a party to the settlement agreement, see paragraph 26, the agreement contemplates a written statement by the Department that it will implement the settlement. See paragraphs 1.1.3 and 20.1. The Deputy State Director for Conveyance Management issued that statement on behalf of the Interior Department on February 17, 1987. Exhibit B hereto. The Deputy State Director's statement that the Department will implement the settlement agreement followed internal review of the agreement by the Deputy Regional Solicitor for Alaska and by the responsible adjudicatory unit within BLM.

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

III. THE JOINT MOTIONS FOR REMAND AND STAY SHOULD BE GRANTED.

The parties recognize that the Board controls the timing of decision of appeals pending before it, and that absent an order by the Board, parties to appeals may not by stipulation extend time periods, dismiss appeals, or stay pending appeals. There are compelling reasons in this instance for granting the motions with respect to the pending appeals.

All policies favoring settlement as opposed to litigation of controversies are operative in this particular case. The parties' settlement agreement, which was entered after very extensive and costly negotiations, disposes of highly complex and burdensome adjudication of contested land claims. Because of the value of the lands involved and their importance to each of the parties, protracted litigation in the federal courts was very likely had settlement not been reached. The settlement agreement was also entered in furtherance of a strong Congressional policy, 45 U.S.C. § 1205(b), favoring settlement of precisely these claims. The settlement is consistent with both ARTA and ANCSA with respect to the allocation and conveyance of the contested lands. The functions of the United States Departments of Interior and Transportation are limited to conveyance of allocated lands in accordance with those statutes.

Moreover, the settlement has the additional virtues of providing a basis for a comprehensive land-use regime in the vicinity of the allocated lands and avoiding counter-productive conveyance patterns produced by a section 3(e) assessment of

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

historical railroad use during 1971-1974 period. The results of a section 3(e) adjudication could have greatly diminished the value and utility of the lands received by each party by comparison with the negotiated outcome under the settlement agreement. Compare, e.g., BLM decision with respect to Eagle River Powder Reserve under § 3(e) (BLM file AA 52319) and Exhibit No. 1-9 to settlement agreement.

The parties have incorporated in their motions suggested verbatim terms for an order of the Board implementing the stays and remands set forth in the settlement agreement and also identifying the extent to which the July 29, 1985, BLM decisions are necessarily modified by the terms or implementation of the settlement. This language is supplied to facilitate the Board's consideration of and action on the two motions. The motions before the Board relate to a settlement scheme that is relatively complex, and the extent to which the 1985 BLM decisions need to be modified to implement the settlement is determined in large part by interaction of the terms of the settlement agreement and the respective decisions. Under these circumstances and because the conveyances in this matter are a product of contract rather than adjudication, the parties felt it would be appropriate to delineate specific language that the Board could employ to effect the settlement terms while preserving the results of earlier BLM work to the extent feasible.

The properties involved in this settlement are of very significant value and of regional importance; their allocation

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

affects the public interest in the future development of the North Anchorage area and in rail operations on a statewide basis. The parties have allocated the lands to maximize their value and utility to each and fully anticipate that the contingency related to acquisition of the exclusive-use easement will be satisfied within the specified time period. For these reasons, their joint motions should be granted and the Board should order the remand and stays requested therein.

Mr. David Wolf, counsel for Eklutna, and Mr. Dennis Hopewell, counsel for BLM, have reviewed this memorandum and have authorized the undersigned to represent that they concur in the statements made herein.

DATED this 2nd day of April, 1987.

Respectfully submitted,

Larry D. Wood
General Counsel
Alaska Railroad Corporation

WICKWIRE, GOLDMARK & SCHORR

By Gregory M. O'Leary
Gregory M. O'Leary
Sarah B. Ignatius

Attorneys for
Alaska Railroad Corporation

S7:AR1:P53

LAW OFFICES OF
WICKWIRE, GOLDMARK & SCHORR
500 MAYNARD BUILDING
SEATTLE, WASHINGTON 98104
(206) 622-9603

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

222 West 8th Avenue, #34
Anchorage, Alaska 99513-7584
(907)271-4131

FILE COPY

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

BLM.AK.124

December 7, 1989

Phyllis C. Johnson
Associate General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Dear Phyllis:

Re: Alaska Railroad Conveyances

I consulted with BLM concerning your letter of November 16, 1989 and believe that this response will clear the way for the ARRC to accept patents AA-55128 and AA-55129.

Acceptance of these patents by ARRC will certainly not be construed as a waiver of any rights ARRC may have to submerged lands or as an acknowledgement that conveyancing in the Portage area is complete. Issuance of any particular patent will not be deemed to foreclose any future conveyances. In addition, you are correct in your understanding that it is generally possible to amend survey plats through an administrative procedure if additional conveyances in the Portage area are found to be appropriate.

Just like ARRC's acceptance of any particular patent will not be deemed a waiver or admission, nothing in this response should be taken as necessarily agreeing or admitting that ARRC is entitled to any additional conveyances in the Portage area. Rather, we are just agreeing that any possible issues can be resolved at a future date with no party arguing that the issue has been foreclosed by a prior conveyance action.

While the issue can be deferred and the pending patents accepted without prejudice, I would like to go on record as disagreeing, at least in part, with what appears to be the ARRC's position. BLM's past agreement was to separately lot bodies of water within the ARRC 200 foot wide right-of-way where that right-of-way crosses a waterbody. See, my letter of May 17, 1986

to Greg O'Leary and the response of May 27, 1986 from Larry Wood, Chief Counsel, ARRC. The issue of how to handle waterbodies other than at right-of-way crossings was deferred. Id. While there may have been further case-by-case agreements on other waterbodies, we are not prepared to recognize and survey an ARRC claim to submerged lands based on PLOs 571, 1425 and 5576. We are, however, willing to continue to defer the issue as stated above.

Sincerely,

Dennis J. Hopewell
Acting Regional Solicitor

cc: Margaret McDaniel, CIRI/Ahtna Adjudication, BLM, ASO (968)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

RECEIVED
Regional Solicitor's Office
MAR 2 2 1996
Anchorage, Alaska

AA-55129 (2658)
(963) mjm

March 21, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Administrative Law Judge
Interior Board of Land Appeals
Office of Hearings and Appeals
U. S. Department of the Interior
4015 Wilson Boulevard
Arlington, Virginia 22203

Dear Judge:

Re: Alaska Railroad Corporation, (Selection AA-55129) IBLA 96-_____

Transmitted herewith are two (2) appeals from the decision issued February 15, 1996, by the Alaska State Office, Bureau of Land Management (BLM), covering the above captioned case file.

The BLM is not transmitting copies of the case file to you at this time. A settlement is being discussed, and is expected to be submitted soon.

The case files will be sent if you request them, or if the settlement discussions do not lead to a speedy resolution.

Sincerely,

Margaret J. McDaniel
Land Law Examiner
State Adjudication
Branch of 963 Adjudication

Attachment:

Copy of Appeal Transmittal

Copy Furnished to:

Regional Solicitor APU

BRUCE M. BOTELHO
ATTORNEY GENERAL

Joanne M. Grace
Assistant Attorney General
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5240

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

BLM AK SO 973B
ANCHORAGE, AK
96 MAR 18 PM 3:12

	)	AA-55129
	)	Exclusive License
IBLA NO. _____	)	Anchorage Recording
	)	District
Appeal of the	)	
State of Alaska	)	AA-17588
	)	
	)	National Forest Community
	)	Grant State Selection

NOTICE OF APPEAL

The State of Alaska, by and through counsel, hereby appeals the February 15, 1996 Decision of the Alaska State Office, Bureau of Land Management, determining certain lands proper for conveyance to the Alaska Railroad Corporation. The Decision was received by the State on February 20, 1996. The State will take further action in this appeal in accordance with 43 C.F.R. 4.412.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

Dated this 18th day of March, 1996 at Anchorage, Alaska.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: for Joanne M. Grace
Assistant Attorney General

BLM AK SO 973B
ANCHORAGE, AK
96 MAR 18 PM 3:12

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

BRUCE M. BOTELHO
ATTORNEY GENERAL

Joanne M. Grace
Assistant Attorney General
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5240

BLM AK SO 973B
ANCHORAGE, AK
96 MAR 18 PM 3:12

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

	)	AA-55129
	)	Exclusive License
IBLA NO. _____	)	Anchorage Recording
	)	District
Appeal of the	)	
State of Alaska	)	AA-17588
	)	
	)	National Forest Community
_____	)	Grant State Selection

CERTIFICATE OF SERVICE

I certify that I am a legal secretary in the Office of the Attorney General, Anchorage, Alaska and that on the March 18, 1996, I caused to be mailed, certified mail, return receipt requested, **NOTICE OF APPEAL** in this proceeding to the following:

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

Phyllis Johnson, Esq.
General Counsel
Alaska Railroad Corporation
P. O. Box 107500
Anchorage, Alaska 99510-7500

DATED this 18 day of March, 1996.

Margaret Watson
Margaret Watson

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

BLM AK SO 973B
ANCHORAGE, AK
96 MAR 18 PM 3:12

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 898
ANCHORAGE, ALASKA 99506-0898

15 March 1996

REPLY TO ATTENTION OF:

Real Estate Division
Planning and Control Branch

Ms. Margaret J. McDaniel
Land Law Examiner
Bureau of Land Management
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

Re: AA-55129 Exclusive License, Anchorage Recording District; AA-17588 National Forest Community Grant State Selection - Appeal and Stay Request

Dear Ms. McDaniel:

This letter constitutes an appeal of the decision cited in your letter, dated 15 Feb 96, informing us of BLM's intention to convey certain lands to the Alaska Railroad Corporation. The lands to be conveyed are described as: Lots 1, 2, 3, and 4, and Parcels A, B, C, and D, U. S. Survey No. 9008, Alaska situated on the Alaska Railroad at Whittier, Alaska.

We also request a stay of the effectiveness of the cited decision. This decision would seriously impact the Army's ability to conduct operations with reference to its mission in the Whittier area if the Army's current uses of these lands are not reserved in your conveyance documents.

We hereby request BLM acknowledge our preexisting reservations on approximately 23.15 acres of easement rights-of-way (ROW) for such things as an access road, overhead transmission lines, a pumping station, communication lines, underground utility lines,

underground communication cable and the Delong Dock as indicated on the attached maps, (segment 1 and segment 2, Whittier - Anchorage POL Pipeline).

If you have any questions or comments, please contact Al Lewis at 753-2856.

Sincerely,

DENNIS E. KLEIN
Chief, Real Estate Division

Enclosures

Copies Furnished:

Interior Board of Land Appeals
General Counsel, Alaska Railroad Corporation
Office of the Regional Solicitor, Alaska Region

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

M. Medinnis 1/15/96

AA-55129 (2658)
(962) (16) mjm/pm

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEBRUARY 1 5 1996

DECISION

Chief Executive Officer Alaska Railroad Corporation P. O. Box 107500 Anchorage, Alaska 99510-7500	:	AA-55129 Exclusive License Anchorage Recording District
State of Alaska Department of Natural Resources Division of Land Realty Services Section 3601 C Street Suite 960 Anchorage, Alaska 99503-5936	:	AA-17588 National Forest Community Grant State Selection

Lands Proper for Conveyance to the Alaska Railroad Corporation

On January 14, 1983, the Alaska Railroad Transfer Act of 1982 (ARTA), 45 U.S.C. 1201, et seq., was enacted, authorizing the transfer of all Alaska Railroad properties to the State of Alaska. Pursuant to the provisions of Sec. 604(b)(1)(C) of ARTA, on January 5, 1985, the Alaska Railroad Corporation of the State of Alaska received an Exclusive License for certain lands in the vicinity of Whittier, Alaska. This license granted exclusive use of rail properties pending final administrative adjudication of claims of valid existing rights. Section 606(b)(2) of ARTA directs the adjudication of unresolved claims of valid existing rights pursuant to applicable law and ARTA. This license was recorded in the Anchorage Recording District, Book 1212, Pages 286 - 289, and Book 1212, Pages 297 - 352. The lands herein approved for conveyance are now surveyed, and are described as follows:

> Lots 1, 2, 3, and 4, and Parcels A, B, C, and D, U. S. Survey No. 9008, Alaska, situated on the Alaska Railroad at Whittier, Alaska,

Containing 237.67 acres, as shown on plat of survey officially filed October 12, 1995.

Prior to the State selection, the Presidential Proclamation of July 23, 1907, 35 Stat. 2149, withdrew certain lands within T. 8 N., R. 4 E., Seward Meridian, Alaska, for the creation of the Chugach National Forest, pursuant to Sec. 24 of the Act of Congress, approved March 3, 1891.

A history of the various Executive Orders (EO's) and Public Land Orders (PLO's) affecting this area follows:

On April 21, 1914, EO 1919½ withdrew lands in the vicinity of Passage Canal and reserved them for townsite purposes under the Act of March 12, 1914, 38 Stat. 305, repealed by Section 615(a) of ARTA. PLO 219 amended EO 1919½ by enlarging the lands reserved for townsite purposes.

Public Land Order 396, filed August 25, 1947, modified EO 1919½, as amended, and, among other things, reserved certain lands at Whittier for use by the Alaska Railroad as a terminal reserve.

Public Land Order 587, filed May 26, 1949, withdrew 9 parcels of land for use of the Department of the Army for military purposes, with the provision that these lands would be returned to the administration of the Department of the Interior when they were no longer needed for military purposes. Parcels 2, 5, 7, and 9 are now under the jurisdiction of the Alaska Railroad. (Parcel 2 is described as Lots 16, 17, 18, and 19, Block 12, U. S. Survey No. 2559, Alaska. Parcels 5, 7, and 9, are included in Lot 3, U. S. Survey No. 9008, Alaska).

Public Land Order 668, September 1, 1950, reserved approximately 2.80 acres for the Alaska Railroad as a dock and wharf site. This was revoked by PLO 1113.

Public Land Order 787, filed January 15, 1952, partially revoked PLO 587, and reserved the land released for use of the Alaska Railroad in connection with a railroad reserve. This area contains 0.42 acres, and is described as Parcel B, U. S. Survey No. 2559, Alaska.

Public Land Order 1056, filed January 24, 1955, reserved lands lying below the line of ordinary high tide for use of the Alaska Railroad as a dock and wharf site, containing approximately 6.52 acres, and lies within Parcel C, U. S. Survey No. 9008, Alaska.

Public Land Order 1113, filed April 11, 1955, withdrew lands for the Department of the Army as a dock and warehouse site. Jurisdiction of these lands was later transferred to the Alaska Railroad, and contain approximately 15.93 acres, and lies within Parcel C, U. S. Survey No. 9008, Alaska.

Public Land Order 1410, filed April 24, 1957, reserved lands for use of the Alaska Railroad in connection with trainship operations, containing approximately 4.88 acres, and lies within Parcel C, U. S. Survey No. 9008, Alaska.

Public Land Order 2667, filed May 8, 1962, withdrew certain lands for the Alaska Railroad and the Department of the Army, and partially revoked other prior orders. The parcels retained by the Alaska Railroad are located within Lot 3, U. S. Survey No. 9008.

Public Land Order 2791, filed October 18, 1962, revoked PLO 561, filed February 24, 1949, and withdrew lands for the Alaska Railroad as an ammunition depot. This portion of the PLO contains 16.18 acres, and was designated as Tract 1 of PLO 2791.

Within the exclusive license, granted to the State of January 5, 1985, State Selection AA-17588 was identified as requiring adjudication. On July 26, 1985, the State of Alaska submitted a relinquishment for lands within the right-of-way in the SE¼SW¼, Sec. 15, T. 8 N., R. 4 E., Seward Meridian. On February 2, 1995, Tentative Approval was issued to the State of Alaska for those lands outside the railroad right-of-way. There is, therefore, no further action to be taken on this selection application.

In view of the above, when this decision becomes final, the Alaska Railroad Corporation shall receive the full and complete right, title, and interest of the United States in and to the real property described above, pursuant to Sec. 604(b)(2) and (3) of ARTA, 45 U.S.C. 1203(b)(2) and (3). Pursuant to Sec. 606(b)(4)(B) of ARTA, 45 U.S.C. 1205(b)(4)(B), the right, title, and interest granted by the United States in the real property described above that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA, 45 U.S.C. 1202(6).

When this decision becomes final and the Alaska Railroad Corporation receives patent, the exclusive license issued to the Alaska Railroad Corporation will terminate as to the above described lands.

A portion of the real property described above is situated within the boundaries of the Chugach National Forest and, pursuant to Sec. 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. Such laws are those pertaining to the National Forest system including, but not limited to, the Organic Administration Act of June 4, 1897, as amended; the Multiple-Use Sustained-Yield Act of 1960; and the National Forest Management Act of 1976. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and Form 1842-1 (copies enclosed). If an appeal is taken, the notice of appeal must be filed with the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, within 30 days from receipt of this decision. Failure to file the notice of appeal with the Bureau within the time allowed is a jurisdictional defect and will result in dismissal of the appeal. In order to avoid dismissal of the appeal, there must be strict compliance with the regulations. The appellant has the burden of showing that the decision appealed from is in error. Copies of the notice of appeal must also be submitted to each party named in the heading of this decision and to the Office of the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, Alaska, 99508-4626 at the same time the original documents are filed with this office. The following parties must also be served with a copy of the notice of appeal:

General Counsel
Alaska Railroad Corporation
P. O. Box 107500
Anchorage, Alaska 99510-7500.

The Departmental regulations in 43 CFR 4.21 (58 FR 4939, copy enclosed) provide that parties entitled to file an appeal may file a request for a stay of the effectiveness of this decision during the time that the appeal is being reviewed by the Board. The request for a stay must accompany the notice of appeal submitted to the Bureau of Land Management (BLM) and a copy of both documents must be served on the Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, at the same time they are submitted to the BLM. A copy of the request for a stay must also accompany each copy of the notice of appeal submitted to the parties listed in the heading of this decision or listed as parties to be served in the preceding paragraph. A request for a stay is required to show sufficient justification based on the standards listed below.

Standards for Obtaining a Stay

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, the regulations in 43 CFR 4.21(b) provide that a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellants success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Enclosed are copies of the current status plats showing the lands approved for conveyance.

/s/ Margaret J. McDaniel

Margaret J. McDaniel
Land Law Examiner
State Team
Branch of 963 Adjudication

Enclosures:
Status Plats
Survey Plats
Form 1842-1
Appeal Regulations

Copy furnished to:

Mr. Joe King, RCC (CM-RRR)
FRA USDOT 8201
400 Seventh Street, SW
Washington, D.C. 20509

Gregory M. O'Leary (CM-RRR)
Hellar, Ehrman, White, and McAuliff
6100 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7098

Chief, Right-of-Way Agent (CM-RRR)
State of Alaska
Department of Transportation and
Public Facilities
P.O. Box 106900
Anchorage, Alaska 99519-6900

Department of Transportation (CM-RRR)
Attn: Newt Whittaker
400 Seventh Street, SW
Washington, D.C. 20590

Mr. James Barnett (CM-RRR)
10050 Prospect Drive
Anchorage, Alaska 99516

Mr. Dave Morgan (CM-RRR)
Acting City Manager
P. O. Box 608
Whittier, Alaska 99693

USDA Forest Service (CM-RRR)
Regional Forester
Attn: Lands
P. O. Box 21628
Juneau, Alaska 99802-1628

Forest Supervisor
Chugach National Forest
3301 C Street, Suite 300
Anchorage, Alaska 99503-3998

Chugach National Forest
Glacier Ranger District
Monarch Mine Road
P. O. Box 129
Girdwood, Alaska 99587

Department of the Army
U. S. Army Engineer District, Alaska
P. O. Box 898
Anchorage, Alaska 99506-0898

Mr. Mike Fretwell
Alaska Railroad Corporation
P. O. Box 107500
Anchorage, Alaska 99510-7500

Commissioner
Department of Transportation and
Public Facilities
Pouch Z
Juneau, Alaska 99811

General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Dennis Hopewell, Esq.
Regional Solicitor's Office

Withdrawal Section (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

Office of the Regional Solicitor
Alaska Region
NOV 17 2003
Received

From
FAX No.: (907) 271-3334

To: Dennies Hyeverd **FAX No.:** 271-4143

Office: _____ **No. of Pages to Follow:** 5

From: Margaret McDaniel **Office Code:** _____

Phone No. 271-5657 **Verify Receipt:** Yes No

Comments: _____

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender.

Date FAX Sent: _____ Time: _____ Initials: _____

Nov. 17, 2003

Dennis:

The only Tanana Valley Railroad lands that were IC'd on Jan. 5, 1985, were in Secs. 1 and 2, T. 1 S., R. 2 W., Fairbanks Meridian, and that was for the right-of-way. The land in Sec. 6, T. 1 S., R. 1 W., they ask about that is IC'd is also for the right-of-way. The remainder of the lands are in the QCD.

The 1993 letter Phyllis asks about that came to me, I evidently did not respond to in writing.

I don't know what I should be doing about this. I am certainly agreeable to whatever you and Phyllis decide on.

In case you don't have a copy of the QCD I am sending you one, as well as the IC.

Please let me know what I need to be doing to get this settled.

Thanks for your help.

Margaret - 271-5657

QUIT CLAIM DEED
Fairbanks Recording District

Pursuant to Sec. 604 of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.), the United States of America hereby conveys without warranty and quit claims to the Alaska Railroad Corporation the following described real property, that being property acquired by the United States from the Tanana Valley Railroad:

As depicted on the attached maps which shall be considered controlling:

1. Tanana Valley Railroad, Map Showing Definite Location of the Extension to Chatanika, approved by the Department of the Interior, December 4, 1922. The original map is located at the National Archives in Washington, D.C., record group No. 49;

2. Map Showing Definite Location of Tanana Mines Railroad, filed at the United States Land Office on August 8, 1905, and approved April 27, 1906. The original map is located at the National Archives in Washington, D.C., record group No. 49;

3. Map of the Tanana Valley Railroad, file No. R-623-204, reproduced by the Alaska Engineering Commission;

4. Map of Definite Location of Tanana Valley Railroad Terminal Grounds, Fairbanks Branch Line, submitted November 21, 1907. The original map is located at the National Archives in Washington, D.C., record group No. 49;

5. Map of Definite Location of Tanana Valley Railroad Terminal Grounds, Town of Chena, Alaska, submitted November 21, 1907. The original map is located at the National Archives in Washington, D.C., record group No. 49;

6. Map Showing Definite Location of Terminal and Junction Grounds, Tanana Mines Railroad, filed September 7, 1905 at the United States Land Office, Juneau, Alaska. The original map is located at the National Archives in Washington, D.C., record group 49;

lying within the following described lands:

Fairbanks Meridian, Alaska

T. 1 S., R. 2 W.
Sec. 1;
Sec. 11, SE4SE4;
Sec. 12, W2;
Sec. 14, lots 1, 6, 10, 25, 32, 44, 45, 54, 65, 77 and 86;
Sec. 22, lots 1, 2 and 3, S2NE4, N2SE4;
Sec. 23, lots 2 and 6, W2NW4;
Sec. 27, lots 3, 8, 9, 10 and 11.

T. 1 S., R. 1 W.
Sec. 3, S2;
Sec. 4, lots 16, 17, 19 and 21;
Sec. 5, lots 7, 8, 9, 10 and 11, NW4SW4, S2SE4;
Sec. 6, lots 5, 6, 7 and 8, S2SE4, NE4SE4, SE4SW4;
Sec. 9;
Sec. 10, lots 3, 4, 6, 7 and 8, and that portion within U.S. Survey Nos. 805, 848 and Amended U.S. Survey No. 806.

T. 1 N., R. 2 W.
Sec. 23, SE4SE4;
Sec. 24, NE4, S2;
Sec. 25, NW4;
Sec. 26, N2, SW4SW4;
Sec. 27, E2;
Sec. 34, NE4NE4;
Sec. 35, lots 3, 5, 6, 7 and 8, NW4, N2NW4SE4 and that portion within Mineral Survey Nos. 2056 and 2030;
Sec. 36, lots 6, 7 and 8.

T. 1 N., R. 1 W.
Sec. 1, lots 11, 12, 13 and 14 and that portion within Mineral Survey Nos. 1731 and 1788;
Sec. 2, lots 7, 8, 9 and 10 and that portion within Mineral Survey No. 846;
Sec. 3, that portion within Mineral Survey Nos. 846, 860 and 2004;
Sec. 4, lot 10 and that portion within Mineral Survey Nos. 2004 and 2063;
Sec. 7, SE4SE4;

T. 3 N., R. 1 E.
Sec. 8, lot 5 and that portion within Mineral Survey Nos. 2089 and 2171;
Sec. 9, lots 1, 2, 3, 4 and 7, W2SW4 and that portion within Mineral Survey No. 1663;
Sec. 10, lots 11, 12 and 14, and that portion within Mineral Survey Nos. 1637, 1914, 2099 and 2173;
Sec. 17, lot 2 and that portion within Mineral Survey Nos. 2089 and 2171;
Sec. 18, lots 2, 3 and 5, NW4NE4, S2NE4, E2W2.

By acceptance of this quit claim deed, the Alaska Railroad Corporation waives all claim and right to a warranty of exclusive-use easement in any and all of the above-described real property pursuant to Sec. 606(b)(4)(B) of the Alaska Railroad Transfer Act of 1982.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated January 5, 1985

COPY

65

letter from O'Leary Aug

2. Former Tanana Valley Railroad Lands. The Corporation will receive conveyance of the former Tanana Valley Railroad lands by quitclaim deed without warranty or assurance of the level or existence of the Federal Government's title in such property. The Corporation will receive only what the Federal Government presently owns. The former Tanana Valley Railroad property now within the main line right-of-way of the Alaska Railroad is excepted from the foregoing accommodation. The main line right-of-way will also be conveyed by patent under ARTA, and the level of title in such right-of-way will not be less than an exclusive-use easement. The fact that the quitclaim deed and patent descriptions overlap (i.e., with respect to the portion of the Tanana lands within the main line right-of-way) will not be construed to eliminate the exclusive-use easement in the main line lands.

The State waives the right of survey under ARTA with respect to all former Tanana Valley Railroad properties other than the property presently within the main line right-of-way of the Alaska Railroad. The description of the property conveyed by the quitclaim deed will incorporate a plat to be prepared by BLM and FRA, and the State will have an opportunity to review the deed and the plat prior to the date of transfer.

3. Iditarod Trail. No portion of the Iditarod Trail will be reserved from the conveyances of rail property under ARTA.

4. Unused Telephone and Telegraph Rights-of-Way. The Corporation will receive all telephone and telegraph rights-of-way in use during January of 1983. It will not receive telephone and telegraph rights of way not in use as of January 1983. Although the telephone and telegraph rights-of-way which were used in January of 1983 have not yet been specifically identified in the conveyance instruments, identification will be completed prior the time of survey. The State agrees that any areas where there were poles but no line as of January 1983 will be treated as unused right-of-way.

5. Moose Pass Townsite. Those areas of the Moose Pass townsite that are not within the right-of-way of the Alaska Railroad will be conveyed to the State of Alaska pursuant to the Alaska Statehood Act. The State relinquishes its claim to such areas pursuant to ARTA.

ALASKA RAILROAD CORPORATION

Corporate: P.O. Box 107500, Anchorage, AK 99510• 327 Ship Creek Avenue, Anchorage, AK 99501

www.alaskarailroad.com

Patrick Kelly, PLS
Real Estate Office
Telephone: (907) 265-2411
Fax Number: (907) 265-2450
E-mail: kellyp@akrr.com

Thursday, October 14, 2004

Ms. Margaret McDaniel
222 West 7th Avenue, #13
Anchorage, AK 99513-7599

BLM AK SO 952
ANCHORAGE AK
2004 OCT 25 AM 10: 34

Bureau of Land Management
Margaret McDaniel
John Sroufe
Ron Schwind
Jerry Lewis
Ron Scherler

Alaska Railroad Corporation
Michael Fretwell
Patrick Kelly

Re: Valdez railroad right-of-way – Survey review meeting.

Dear Margaret;

The listed items are the resolutions to the agenda items received from you by fax on October 13, 2004 (please find agenda attached), as discussed at our meeting on October 14, 2004. Your help in moving this process forward is greatly appreciated.

1. All right, title, and interest possessed by the Federal government is passed to the Alaska Railroad Corporation through patent, including the subsurface estate if owned by the Federal government.
2. The railroad right-of-way is to be coincident with the northerly and easterly boundary lines of Lot 4, U.S. Survey No. 3682.
3. Road easements on the new 9000 series U.S. Survey are to be described in the patent under Reservations and Conditions. Patents shall be issued for Lot 1, and Lot 9, U.S. Survey No. 3682 railroad right-of-way in fee.
4. Alaska Tideland Survey 613, coincident with Lot 9, U.S. Survey No. 3682, is composed of fill material. No accretion or uplift occurred on said parcel. See 1975 aerial photo supplied by the Alaska Railroad Corporation.
5. Reversion clause does not affect the subject interim conveyance.

6. Yes, same as U.S. Survey No. 3682 roads. The railroad right-of-way lines on the new 9000 series U.S. Survey shall be solid. The street easements shall be dashed lines on the new 9000 series U.S. Survey.
7. The Bureau of Land Management shall execute the field survey.

Sincerely,

Patrick Kelly

Patrick Kelly, PLS
Real Estate Office
Alaska Railroad Corporation

AGENDA: SURVEY VALDEZ RAILROAD RIGHT OF WAY

1) The minerals within Lots 1 and 4 were not reserved, however the IC seem to convey the minerals to the Railroad.

2) There is no reservation for the railroad in the patent for Lot 4, but the IC conveys the right of way across Lot 4. This is important because the NE cor. of Lot 4 is near the center line of the railroad. Lot 4 is a native allotment with restricted title.

3) Several road easements are shown on the plat of U.S. Survey No. 3682, there is no reservation in the patent and there is no dedication on the plat but according to Alaska state law Sec. 40.15.030 "When an area is subdivided and a plat of the subdivision is approved, filed and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are considered to be dedicated to public use." The plat creating the road easements was dated Feb. 28, 1963, prior to the patents for Lots 1 and 9 which are dated October 1964. The IC granted an "exclusive use easement" across Lot 1 and an "exclusive license" across Lot 9.

4) There is accretion or uplift adjacent to Lot 9. Does an easement across a parcel carry with it an easement across accretion to the parcel? There is an Alaska Tideland Survey that appears to survey an extension of the railroad right of way across the tidelands.

5) Sec. 610 of the ARTC contains a reversion clause which is contained in the IC, but was repealed by the Act of Feb. 20, 2003. What is the affect on existing ICs and patents that contain the reversion clause?

6) Platting issues. Should the right of way be given an identifier? Should the boundaries of the right of way be shown as solid lines or dashed lines. How should we show the street easements the cross the railroad?

7) Who should execute the field survey?

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599
http://www.ak.blm.gov

TAKE PRIDE IN AMERICA

Office of the Regional Solicitor
Alaska Region
JAN 10 2005
Received

AA-55129 (2658)
AA-17588 (2627)
(963) mjm/vkm

JAN 05 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Chief Executive Officer	:	AA-55129
Alaska Railroad Corporation	:	
P.O. Box 107500	:	Exclusive License
Anchorage, Alaska 99510-7500	:	Anchorage Recording District
	:	
State of Alaska	:	AA-17588
Department of Natural Resources	:	
Division of Mining, Land and Water	:	
Realty Services Section	:	
550 West Seventh Avenue, Suite 1050A	:	National Forest Community
Anchorage, Alaska 99501-3579	:	Grant State Selection

Additional Lands Found Proper for Conveyance
Approved for Future Conveyance

On January 14, 1983, the Alaska Railroad Transfer Act of 1982 (ARTA), 45 U.S.C. 1201, et seq., was enacted authorizing the transfer of all Alaska Railroad properties to the State of Alaska. Pursuant to the provisions of Sec. 604(b)(1)(C) of ARTA, on January 5, 1985, the Alaska Railroad Corporation of the State of Alaska received an Exclusive License for certain lands in the vicinity of Whittier, Alaska. This license granted exclusive use of rail properties pending final administrative adjudication of claims of valid existing rights. Section 606(b)(2) of ARTA directs the adjudication of unresolved claims of valid existing rights pursuant to applicable law and ARTA. This license was recorded in the Anchorage Recording District, Book 1212, Pages 297-352. The lands herein approved for conveyance are now surveyed and described as follows:

U.S. Survey No. 9007, Alaska, containing 185.02 acres.

Within the exclusive license, State selection application AA-17588 was identified as requiring adjudication. On July 26, 1985, the State of Alaska submitted a relinquishment for those lands falling within the railroad right-of-way, including the SE¼SW¼, Sec. 15, T. 8 N., R. 4 E.,

Seward Meridian. A decision dated December 5, 1994, was issued to the State of Alaska which acknowledged the acceptance of the relinquishment of the above-described lands as of July 26, 1985.

In view of the above, when this decision becomes final, the Alaska Railroad Corporation shall receive the full and complete right, title, and interest of the United States in and to the real property described above, pursuant to Sec. 604(b)(2) and (3) of ARTA, 45 U.S.C. 1203(b)(2) and (3). Pursuant to Sec. 606(b)(4)(B) of ARTA, 45 U.S.C. 1205(b)(4)(B), the right, title, and interest granted by the United States in the real property described above, that is located within the right-of-way of the Alaska Railroad, shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA, 45 U.S.C. 1202(6).

The land approved for conveyance is more particularly described in the proposed patent which is incorporated herein by reference. The proposed patent also identifies federal and third-party interests, if any.

When this decision becomes final, and the Alaska Railroad Corporation receives patent, the exclusive license issued to the Alaska Railroad Corporation will terminate as to the above-described lands.

Any party claiming a property interest in lands affected by this decision may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, within 30 days from receipt of this decision.

The appellant has the burden of showing that the decision appealed from is in error. Failure to file the notice of appeal with the Bureau within the time allowed will result in dismissal of the appeal. In order to avoid dismissal of the appeal, there must be strict compliance with the regulations in 43 CFR, Part 4.

/s/ Margaret J. McDaniel

Margaret J. McDaniel
Land Law Examiner
Branch of Adjudication I

Enclosures:
Master Title Plat
Survey Plat

Copy furnished to:

Chief, Right-of-Way Agent (CM-RRR)
State of Alaska
Department of Transportation and
Public Facilities
P.O. Box 106900
Anchorage, Alaska 99519-6900

City Manager (CM-RRR)
City of Whittier
P.O. Box 608
Whittier, Alaska 99693

USDA Forest Service (CM-RRR)
Regional Forester
Attn: Lands
P.O. Box 21628
Juneau, Alaska 99902-1268

Forest Supervisor
Chugach National Forest
3301 C Street, Suite 300
Anchorage, Alaska 99503-3998

Chugach National Forest
Glacier Ranger District
Monarch Mine Road
P.O. Box 129
Girdwood, Alaska 99587

Mr. Mark Lindsey, FRA Chief Counsel
Federal Railroad Administration
400 7th Street S.W.
Washington, D.C. 20590
(RTCC-1)

Mr. Joe King, General Counsel
Federal Railroad Administration
400 7th Street S.W.
Washington, D.C.

Mr. Patrick Gamble, President and CEO
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. James Blasingame, Vice President, Corporate Affairs
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mrs. Phyllis Johnson, Vice President and General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. Patrick Kelly
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Commissioner
Department of Transportation and
Public Facilities
Pouch Z
Juneau, Alaska 99811

Dennis Hopewell, Esq.
Regional Solicitor's Office

The United States of America

Proposed Patent

AA-55129-7

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 1120 Vermont Avenue N.W., Washington, D.C., 20005, as GRANTOR, to the Alaska Railroad Corporation, P. O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201, et seq., (hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels). An Exclusive License was issued for these lands on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 0286-0289. This patent is hereby issued for the real property described below:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

U. S. Survey No. 9007, Alaska.

Containing 185.02 acres, as shown on plat of survey officially filed March 4, 1988.

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA does give, grant, and convey unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to said real property, subject to the Reservations and Conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

The real property described above is situated within the boundaries of the Chugach National Forest and, pursuant to Sec. 608(d) of ARTA, is subject to laws and regulations for the protection of forest values. Such laws are those pertaining to the National Forest System including, but not limited to, the Organic Administration Act of June 4 1897, as amended, the Multiple-Use Sustained-Yield Act of 1960, and the National Forest Management Act of 1976. The Secretary of Agriculture shall not act pursuant to said subsection without consulting the Governor of the State of Alaska or in such manner as to unreasonably interfere with continued or expanded operations and support functions authorized under said Act.

Definitions

1. "Exclusive use easement", as used herein, means as provided by Sec. 603(6) of ARTA, an easement which affords the easement holder the following:

   a. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

   b. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

   c. subjacent and lateral support of the lands subject to the easement; and

   d. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

2. "Right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:

a. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

b. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated by or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (a) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____ day of _____, 2005.

UNITED STATES OF AMERICA

_____

Secretary of Transportation, by the Administrator of the Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By:_____

Title:_____

Dated:_____

Location Index for Recording Information:

U.S. Survey No. 9007 located within
Secs. 15. 16, and 17, T. 8 N., R. 4 E., SM

Return Recorded Document to:

BISON CONNECT

Hopewell, Dennis <dennis.hopewell@sol.doi.gov>

Potter Hill - Letter from Adjoining Property Owner's Counsel Regarding Title to ARRC Right-of-Way

1 message

Andy Behrend <BehrendA@akrr.com> Fri, Dec 7, 2012 at 12:13 PM
To: "Hopewell, Dennis" <Dennis.Hopewell@sol.doi.gov>, "McDaniel, Margaret" <mmcdanie@blm.gov>, "Schoder, Michael" <mschoder@blm.gov>
Cc: William Hupprich <Hupprichw@akrr.com>, Karen Morrissey <Morrisseyk@akrr.com>, Robert Hahn <Hahnr@akrr.com>

Dennis, Margaret and Michael:

On July 24, 2012, I copied Michael on a letter I sent that day to Roy Longacre, attorney for property owners (the Slaibys) on Potter Hill who adjoin the ARRC right-of-way (ROW). My letter responded to a letter from Mr. Longacre asserting that ARRC had no right to exclude his clients from the ROW. I finally received a response letter from him yesterday. I notice that Mr. Longacre also copied Michael on his letter. But given that Dennis is close to wrapping up his Potter Hill opinion, I wanted to share the latest letter with you electronically in case Michael's mailed copy is delayed.

Given his letter's contents, it probably goes without saying that we disagree with essentially everything Mr. Longacre says about ARRC's property rights. But I thought that this most recent letter might be of interest to you as you work on the Potter Hill issues. One thing worth noting is that Mr. Longacre refers to Patent No. 50-2006-0363, previously issued to ARRC for the portion of the right-of-way containing Lots 1-8, inclusive, U.S. Survey 9015, as an "illegal patent." He also claims that provisions relating to "exclusive use easements" in the Alaska Railroad Transfer Act (ARTA) only apply to the ROW in Denali National Park. That contention ignores 45 U.S.C. § 1205(b)(4)(B), which provides for the transfer of at least an exclusive use easement with respect to portions of the ROW where the underlying land left federal ownership before it was transferred to ARRC or where a third-party claim in that land exists. His analysis also fails to recognize that the exclusive use easement provisions effectively set a "floor" ensuring ARRC has exclusive rights in its ROW sufficient to operate a railroad safely and economically. Congress expressly found that such an exclusive ROW was necessary to do just that. See 45 U.S.C. § 1205(b)(4)(A)(ii).

My July 24 message to Michael attached the somewhat voluminous enclosures I sent to Mr. Longacre with my July 24 letter. Please let me know if you would like me to resend those items (which include a warranty deed, some emails, a title report on the lots in question, and documents supporting that title report).

Once again, thanks to all of you for working on these issues relating to ARRC's ROW.

Regards,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell 907.350.3042

---

2 attachments

Letter to Roy Longacre re Slaibys_7-24-2012.pdf.pdf
794K

ARRC 121206 EmailWAttachment (X).pdf.pdf
315K

OFFICE OF THE GENERAL COUNSEL
TELEPHONE: (907) 265-2305
FACSIMILE: (907) 265-2443
EMAIL: behrenda@akrr.com

Via Regular U.S. Mail

July 24, 2012

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

Re: Peter and Rejani Slaiby
ARRC Transitional Residential Land Use Policy

Dear Mr. Longacre:

This letter responds to yours of June 6, 2012, which was submitted electronically as a public comment regarding the proposed adoption by the Alaska Railroad Corporation ("ARRC") of the ARRC Transitional Residential Land Use Policy ("TRLUP"). Those public comments were submitted pending potential action on that proposed policy at the ARRC Board of Directors meeting on June 7, 2012.

As I believe you know from speaking to Karen Morrissey, ARRC's Real Estate Director, the ARRC Board decided at the June 7 meeting to return the proposed policy to the Board's Right-of-Way Committee for further consideration and possible revision. A letter was recently sent to adjoining property owners, including the Slaibys, informing them of that development. Any additional developments regarding the proposed policy will be communicated to adjoining property owners at a later date.

We wanted to respond separately to your letter in order to address your specific comments relating to the respective property rights of the Slaibys and ARRC. As we proceed to develop and revise the proposed policy, it is important that ARRC and its residential neighbors have a common understanding of those issues.

A. History of ARRC's Right-of-Way (ROW) and Its Property Interest in the ROW.

In order to understand the Slaibys' specific situation, it is necessary to understand the history and legal status of ARRC's ROW. ARRC obtained its ROW from the federal government as a result of the Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201 et seq. (ARTA) and the Alaska Railroad Corporation Act, AS 42.40 (ARCA). In ARTA, Congress provided that the State of Alaska would receive all of the United States' interest, but at a minimum an exclusive use easement, in the Alaska Railroad right-of-way. *See* 45 U.S.C. § 1203(b) (providing for the conveyance to the State of title to all lands within the Alaska Railroad right-of-way). In ARCA, the Alaska Legislature established ARRC and provided that the railroad lands to be conveyed under ARTA would be conveyed to ARRC. *See* AS 42.40.350.

Beginning in 1985, the federal government began the process of conveying the ROW to ARRC. The conveyance process included the initial step of interim conveyances by the federal government of much of the land in the ROW to ARRC, wherein ARRC received at least an exclusive use easement in its ROW. Since the initial conveyances, the federal government, through the Bureau of Land Management, has engaged in an incremental process of patenting the land in the ROW to ARRC. As a result of this conveyance process, ARRC holds an exclusive interest in the entire ARRC ROW. The nature of ARRC's interest in the ARRC ROW ranges from a fee simple interest for much of the ROW to, at a statutory minimum, an exclusive use easement.

Even the exclusive use easement, the minimum interest ARRC owns in its ROW, provides ARRC with exclusive rights of possession and use in the ROW. As provided in ARTA, 45 U.S.C. § 1202(6):

> "[E]xclusive-use easement" means an easement which affords to the easement holder the following:
>
> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
>
> (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
>
> (C) subjacent and lateral support of the lands subject to the easement; and
>
> (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. (Emphasis supplied)

Under this statutory definition of an exclusive use easement, ARRC has - at a minimum - the exclusive right to use and possess the ARRC ROW for transportation, communication and transmission purposes. Moreover, ARRC has the right to fence the ARRC ROW and to exclude all other persons and entities from all or any of it.

ARRC's right to possess its ROW and to use it for railroad purposes is "exclusive." And ARRC not only has the right to exclude all other persons from the ARRC ROW, it exercises that right. It fences portions of the ROW in busy areas, places

prominent "No Trespassing" signs, cites unauthorized persons on the ROW as trespassers, and takes other measures to keep people off the ROW. Another clear reflection of ARRC's exercise of control of access to the ROW is the fact that ARRC requires agencies, entities and individuals wishing to cross, occupy or use any portion of the ROW to qualify for and obtain paid permits to do so.

B. ARRC's Interest in the ROW Adjacent to the Slaibys' Property.

The portion of the ARRC ROW adjacent to the Slaibys' property includes portions of Lots 13 and 14 in Block 3 of the Sunset Hills West Subdivision ("Lots 13 and 14") lying to the southwest of the "Take Line" shown on the plat of Potter Hill Relocation according to Plat 64-105. This land was acquired by the federal government in 1965, following the 1964 earthquake, which caused the bluff in the vicinity of what is now Jarvi Drive to slide. The federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area. Accordingly, the federal government "took" additional land in the Potter Hill area for use in the ROW, receiving deeds conveying land in that area in exchange for payment of compensation.

One of those deeds conveyed to the federal government the portions of Lots 13 and 14 lying to the southwest of the "take line." A copy of that warranty deed is enclosed. The interest granted to the federal government in those lots was "[a] perpetual right-of-way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." The deed stated that "the above-described premises are being acquired for the Alaska Railroad, Department of the Interior." A title report obtained by ARRC with respect to Lots 13 and 14 confirms that grant of a perpetual right-of-way and railroad easement constitute a special exception to the Slaibys' title to Lots 13 and 14. A CD containing a copy of that title report and the documents upon which it is based is enclosed for your convenience.

Pursuant to ARTA, the portions of Lots 13 and 14 southwest of the "take line" were included among the lands to be transferred to ARRC to be occupied and used as part of its ROW, just as that land had been used and occupied by the federal Alaska Railroad. The intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA, although that final conveyance has not yet occurred. Consequently, although ARRC has an exclusive right to occupy and use the land for its ROW, both to operate a railroad and for the other statutory purposes identified in ARCA, the federal government still owns this portion of the ARRC ROW. As Patrick Kelly, ARRC's former Land Services Manager, informed both Mr. Slaiby and Scott Jones of SAJJ Architecture in April 2012, and Rob Hahn, Mr. Kelly's successor, mentioned to you in an email of June 6, 2012, the U.S. Bureau of Land Management currently is reviewing Plat 64-105 for transfer of Lots 13 and 14 to the ARRC. Copies of those communications are enclosed.

The fact that the federal government still owns the portions of Lots 13 and 14 in the ARRC ROW does not affect ARRC's exclusive rights to occupy and use that land. Consistent with ARTA, ARRC has, at a minimum, an exclusive use easement in the land. Notably, the enclosed title report includes a special exception stating that title to Lots 13 and 14 is subject to the "rights of the Public and/or governmental agencies, in and to any portion of said land lying within the boundaries of the Alaska Railroad right-of-way." The rights of ARRC in the portions of Lots 13 and 14 lying to the southwest of the "Take Line" include the statutory grant of, at a minimum, an exclusive use easement under ARTA. Accordingly, as discussed above, ARRC has the right to exclude others from the land, including by means of fencing the boundary of the ROW. Relative to that right, ARRC also has the right to prohibit or to require a permit for any residential uses of or structures in that portion of the ROW. This portion of the ROW, therefore, is subject to the proposed TRLUP.

C. Responses to Individual Points in Your June 6 Letter.

1. Slaibys Do Not Have the Right to Occupy or Use the ARRC ROW Without ARRC's Permission.

Your June 6 letter characterizes the portion of Lots 13 and 14 falling within the ARRC ROW adjacent to the Slaibys' property (i.e., the portion of those lots lying to the southwest of the "Take Line") as "property owned by the Slaibys" in which ARRC has an easement for specific purposes. Apparently referring to the ARRC's tracks, your letter states that "the railroad runs through the extreme edge of [the Slaibys'] property." You also state that the Slaibys "are free to use the easement area of their property so long as it does not interfere with ARRC's utility corridor easement." With due respect, however, those statements inaccurately describe the Slaibys' rights with respect to the portions of Lots 13 and 14 within the ARRC ROW.

First, as detailed above, the current owner of the land in question is the federal government rather than the Slaibys. Moreover, ARRC has, at a minimum, an exclusive use easement in its ROW, including the portion of the ROW comprised of the portions of Lots 13 and 14 southwest of the "Take Line." An exclusive use easement gives ARRC the right to exclude anyone other than ARRC from the ROW, to fence the land if it chooses and to require any others to purchase permits before using or occupying the ROW.

ARRC's long-standing policy has been not to grant permits to third parties to occupy the ROW with respect to uses that are not related to the operation or use of the railroad or to other statutory purposes under ARTA and ARCA. But residential uses, some authorized but many unauthorized, have arisen in portions of the ROW. Those uses pose safety risks arising from railroad operations and the potential to interfere with other statutory uses of the ROW (i.e., transportation, transmission and communication). The ARRC Board is concerned with the problems raised by such existing residential

uses and the prevention of any new residential uses, but also recognizes that adjoining land owners have developed such uses and, in some cases, maintained them for relatively long periods. That situation, coupled with ARRC's need to control its ROW, gave rise to the proposed TRLUP and its system of residential use permits.

2. The Proposed Policy Would Not Constitute a Taking.

You assert that the proposed TRLUP would constitute a taking of the Slaibys' property interest. Given the nature of ARRC's interest in its ROW, however, that is not the case. Because ARRC possesses an exclusive use easement in the portions of Lots 13 and 14 that are in the ARRC ROW, which includes the right to exclude all others from the ROW, the proposed TRLUP would not constitute a taking. Since the Slaibys do not have the right to occupy or use any land in the ARRC ROW absent ARRC's permission to do so, requiring them to have and to pay for a permit to use the ROW for residential purposes would not deprive them of any property interest.

3. The Individual History of Lots 13 and 14 Do Not Affect the Nature of ARRC's Exclusive Use Easement in the ROW.

Your letter describes the Slaibys' property as unique with respect to the ownership of land on the bluff and the lack of a setback of their home from the ROW boundary. Although the conveyance histories of various properties along this section of the ARRC ROW vary, those histories do not change the fact that ARRC has, at a minimum, an exclusive use easement in all portions of its ROW. Whatever the underlying history of that portion of the ROW, therefore, ARRC's right to exclusive use and possession of the land in its ROW, including the relevant portions of Lots 13 and 14, remains the same.

4. Applying the Proposed Policy to the ROW Adjoining the Slaibys Would Not be Arbitrary and Capricious.

You also assert that the application of the proposed TRLUP to the area of the ROW near the Slaibys would be "arbitrary and capricious." We disagree. The TRLUP's permitting system would be a perfectly rational approach to addressing the railroad safety and operations issues raised by existing residential uses of the ARRC ROW and also would protect other statutory purposes of the ROW. In addition, under the proposed policy, all adjoining properties and property owners would be treated similarly, which is reasonable given that the exclusive nature of ARRC's interest in its ROW is consistent throughout its length.

5. Addressing the Slaibys' Security Concerns.

Your letter mentions the Slaibys' desire to protect themselves from "uninvited guests who access their property on the railroad's easement." If trespassers are seen using the ARRC ROW in the vicinity of the Slaibys' residence, or anywhere else in the

neighborhood, we ask that they be reported to ARRC's Security Department at 265-2245 or 1-877-RAILCOP (1-877-724-5267). The ARRC Security Department has jurisdiction over trespassers and other security threats on the ARRC ROW. ARRC is always ready to work with its neighbors to enhance safety and security in the ROW.

6. The Slaibys' Request to Purchase ARRC's Property Interest.

Your letter raises the issue of the Slaibys purchasing ARRC's interest in the portion of the property on the bluff. Given that the federal government owns the underlying interest in the property, any conversation regarding purchase of this portion of the ROW would more properly be had with the Bureau of Land Management. ARRC's Land Services Manager, Rob Hahn, has been working with BLM's Deputy State Director, Michael Schoder on matters relating to the ARRC ROW in the vicinity of Potter Hill. Mr. Schoder can be reached by telephone at 907-271-5481 or by email at mschoder@blm.gov. That said, ARRC would generally be opposed to any request by an adjoining landowner to purchase either ARRC's or the federal government's interest in the ARRC ROW. The land in question continues to be needed by ARRC in order to maintain and protect railroad safety and operations, as well as other statutory priority purposes.

I hope this letter has provided useful information regarding the proposed TRLUP and its application to the ROW in the vicinity of the Slaibys' property. As noted above, additional communications regarding developments on the proposed policy will be forthcoming soon.

Very truly yours,

Andy Behrend

Andy Behrend
Senior Attorney, Real Estate & Environmental

Enclosures

cc: William R. Hupprich, Vice President & General Counsel, ARRC (via email)
Wendy Lindskoog, Vice President, Corporate Affairs, ARRC (via email)
Karen Morrissey, Director, Real Estate, ARRC (via email)
Michael Schoder, Deputy State Director, BLM (via email and U.S. Mail)

Hopewell, Dennis

From: Hopewell, Dennis
Sent: Friday, December 07, 2012 10:00 AM
To: 'Andy Behrend'
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: RE: Potter Hill

Good morning Andy,

I was finally able to complete the little bit of additional research I wanted to do for the Potter Hill legal opinion. Now I have to find an hour or two to finish the draft for Margaret McDaniel to review. I don't know Margaret's schedule but it will not take Margaret long to review the draft. Then I will be able to get your thoughts on the draft as well. Thanks for your patience in this matter. For some reason, it seems like all my clients want to have one last meeting or one final written product. I will, however, definitely issue the Potter Hill memorandum before I retire.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Thursday, December 06, 2012 2:10 PM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: FW: Potter Hill

Good afternoon, Dennis:

I hope things have been going well for you since our last communications. I thought I would touch bases with you to see how the draft opinion on the Potter Hill title/conveyance issues is coming along. I stand ready to give you my thoughts, if you would like ARRC's input.

I understand your retirement is looming and I can only imagine how all-consuming getting ready for that must be. Hopefully, you will still be able to enjoy the holidays.

Thank you for all your efforts on the Potter Hill matter and other railroad-related issues. We very much appreciate your efforts, and those of BLM, not only this year, but through the years.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell 907.350.3042

From: Andy Behrend
Sent: Tuesday, November 20, 2012 7:50 AM
To: 'Hopewell, Dennis'
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis:

Thank you for the update. Rob Hahn, our Land Services Manager, has been keeping in touch with Margaret and Michael recently, so I knew that your efforts were ongoing. I would be happy to provide you with our thoughts on any draft opinion. I will generally be in the office the balance of this week (which means today and tomorrow, I guess), next week and for the foreseeable future.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell 907.350.3042

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Monday, November 19, 2012 5:35 PM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I

am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell 907.350.3042

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell 907.350.3042

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW

for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell 907.350.3042

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

1. What level of property interests should be transferred to the ARRC – full fee title or an easement;
2. What process should be used to provide adequate notice to concerned/affected parties and to make the required transfers to the ARRC; and

3. Whether the legal descriptions based on locally filed subdivision plats used to convey the land to the U.S. can be used to issue patents to the ARRC.

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

1. All of the sample deeds included in the information packet you sent me, except one, appear to convey full fee title to tracts of land. The William Hancock deed is clearly limited to an easement. Do federal land records show the parcels to be reacquired federal property? Do you know if this status is disputed by the present owners? If the parcels were not shown on the federal status plats as reacquired federal land at the time of the initial transfers to the ARRC, that would explain why they were overlooked.
2. Generally, when the U.S. owns property it can convey its interests without notice to others (as long as there is conveyance authority and no special laws or facts requiring notice to others). If parties have put the ARRC or BLM on notice of competing claims, due process does require some notice.
3. It seems to me if the descriptions were good enough for acquiring the land they should be good enough to convey the land. In fact, it is generally a good idea to use the same descriptions so that it is clear you are conveying exactly what you received. However, I vaguely remember a recent IM or conversation with someone at BLM requiring review Cadastral Survey review of all legal descriptions for acquisition or special conveyance purposes. I think this is a good idea and recommend you ask DSD Michael Schoder to assign someone to make such a review. This review can start as soon as staffing is available.

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

LONGACRE LAW OFFICES, LTD.
425 G STREET, SUITE 910
ANCHORAGE, ALASKA 99501

ROY L. LONGACRE, ESQ.

Ph: (907) 350-1748
FAX: (907) 279-4685

December 19, 2012

Michael Schoder
Deputy State Director
Bureau Land Management
BLM Anchorage Field Office
4700 BLM Road
Anchorage, AK 99507-2599

Rec'd by
DEC 27 2012

SD: _____
ASD: _____

Re: *Peter and Rejani Slaiby*
Alaska Interim and Final Transfers/Patent AA-55129-9
ARRC Transitional Residential Land Use Policy (TRLUP)

Dear Mr. Schoder:

I represent Peter E. and Rejani Slaiby, who are affected by either interim or final transfer of a Right of Way or Easement from the Bureau of Land Management to the Alaska Railroad pursuant to the 1982 Transfer Act. This involves a portion of the railroad line in the vicinity of Potter Hill in Anchorage, Alaska. The Slaibys own and pay property taxes on Lots 13 and 14, Block 3, Sunset Hills West Subdivision located at 14200 Jarvi Drive in Anchorage, Alaska. Their house is placed behind a circular driveway off Jarvi Drive. A few feet behind their house is a ~50 foot 30 degree bluff at the bottom of which there is ~30 feet of property left on their lot on which the railroad line lies. The perpetual limited easement for railroad purposes described in more detail below has been more than sufficient for railroad purposes since it was authorized in 1914. Now, by misconstruing the transfer acts, the Alaska Railroad seeks to obtain through the BLM patents, a different, exclusive use easement. Even before it has a final patent to this new exclusive use easement, the Alaska Railroad has asserted that it is the owner of the land contained within the easement and has the power to a) require the landowner to apply for permits and pay use fees, b) fence off the property, and asserts other fee simple owner type rights. Why?

Scope of Easements

As you are aware the (Federal) Alaska Railroad received conveyance of these perpetual limited easements pursuant to the 1914 Alaska Railroad Act for the purposes of construction, operation and maintenance of a railroad, including telegraph and telephone lines. Many of these easements were contained in patents issued during the 1940s to homesteaders who later subdivided the property and sold lots off as home building sites.

The interest of the Federal government in these easements, through the Alaska Railroad, was to be conveyed to the State of Alaska pursuant to procedures set forth in the (Federal) Alaska Railroad Act of 1982. The type and scope of the easements being transferred remained unchanged as a result of operative language in 42 USC §1212(b):

> The enactment of this chapter, actions taken during the transition period ... and transfer of the rail properties of the Alaska Railroad under authority of this chapter .... Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 USC 975 et. seq.)....

The Alaska Railroad in the hands of the State of Alaska was allowed to choose other federal land for extensions of rail line in the future. 42 USC §1202 defines in 1202 (6) and (10) two different types of easements. Section 1202(10) has to with the railroad perpetual limited easements for the purposes of construction, operation and maintenance of a railroad, including telegraph and telephone lines as provided in the 1914 Alaska Railroad Act. Section 1202(6) sets forth a definition of the "unrestricted" easement, a creation of the 1982 Act having to do with <u>future</u> conveyances.

It appears that patents being issued by BLM for existing 1914 Alaska Railroad Act property contain exclusive use easements exceeding the scope of the law and statutory procedures which only authorized conveyance of the existing perpetual limited easements for the purposes of construction, operation and maintenance of a railroad, including telegraph and telephone lines as provided in the 1914 Alaska Railroad Act.

<u>Requisite Procedures</u>

Contemporaneously with the (Federal) Alaska Railroad Act of 1982, the State of Alaska enacted the (State) Alaska Railroad Act: A.S. 42.40 et. seq. One section of this Act, A.S. 42.40.285(5), provides that before the Alaska Railroad may solicit or receive a grant of federal land interest within a Municipality the State Legislature must first determine the additional land interest is required for Alaska Railroad purposes. In short, the only type of transfer that can be solicited or received by the Alaska Railroad without legislative approval is one in compliance with Section 1202(10) which is the perpetual limited easements for the purposes of construction, operation and maintenance of a railroad, including telegraph and telephone lines as provided in the 1914 Alaska Railroad Act language. We understand that the Alaska Railroad has not solicited, nor has it received, any such legislative approval.

Request

Issuance of the Patent for a Section 1202(6) defined easement violates both State and Federal laws. On behalf of my clients I request that you immediately suspend all activity attempting to or having the effect of transferring rights-of-way or easements in violation of the 1914 easement previously conveyed. My clients have already spent over $10,000.00 in retaining professional services to uncover and address this illegal activity. Furthermore the Slaiby's demand that you immediately record all documents necessary to correct and reverse any documents which have been previously conveyed or recorded in an attempt to convert the existing 1914 perpetual limited easement into a Section 1202(6) exclusive use easement.

If you have any questions regarding the foregoing please contact me at your convenience.

Very truly yours,

Roy Longacre, Esq.

cc: Peter E. and Rejani Slaiby
Linda Leary, Board Chair, ARRC
Andy Behrend, Esq., Senior Attorney, ARRC
Karen Morrissey, Director, Real Estate, ARRC
Bud Cribly, State Director, BLM
John Pletcher, Esq.
Craig Johnson, Representative of Alaska Legislature
Lesil McGuire, Representative of Alaska Legislature
Lt. Governor Mead Treadwell
Don Young, Congressman
Lisa Murkowski, Senator
Mark Begich, Senator

11/18/13

Andy Behrens

- Slaiby house does encroach on ROW
  - Wanted permanent grant of easement to allow house
    - They did get the easement to keep house and maintain
  - RR has said it would do revocable use permit to rest of area on top of bluff.
    - Not interested in negotiating this piece

Check past letters to Longacre for other title issues

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

DEC - 4 2013

	)	IBLA DOCKET NO. 2014-0027
	)	
PETER SLAIBY and	)	Appeal of the Decision for the
REJANI SLAIBY,	)	Alaska Railroad Selection Application
	)	AA-55129 (2658)(944) mjm/lga
Appellants.	)	Anchorage, Alaska
	)	
	)	

NOTICE OF PARTICIPATION IN APPEAL

The Alaska Railroad Corporation ("ARRC") hereby notifies the Office of Hearings and Appeals, Board of Land Appeals ("Board"), that ARRC intends to participate in the above-captioned appeal. ARRC was served with Appellants' notice of appeal at the time it was filed. ARRC, therefore, is entitled to and intends to participate in the appeal by filing an answer within thirty (30) days after Appellants file their statement of reasons. 43 C.F.R. § 4.414.[1/] ARRC files this notice to inform the Board of its participation and to respectfully request that all orders and other papers filed or otherwise distributed by the Board in this appeal be served upon the undersigned at the following address:

Andrew F. Behrend
Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Because ARRC was served with Appellants' notice of appeal and consequently has the right under 43 C.F.R. § 4.414 to participate in the appeal by filing an answer, it

[1/] Appellants have not yet filed their statement of reasons. They have filed a motion requesting an extension of the time to file their statement of reasons until December 14, 2013.

BLM 4458

is not necessary for ARRC to file a motion to intervene in this appeal. Should the Board disagree with that assessment and require ARRC to intervene, ARRC respectfully requests that the Board treat this Notice as a motion to intervene under 43 C.F.R. § 4.406. Under that regulation, ARRC would qualify for intervention because ARRC would be adversely affected if the Board reverses, vacates, sets aside or modifies the decision of the Bureau of Land Management ("BLM") to issue a patent to ARRC for the right-of-way lands at issue in this appeal. Under the Alaska Railroad Transfer Act, 45 U.S. C. § 1201 et seq., ARRC is entitled to the conveyance from the United States of the United States' entire interest, and not be less than an exclusive use easement, in all portions of the Alaska Railroad right-of-way. *See* 45 U.S.C. §§ 1203(a),(b); 1205(b)(4)(B). As Congress specifically found in ARTA, ARRC requires exclusive control of its right-of-way in order to safely and economically engage in railroad operations. *Id.* § 1205(b)(4)(A)(ii). In light of the above, a decision by the Board altering BLM's decision to convey a portion of the ARRC right-of-way via issuance of a final patent granting an exclusive use easement would severely and adversely affect ARRC by impairing its ability to engage in safe and economical railroad operations. Moreover, ARRC's participation in the appeal would not prejudice either the Appellants or BLM. Accordingly, if ARRC was required to move to intervene in the appeal, which is not the case in light of 43 C.F.R. § 4.414, it would be entitled to intervention under 43 C.F.R. § 4.406.

ARRC respectfully requests that the Board take notice of ARRC's participation in the above-captioned appeal. Alternatively, if the Board deems it necessary, ARRC

requests that the Board grant ARRC intervention in the appeal pursuant to 43 C.F.R. § 4.406.

DATED at Anchorage, Alaska this 2nd day of December, 2013.

Andrew F. Behrend
Senior Attorney, Real Estate & Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

CERTIFICATE OF FILING AND SERVICE

I certify that on December 2, 2013, I filed and served this Notice of Participation in Appeal, as indicated below:

FILED:
United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, Virginia 22203
[via Facsimile (703.235.8349) and U.S. Mail]

SERVED:
Roy Longacre, Esq.
Longacre Law Offices, Ltd.
Counsel for Appellants
425 G Street, Suite 910
Anchorage, Alaska 99501
[via U.S. Mail and Electronic Mail (Roy@LongacreLaw.com)]

Steve Scordino, Esq.
Attorney Advisor for Bureau of Land Management, Alaska State Office
U.S. Department of the Interior, Office of the Solicitor, Alaska Region
4320 University Drive, Suite 300
Anchorage, Alaska 99508
[via Facsimile (907.271.4143)
and U.S./Electronic Mail (steven.scordino@sol.doi.gov)]

Andrew F. Behrend
Alaska Railroad Corporation

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

IBLA 2014-0027	)	AA-55129
PETER SLAIBY and REJANI SLAIBY,	)	Land Conveyance
Appellants.	)	

JAN 13 2014

APPELLANTS' STATEMENT OF REASONS

Peter Slaiby and Rejani Slaiby (collectively, "Appellants"), by and through their counsel, Roy Longacre, Esq. have appealed the decision made by Bureau of Land Management ("BLM") Alaska State Acting Deputy Director, Robert L. Lloyd. On September 16, 2013, Mr. Lloyd signed a Decision "Lands Found Proper for Conveyance To the Alaska Railroad Corporation," identified as AA-55129-20[1]. The Slaibys appeal because the BLM cannot convey by patent real estate interests that it does not have, the BLM mischaracterizes the legal nature and scope of the easement it proposes to convey to the Alaska Railroad Corporation, the ARRC has not met the statutory requirements for an exclusive easement conveyance and because issuing a land patent is an improper procedure for conveyance of the easement. The Slaibys' property was part of a 1950 Federal land patent issued to Jarvi. It contained an easement under the Alaska Railroad Act of 1914. The railroad track was realigned in 1965 as a result of the 1964 earthquake. The Decision regarding AA-55129-20 purports to change the nature of the easement from that described in the original Patent and 1965 deed to an "exclusive use" easement as defined in ARTA Section 1202 (6). *See,* 45 U.S.C. 1202(6).

[1] Exhibit 1 hereto.

8CTH WD

In advancing what the Alaska Railroad Corporation ("ARRC") perceives as its rights to the "exclusive" easement[2], ARRC has recently enacted a permit policy[3] in which it attempts to transform its limited easement right-of-way into a real estate interest akin to fee simple ownership. The policy is at odds with the settled rights of a dominant estate holder and the servient estate under the common law by which the servient estate retains the right to use the easement for purposes not unreasonable given the dominant estate uses. In addition to charging the record-title property owners fees to use their own property, the policy places severe restrictions far exceeding the easement reserved on the Slaibys' Lots 13 and 14, Block 3, of the Sunset Hills West Subdivision by the July 2, 1964 Warranty Deed:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below;...

---

[2] The exclusive use concept originated from cemetery agreements and was the grant of an easement exclusive of others, not to the derogation of the servient estate uses not in conflict with the easement activities. The ARRC has, in other matters, similarly granted exclusive easements, not to derogation of its property rights, but exclusive of other third-parties obviously intending to restrict the granite company and not itself. The grantee may not allow others to exercise any right and may make the agreement non-transferable by the grantee. *Ahtna, Inc. v. State of Alaska Dept. of Transportation*, 296 P.3d 3 (2013); The exclusive use language, which is disfavored in easements, generally, is discussed in *Garrett v. O'Dowd*, 775 N.W.2d 549 (Wis.App. 2009). Indeed, because the granting of the original 1950 patent to Jarvi makes final the respective property rights, and Lots 13 and 14 are private, and not public land, the BLM is inappropriately making the fight for the easement owner about the legal rights and scope of the easement.

[3] ARRC's first presentation of its permit policy was strongly criticized both in writing and by public testimony. Nevertheless ARRC continued down its path and after changing some characteristics of the permit published a revised proposal. Attached hereto as Exhibit 2 is the second published version of the public policy, The ARRC Residential Right-of-Way Use Policy (RRUP) enacted by ARRC the same afternoon after taking public testimony on October 25, 2013. With some 480 miles of easement with a 200 foot width across private, public and state lands; the ARRC is attempting with a blanket policy to convert a hodgepodge of ownership interests and rights to a status where it essentially takes ownership rights of the railroad easement regardless of the particular property interest it has historically held. *See,* Page 12 of attached University of Alaska, *The Alaska Railroad: Overview and Operational Alternatives*, February 1982, Exhibit 3 hereto. Public criticism continues with one Slaiby neighbor even building a website addressing the issues: www.alaskarailroadeasement.info.

including the purported ability to fence off the easement area[4]. ARRC is now[5] attempting to acquire ownership, not of the easement as it has existed since 1914, but as an "exclusive easement" attempting substantively to change the legal nature of the easement in the transfer process by misconstruing the Alaska Railroad Transfer Act of 1982, 45 U.S.C. § 1201 et. seq.

I. BACKGROUND.

Railroad easements have undergone several transformations to meet the needs of this Country. Before 1871, Congress made generous grants of the fee estate in publically owned lands (and the minerals under the land) to railroads. Congress sought to encourage railroads to build a transcontinental railway line and provided public land for a right-of-way as well as fee title to alternating tracts of public land the railroad could sell to finance construction of the railway. The railroad's interest in the right-of-way land under the pre-1871 grants was described as a "limited fee."[6]. There was, however, a "sharp change in Congressional policy with respect to railroad grants after 1871."[7] The *Great Northern* Court explained Congress's 1871 "shift" in policy:

> Beginning in 1850 Congress embarked on a policy of subsidizing railroad construction by lavish grants from the public domain. This policy incurred great public disfavor which was crystallized in the following resolution adopted by the

---

[4] Imagine if you were a property owner like the Slaibys and years after your bought a bluff view property as depicted on Exhibit 4, with a railroad running down at the bottom of an extended bluff, you learned that the railroad was asserting that instead of having an easement limited to operation of its railroad, it, not you controlled the property and it could erect a fence a few feet from your house obstructing the view and cutting your property in half – by a wild construction of statutory provisions enacted long after the easement was established. *See,* 45 U.S.C. 1202(6)(A) and (D).

[5] ARRC's position and legal argument is known through an exchange of letters with the Slaibys.

[6] *See, e.g., Northern Pacific Ry. Co. v. Townsend,* 190 U.S. 267, 271 (1903). There were a series of railroad Acts: 1862, 1864, and 1866. Contemporaneous with the Homestead Act, fee simple land to the railroad was necessary so it could sell land to homesteads and obtain revenue to fund the railroad construction. The grants fell out of disfavor because of associated corruption. The 1871 Act granted specific easement rights and limited "condemnation" rights for expansion. The 1875 Act granted easements but did not allow condemnation. In 1908 Congress offered easements for railroad development which included mineral rights, to attract investors, but there were no takers.

[7] *Great Northern Ry. V. United States,* 315 U.S. 262, 275 (1942)

> House of Representatives on March 11, 1872.[8] After 1871 outright grants of public lands to private railroad companies seem to have been discontinued. But to encourage development of the Western vastness, Congress had to grant rights to lay track across the public domain....[9]

In the early 1870s, Congress initially passed separate "special acts" for each grant of a right-of-way to a railroad. *Id.* at 274. But passing special legislation for each railroad right-of-way was burdensome, so Congress passed the 1875 Act which was a "general right of way statute" that applied to all railroad rights-of-way across land then owned by the national government. *Id.* at 275. Against this background in 1914 Congress enacted the Alaska Railroad Act[10] which allowed for use of the Panama Canal equipment to build a railroad in Alaska. The Alaska Railroad Act provided for "reservations over right-of-way in patent"[11]:

> In all patents for lands taken up, entered, or located in Alaska March 12, 1914 there is reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines to the extent of 100 feet on each side of the centerline of any such road and 25 feet on either side of the centerline of any such telegraph or telephone lines.

With the development of Anchorage in 1915 and construction of the Alaska Railroad through 1923; homesteads[12] were created next to the railroad yard[13] first, and then progressing southward. By land patent the federal government relinquished title to the homestead interest in fee simple, but in the patent reserved an easement for the railroad's purposes as described in the

---

[8] "[T]he judgment of this House the policy of granting subsidies in public lands to railroads and other corporations ought to be discontinued, and that every consideration of public policy and equal justice to the whole people requires that the public lands should be held for the purpose of securing homesteads to actual settlors, and for educational purposes, as may be provided by law." CONG. GLOBE, 42d Cong., 2d Sess., 1585 (1872).

[9] *Great Northern,* 315 U.S. at 273-74. *See also* JAMES W. ELY, JR., RAILROADS AND AMERICAN LAW (2001), pp. 51-64 ("As a consequence [of scandals such as Credit Mobilier], Congress began to shift priorities with respect to the transcontinental project.").

[10] 48 U.S.C. § 301 et. seq., re-codified in 43 U.S.C. § 975 and then repealed by Pub.L. 94-579, Title VII, § 704(a), Oct. 21, 1976).

[11] Sec. 49-3-5.

[12] Homestead Act of 1862.

[13] Before Alaska statehood in 1959 there was no need for an easement across public land because the railroad went across federal land and so it was part of the federal government's "crown" estate. One cannot have an easement in his own estate in fee. *Wessels v. State, Dept. of Highways,* 562 P.2d 1042 (Alaska 1977)(FN 11); *Rusk v. Grande,* 52 N.W.2d 548, 551 (1952).

Alaska Railroad Act. In 1950 the land containing the Slaibys' Lots 13 and 14 was patented to Jarvi[14]:

> ....reserving to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat. 305).

This is consistent with similar easements issued across federal lands in more modern times. Pursuant to 43 CFR § 2842.1a (1976) the railroad easement was limited:

> A railroad company to which a right of way is granted does not secure a full and complete title to the land on which the right of way is located. It obtains only the right to use the land for the purposes for which it was granted and for no other purposes, and may hold such possession, if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title on the land over which the right of way is granted to the person to whom patent issues for the legal subdivision on which the right of way is located, and such patentee takes the free subject only to the railroad company's right of use and possession.

After the March 1964 earthquake property shifted and as part of the railroad track realignment, the United States of America for $24,115.00 purchased from the then owners of Lots 13 and 14[15]:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:...

Some time ago the BLM adhered to the notion recently advanced by ARRC that its easement even before ARTA transfer is more akin to fee ownership simply because it is a railroad. *See,* M-36964 (1989). Following the *Hash*[16] decision, the BLM changed its 1989, M-

[14] A copy of the patent is attached as Exhibit 5 hereto.
[15] A copy of the July 2, 1965 Warranty Deed on which BLM's Alaska Railroad Selection Application relies, is attached as Exhibit 6 hereto.
[16] *US v. Hash,* 403 P.3d 1308 (Fed.Cir. 2005).

36964 opinion[17] on the ownership interest of railroad interests rejecting the "something akin to fee simple ownership view" and adopted the Great Northern analysis; that the right-of-way granted to a railroad is limited to activities that serve a railroad purpose[18]. *See,* M-37025.

In 1982, Congress conveyed the Alaska Railroad to the State of Alaska by the Railroad Transfer Act, 45 U.S.C. § 1201 *et. seq.* As part of this legislation Congress specifically stated that:

> The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall not be the disposal ...{of certain properties}..Such events ....shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.)[19]

"Reservation" as defined by the BLM glossary[20] is a withdrawal of Federal lands dedicated to a public purpose" such as the Alaska Railroad easement.

Correspondingly, also in 1982, the State of Alaska enacted legislation to provide for creation and ownership of the Alaska Railroad, Alaska Statute 42.40.010 *et. seq., ARCA.* In such legislation the State of Alaska provided that before the ARRC could apply for or accept a grant of federal land within a Municipality such as Anchorage where the Slaibys' property is located, "the legislature must determine that the federal land is required for essential railroad purposes. A,S. 42.40.285. Further, Section .285 (5)(c) provides that the Alaska Railroad Corporation may not apply for or accept a grant of federal land within a municipality without legislative approval. The sole exception is a grant under Section 1202(1) of ARTA (1914 easement). The exception does not apply to Section 1202(6) exclusive use easements, and there has been no legislative

---

[17] A copy of Opinion M-37025 and questions and answers about the 1875 Act and M-37025 Opinion are attached as Exhibit 7.

[18] Additionally interpretation of Congressional intent by a subsequent Congress is not exclusive evidence of the actual intent of the earlier Congress. *State of Wyoming v. Udall,* 379 P.2d 635, 639 (10th Cir. 1967).

[19] Sec. 1212(b).

[20] Exhibit 8 hereto.

approval, yet AA-55129-20 specifically recites that the new proposed easement patent is issued under Section 1202(6).

II. ANALYSIS

A. BLM Cannot Convey Property Interests It Does Not Own.

Ownership of real property often has been described as a "bundle of sticks", with each stick being a right or privilege to enjoy ownership thereof and dominion over all that the property views. The entire bundle of sticks would constitute *fee simple absolute* ownership of the realty. Ownership in fee of real estate generally carries with it all rights to do everything to and upon the land which is not proscribed by law[21]. A property owner's right to exclude others from his or her property is recognized as "one of the most essential sticks in the bundle of rights that are commonly characterized as property[22]. An easement is a general or specific right to use the land without alienating, or selling, the land. An easement is not an estate, *per se*, but is an interest in land. It is not the land itself[23]. Easements and "right-of-way" have been used interchangeably by the courts in treating statutes reserving rights-of-way in favor of the United States[24]. BLM accepts the general definition of an easement as: "An interest or right in land owned by another that entitles its holder to a specific limited use; such as laying a sewer, crossing over property or putting up power lines."[25]

---

[21] Such as to operate a "common nuisance", a hazardous waste landfill, or other limitation imposed by zoning, restrictive covenants, or development use standards.

[22] *Dolan v. City of Tigard*, 512 U.S. 374, 384, 385 (1994).

[23] *Kennecot Cooper Corp. v. U.S.*, 347 F.2d 275, 294 (1965)

[24] *Northern Pac. Ry.Co. v. US*, 277 F.2d 615, 618 (10th Cir. 1960). Alaska cases say same thing: *Wessels v. State Dept. Of Highways*, 562 P.2d 1042 (AK 1977) and *Anderson v. Edwards*, 625 P.2d 282 (AK 1981).

[25] www.blm.gov/cadastral/Glossary/cadterms/glosse.pdf. *See also, SOP, Inc. v. State, Dept. of Natural Resources*, S-14541 (Alaska Oct. 11, 2013); *Northern Alaska Environmental Cent. V. DNR*, 2 P.3d 629 (Alaska 2000).

Slaibys' Lots 13 and 14 are part of the Jarvi patented property. In the original 1950 patent to Jarvi, the government already conveyed all of the "sticks" pertaining to the Slaibys' Lots 13 and 14 except the limited easement described as[26]:

> ....reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat. 305).

The government then later purchased an almost identical easement in the Warranty Deed on which BLM relies[27]:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:...

At the time of the creation of the easement in 1950, a dominant estate was created in the easement holder federal government and a servient estate created in the fee simple owner Jarvi. The easement is akin to a license, not a fee simple ownership. The fact that the easement remained with the Government does not give it any special legal status or rights. The Government acquired in the Jarvi Patent reservation and the 1965 Warranty Deed no more or less rights than a private holder of a similar easement. The easement language controls the dominant estate rights. Here, by reference, those rights are defined under the Act of March 12, 1914 and the 1965 Warranty Deed from Jarvi to the Government. The Government may only convey what was reserved in the original Jarvi patent, not more, regardless of what later legislation was enacted by either the federal or the state government. Jarvi and successors such as the Slaibys retained the servient interest rights pertaining to the estate physically underlying the easement. This is so regardless of any intervening easement conveyances which neglect to specifically convey such. This is called the "centerline presumption", a presumption which is

[26] Exhibit 5 hereto.
[27] Exhibit 6 hereto.

used in the event of abandonment of a number of types of easements such as roads. *See*, A.S. 09.45.015. As a result, under the doctrine of "centerline presumption" followed by 15 of 16 states in which the issue has been ruled on as to railroads, the servient estate holder owns the land subject to the easement's designated scope and purpose and the rights of the servient owner to non-conflicting use of the easement without permission from or payment to the dominant estate and the right of "reversion" of the easement upon abandonment. *See, Assmunson* and *Hash supra.* If the easement is abandoned that specific stick from the bundle of property rights simply disappears[28]. This is somewhat mistakenly referred to as "reversion" when in fact since the easement is not an estate in the underlying property, but is more akin to a license, nothing ever left in the first place to come back to the servient property owner.

Now BLM wants to convey to ARRC a different and much enhanced easement, an easement containing sticks the Government has already conveyed to Jarvi the prior owner of Lots 13 and 14. The new improved easement is not one under the 1914 Act as in the patent or as in the Jarvi Warranty Deed as in a 1202(10) rail property, but one under 1202(6) , described as an "exclusive use easement"[29] which affords to the easement holder (a) the exclusive right to use, possess, and enjoy the surface estate for transportation, communication, and transmission purposes and for support functions associated with such purposes; (b) the right to use so much of the subsurface estate as is necessary for the above; (c) subjacent and lateral support of the lands subject to the easement; and (4) the right (1) to fence all or part of the lands subject to this easement, (2) to affix track, fixtures and structures, and (3) to exclude other persons [including the owner such as the Slaibys] from all or part of their land. *See,* BLM Alaska Railroad

[28] In *Assmunson v. US*, 304 P.3d 552 (Colo. 2013), the Court was asked by the federal court to issue an advisory opinion of what happens to an abandoned rail line. The *Assmunson* Court answered that as in 14 out of 15 states that had considered the question, the abandoned easement belonged to the servient estate and became a part of fee simple ownership rights.

[29] Section 1202(6).

Application and proposed Patent A-55129-20 (Exhibit 1 hereto). The approach of BLM and ARRC is flawed. Once the property interest sticks have been passed into private hands, BLM cannot re-convey those interests[30].

BLM cannot convey to ARRC what it does not own. If the Government wants to change the bundle of sticks property rights of the fee simple owner, or servient estate, there are well-established condemnation procedures providing for notice and compensation[31]. Neither ARTA or ARCA[32] provide for condemnation, or compensation for the taking of property rights from the servient estate because ARTA was not, as referenced above, intended to be a change to existing railroad easements. Furthermore, BLM's proposed patent of an already existing easement to ARRC pursuant to Section 1202(6) as an exclusive easement, as an example, would violate 285, and is plainly illegal on its face.

B. BLM and ARRC's Interpretation of the Alaska Railroad Transfer Act Of 1982 Is Flawed.

If BLM were to propose to convey, by assignment, its easement on the Slaibys' Lots 13 and 14 as defined in 1202(10) it would be consistent with the historic references to the easement on the property and the Slaibys would have no objection.

BLM's purported authority[33] to patent the exclusive easement instead of the limited easement[34] retained by the government with the original patent and later purchase after the 1964 earthquake is found in a misreading of Section 1205 and misapplication of an "exclusive use" easement, Section 1202(6) of the Alaska Railroad Transfer Act of 1982 (ARTA). 45 U.S.C.

---

[30] *Hamerly v. Denton*, 359 P.2d 121 (Alaska 1961), 359 P.2d at 123; *Fitzgerald v. Puddicombe*, 918 P.2d 1017 (Alaska 1996).

[31] Tucker Act, 28 U.S.C. § 1491 (1994).

[32] ARTA and ARCA were contemporaneous and need to be read together to determine the legislative intent.

[33] **Although BLM cites 45 U.S.C. 1202 (6) for its legal authority; it expressly states in the application it is instead relying on the 1964 Warranty Deed which is not addressed in or by any provision of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. § 1201 *et. seq.* or in particular Subsection 1202(6).**

[34] That the Railroad right-of-way would be a limited easement was referenced on the bottom of Page 4 in the Valuation of the Alaska Railroad by the General Accounting Office on November 24, 1982, Exhibit 9 hereto.

1202 provides for two different types of easements. BLM attempts to apply the wrong one: 1202(6) instead of 1202(10). 45 U.S.C. 1202(10) is the 1914 language referenced above and is consistent with Section 1212 referenced above which provides that easements previously created remain unchanged referencing "rail properties of the Alaska Railroad." Sec. 1212 and other provisions of ARTA should be read together so as to avoid conflict and ambiguity. But if other provisions of ARTA seem to be in conflict with the clear language of 1212, then 1212 would control because it is more specific as to the ARTA intention of the treatment of the 1914 reservations in the course of transfer of the various railroad assets to the State of Alaska. This follows from the common rule that where two seemingly inconsistent provisions concern the same matter, the more specific provision controls over the general provision[35].

BLM also incorrectly relies on Section 1205, particularly Subsection (b) which concerns resolution of existing, pending, or conflicting native claims and then applies or references 45 U.S.C. 1202 (6) which provides for an exclusive easement. This exclusive easement definition was meant to tie to 45 U.S.C. 1203 which conveyed an exclusive use easement for Denali National Park land and to 45 U.S.C. 1205 which addressed native land claims[36] and provided for "exclusive control over the right-of-way"[37]; it was not meant to address easements across homesteaded property such as the Slaibys' Lots 13 and 14[38].

BLM is particularly confused about the operation of 1205, which is designed to deal with conflicting native claims caused by (among other preceeding Acts): the Allotment Act of 1906

---

[35] Sea Lion Corp. v. Air Logistics of Alaska, Inc. 787 P.2d 109 (Alaska 1990); Starlight Ridge v. Hunter-Bloor, 177 Ca.App.4th 440, 447 (Cal.App.4th Dist. 2009).

[36] The Railroad, at the time was concerned that native claims could result in it retaining "only an easement." *See* Page 11 of *The Controller General Report To The Congress Of The United States* dated February 25, 1982 and attached hereto as Exhibit 10. *See also,* 43 U.S.C. 1634(a) and (b)(5).

[37] 45 U.S.C. § 1205 (b)(4)(A)(ii).

[38] Governor Hammond's contemporaneous March 28, 1982 letter references the concern about native claims, but specifically calls for the 1914 easement for railroad, telephone and telegraph to be the "standardized easement" for the track in Alaska, Exhibit 11 hereto.

and the 1971 ANCSA[39], which left the railroad track easement in some dispute as to natives. Some of those are named in 1205 (b)(3) and include Nenana, Eklutna and Cook Inlet. These conflicts for 1205 resolution are referenced in a number of contemporary sources including the March 28, 1982 letter of then-Governor Hammond[40]. In resolution of these pending and disputed native matters, 1205(a) seeks to prevent the problem from becoming worse during the transfer by inoculating those portions of the track easement not already infected. 1202(b) then sets out a process of resolution of the problems. We now come to 1202(b)(4)(B) the main source of BLM and ARRC misunderstanding. This refers not to homesteaders as seems to be the thinking of BLM but is related to disputes, conflicting claims and similar confusion as to the track rights, some of which being the result of pending or finalized transfers under the 1906 Act and ANCSA (arising between 1971 and1982[41]. All of these maladies are mentioned in (b)(4)(B). To the extent that the language of this subsection refers to individuals, this is simply the result of the fact that individuals could make allotment claims under the 1906 Act followed by the fact that individual claims could be made on behalf of individual natives by village corporations under ANCSA. As an aside, non-natives who lived a native lifestyle and perhaps others are also involved in these maladies. But what is very significantly absent from the 1205 scheme is any reference to homesteaders and the 1914 reservations across their patents. To the extent that reference to those "holding interests in such lands", or "claim of existing rights" etc., under the *"Noscitur a Soclis"* doctrine words in a section are interpreted in accordance with the company

---

[39] Alaska Native Claims Settlement Act, 43 U.S.C. § 1601-1624 (1971).

[40] *See also,* the IBLA's decision in State of Alaska (John Billum, Jr.), 127 IBLA 137, 143 (1993) and subsequent decisions including State of Alaska (Irene Johnson and Jack Craig), 133 IBLA 281 (1995)which have dealt with the variety of conflicts that were pending as to the homestead act, the 1906 allotment, ANCSA and other laws.

[41] In Sec. 1205(b)(4), the leadoff phrase states: "The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:...."

they keep. Section 1205 generally concerns native claims and conflicts. Reference to such phrases above would mean those persons holding such rights as are involved with the matters of concern dealt with in the section: native claims

As stated previously the "exclusive use" in ARTA referenced in 1203 and 1205 and defined in 1202(6) is a pure creation of ARTA.[42] Subsection (a)(1)(D) addresses the exclusive use easement: "for that portion of the right-of-way of the Alaska Railroad within the Denali National Park...." This is what is being defined by "exclusive-use easement" in BLM's Subsection 1202 (6) authority. Exclusive use easements are disfavored and commonly not construed to the detriment of the servient estate holder even if the word "exclusive" is used in the easement document. The reason is that impairment of the servient estate interest and uses makes the land less serviceable and this is disfavored[43]. When an easement is "non-exclusive," the common users must accommodate each other[44], as has existed on Lots 13 and 14 to the present time. "[A]n exclusive easement is an unusual interest in land, amounting almost to a conveyance of the fee; and, therefore, no intention to convey such a complete interest can be imputed ... in the absence of a clear indication of such an intention."[45]

45 U.S.C. § 1203 (a)(1)(A) and (B) provides for conveyance to the State of Alaska all rail properties which would include the limited easement across Slaibys' Lots 13 and 4. The term

---

[42] The Government's intent is set forth in the accompanying December 20, 2012 Department of Interior Memorandum (Exhibit 12 hereto) adopting the BLM's revised railroad easement interpretation. *See, M-37025* (Exhibit 7 herto).

[43] *Garrett v. O'Dowd,* 775 N.W.2d 549 (Wis.App. 2009); *Gray v. McCormick,* 167 Cal.App.4th 1019 (Cal.App.4thDist.Third Division 2008); *Fedorko Properties, Inc. v. CF Zurn & Associates, 720 A.2d 147* (Pa.Super 1998).

[44] *Scruby v. Vintage Grapevine, Inc.,* 37 Ca.App.4th 697 (Cal.App.4th 1995)

[45] *City of Pasadena v. California-Michigan Land & Water Co.,* 110 P.2d 983 (1941); *See also, Van Natta v. Nys,* 279 P.2d 657 (1954); and *Mitchell v. Land,* 355 P.2d 682 (Alaska 1960).

"rail properties" means 1202(10).[46] The BLM and ARRC view of ARTA, 45 U.S.C. 1201 *et. seq.* as substantially expanding the railroad easement across the Slaibys' Lots 13 and 14 would be illegal as the Court determined in *Myers v. U.S.*, 378 F.2d 696 (US Ct of Claims June 9, 1967). The *Meyers* case involved a federal homestead patented "Valley" property with a road easement for the Wasilla-Big Lake Road outside of Anchorage, Alaska. The government contended a subsequent statute was claimed to have altered the easement created by the previous statute. The court said that a homestead patent is not assailable and that the easement, granted back to the government for roads, is not modifiable by later statute unless the clearest possible language is used, specifically referring to easement granted under the 1914 Act. *See also*, *State of Idaho v. Hodel*, 814 F.2d 1288 (1987): "Where the US has parted with title by a patent legally issued and upon surveys made by itself and approved by the proper department, the title so granted cannot be impaired by any subsequent survey made by the government for its own purposes."[47] Similarly *Hash v. US*, 403 F.3d 1308 (US Ct. of Appeals, Fed. Dist. 2005) held that once a homesteader receives a patent, a related railroad easement cannot be transferred to another entity without compensation. Direct condemnation is necessary to change a patent easement such as is on Lots 13 and 14.

C. Issuance Of A Land Patent Is An Improper Procedure For Conveyance Of This Easement

BLM proposes to convey, and the ARRC proposes to accept the easement across the Slaibys' property by means of a patent. In addition to the restrictions on changing property rights after the original patent as set forth above, the law, 43 CFR § 2807.21, provides that

---

[46] "rail properties of the Alaska Railroad" means all right, title, and interest of the United States to lands, owned,.... administered or otherwise held or validly claimed for the Alaska Railroad by the United States ....thereof as of January 14, 1983,..."

[47] *See also, Hillstrand v. State of Alaska,* 181 F.Supp. 219, 223 (Alaska 1960); *Cage v. Danks,* 13 La.Ann 128 (La. 1858)

appropriate transfer of an easement is by "assignment". BLM's own procedures follow the law and provide that the conveyance of a right-of-way is by assignment prescribing use of its form SF-299[48] as to rail lines over public lands. ARTA easement transfers should be similarly done.[49] Additionally, ARRC has not met the prerequisite requirements of obtaining legislative approval pursuant to A.S. 42.40.285 for conveyance of an exclusive easement by patent or otherwise.

III. CONCLUSION.

It is clear that prior to the Railroad Transfer Act of 1982, the easement across the Slaibys' Lots 13 and 14 was not an exclusive easement. Prior to the Railroad Transfer Act of 1982 the easement across the Slaibys' Lots 13 and 14 was one limited to operation of the railroad and certain railroad-related communications (which communication systems have never existed).

As is expressly stated in the Railroad Transfer Act of 1982 which transferred the Alaska Railroad from the federal government to the State of Alaska, existing easements are to be transferred unchanged. *See*, 1212. BLM and ARRC draw on confusion created by a post-dated review of the specific narrow provisions of the act designed to meet special needs in process for Denali National Park and native claims that separately provided an exclusive easement and mistakenly focus on the exclusive easement language for application to existing easements across land that had already been placed into private ownership by patent. What should be done is for BLM to convey by assignment the limited 1914 easement across the Slaiby s' Lots 13 and

[48] An example of an actual Alaska BLM right-of-way conveyance by assignment is attached as Exhibit 13 hereto. A copy of BLM's website page on right-of-way conveyances and its form SF-299 are attached as Exhibit 14 hereto.
[49] While 45 U.S.C.A. § 1203 states "Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor instead of an interim conveyance." This was meant to refer only to a final instead of an interim conveyance and was not meant to violate existing law and procedure providing that for an existing easement such as the one across the Slaibys' Lots 13 and 14, assignment is the correct conveyance procedure; so that conflict is not created by a differing reconveyance.

CERTIFICATE OF SERVICE

I certify that on January 10, 2014, I served this Appellants' Statement Of Reasons, as indicated below, upon:

Mr. and Mrs. Peter Slaiby
14200 Jarvi Drive
Anchorage, Alaska 99515-3944
(by mail)

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(by mail)

Steve Scordino, Attorney Advisor for
Bureau of Land Management, Alaska State Office
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(by mail)

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
(by mail)

Roy L. Longacre

Roy L. Longacre, Esq.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504
http://www.blm.gov

In Reply Refer To:

SEP 16 2013

AA-55129 (2658)
(944) mjm /lga

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Chief Executive Officer Alaska Railroad Corporation P.O. Box 107500 Anchorage, Alaska 99510-7500	:	AA-55129-20 Alaska Railroad Selection Application

Lands Found Proper for Conveyance
To the Alaska Railroad Corporation

On January 14, 1983, the Alaska Railroad Transfer Act of 1982, (ARTA) 45 U.S.C. 1201, et seq., was enacted authorizing the transfer of all Alaska Railroad properties to the State of Alaska.

The lands being addressed in this decision are in Parcel 4, of the Warranty Deed dated July 2, 1965, from Edwin A. Jarvi and Yula C. Jarvi, husband and wife, to the United States of America, and further described as portions of Lots 4, 13, and 14, Block 3, of the Sunset Hills West Subdivision, and recorded in Book 305, Pages 170 and 171 in the Anchorage Recording District. The Deed further states that the above-described premises are being acquired for the Alaska Railroad, Department of the Interior.

In view of the above, when this decision becomes final, the Alaska Railroad Corporation shall receive the full and complete right, title, and interest of the United States in and to the real property described above, pursuant to Sec. 604(b)(2) and (3) of ARTA, 45 U.S.C. 1203(b)(2) and (3). Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest hereby granted by the United States in the real property of the Alaska Railroad shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA.

The lands approved for conveyance are more particularly described in the proposed patent which is incorporated herein by reference.

EXHIBIT 1
PAGE 1 OF 8

AD

Any party claiming a property interest in lands affected by this decision may appeal the decision to the Interior Board of Land Appeals, within 30 days of receipt of this decision.

The appellant has the burden of showing that the decision appealed from is in error. Failure to file the notice of appeal with the Bureau within the time allowed will result in dismissal of the appeal. In order to avoid dismissal of the appeal, there must be strict compliance with the regulations contained in 43 CFR, Part 4.

/s/ Robert L. Lloyd

Robert L. Lloyd
Acting Deputy State Director
Division Lands and Cadastral

Enclosures:
Proposed Patent
Plat 64-105 of Sunset Hills West Subdivision
Jarvi Warranty Deed

Copy furnished to:

State of Alaska
Department of Natural Resources
Division of Mining, Land and Water
Realty Services Section
550 West Seventh Avenue, Suite 1050A
Anchorage Alaska 99501-3579

Mr. Christopher Aadnesen, President and CEO
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Ms. Wendy Lindskoog, Vice-President Corporate Affairs
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. William Hupprich, Vice-President and General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. Robert Hahn
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Mr. Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

Mr. and Mrs. Peter Slaiby
14200 Jarvi Drive
Anchorage, Alaska 99515

Mr. Steve Scordino, Regional Solicitor's Office

FM- (011)

Records (940)

EXHIBIT 1
PAGE 2 OF 8

The United States of America

To all to whom these presents shall come, Greeting:

Proposed Patent

AA-55129-20

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201, et seq (hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels). This patent is hereby issued for the real property described below:

Railroad Right-Of-Way as Defined by Section 603(11) of ARTA:

> All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3), of Sunset Hills West Subdivision, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

NOW KNOW YE, that the UNITED STATES of AMERICA has given and granted, and by these presents in conformity with ARTA does give, grant, and convey unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

EXHIBIT 1
PAGE 4 OF 8

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to the said real property, subject to the Reservations and Conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive-use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

1. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

2. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions:

1. "Real property", as used herein, means land and all the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, lease-holds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603 of ARTA have the same meaning herein as provided in said section, including but not limited to the following terms:

   a. "exclusive-use easement", as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

      1. the exclusive right to use, possess, and enjoy the surface estate of the lands subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

      2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for transportation, communication, and transmission purposes and the associated support functions for which the surface of the lands is used;

      3. subjacent and lateral support of the lands subject to the easement; and

4. the right (in the easement holders discretion) to fence all or part of the lands subject to this easement, and to affix track, fixtures, and structures to such lands, and to exclude other persons from all or part of such lands.

b. "right-of-way" as used herein, means as provided by Sec. 603(11) of ARTA:

1. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this _____day of _____2013.

UNITED STATES OF AMERICA

_____

Secretary of Transportation by the Administrator of the Federal Railroad Administration

EXHIBIT 1
PAGE 6 OF 8

Alaska Railroad Corporation Concurrence

The Alaska Railroad Corporation has reviewed the following document pursuant to the Alaska Railroad Transfer Act of 1982, and finds it acceptable.

This concurrence applies to the following document under the specified case file number:

AA-55129-20

_____

By

_____

Title

_____

Date

EXHIBIT 1
PAGE 7 OF 8

Accepted:

ALASKA RAILROAD CORPORATION

By:_____

Title:_____

Dated:_____

Filed for Record at the Request
of and Return to:

State of Alaska
Alaska Railroad Corporation
Attn: Ms. Wendy Lindskoog
Vice-President Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500

STATE BUSINESS – NO CHARGE

Location Index for Recording Information:

Lots 4, 13, and 14, Block 3, Sunset Hills
West Subdivision are located within
Sec. 32, T. 12 N., R. 3 W., SM.

EXHIBIT 1
PAGE 8 OF 8

BOARD RULE NO. 23

ALASKA RAILROAD CORPORATION
RESIDENTIAL RIGHT-OF-WAY USE POLICY

GENERAL PURPOSE AND INTENT

The Alaska Railroad Corporation (ARRC) Right-of-Way (ROW) is an essential part of the state's transportation network that serves several purposes.[1] Because of its importance to the long-term economic growth and development of Alaska, state law requires ARRC to preserve the integrity of the ROW for "transportation, communication, and transmission purposes."[2] In addition to its primary purpose of accommodating railroad operations, the ROW also provides maximum protection to the public and ARRC employees from safety risks inherent in such operations, and delineates the boundary of ARRC's property interests near its tracks.[3]

Unfortunately, ARRC and its predecessor, the federal Alaska Railroad, have been inconsistent both in their decision-making processes and enforcement regarding the use and occupancy of the ARRC ROW by adjoining residential property owners. Over time, non-permitted uses and non-permitted construction by adjoining residential property owners have occurred within the ARRC ROW. Such uses and construction could pose safety risks to the public and to ARRC employees and equipment, and could limit the use of the ARRC ROW for its statutorily mandated purposes.

The purpose of this policy is to establish consistent guidelines and procedures to regulate residential uses of the ARRC ROW by adjoining property owners in order to better protect and preserve the integrity of the ROW so that it remains intact and available for its intended purposes.

This policy requires ARRC management to set up a permit process for residential uses and structures within the ROW. Permits will be issued for a certain term, but will be renewable if the permitted uses or structures continue to be allowable under the terms of this policy. A permit issued under this policy will be assignable to new owners of a permit holder's property upon a transfer of ownership interest in that property by the permit holder, provided ARRC receives notice of the transfer as specified in the permit. The uses and structures allowed under a permit transferred to a new property owner shall be limited to only those uses and structures allowed by the original permit.

---

[1] AS 42.40.350(a) defines the ARRC ROW as a "railroad utility corridor."
[2] §1 ch 153 SLA 1984
[3] Pursuant to the Alaska Railroad Transfer Act of 1983 (ARTA), ARRC's property interest in the ROW is, at a minimum, an "exclusive use easement." 45 U.S.C. §1205(b)(4)(B). As defined by statute, the exclusive use easement grants ARRC the right to fence all or part of the ROW and to exclude other persons from all or part of such lands. 45 U.S.C. §1202(6).

EXHIBIT 2
PAGE 1 OF 10

This policy also requires that all structures be removed from the ARRC ROW and that all areas subject to this policy be vacated immediately by any residential user who either (i) does not obtain a permit under this policy, or (ii) obtains a permit which is subsequently terminated. Although costs associated with removal of structures and the vacation of the ARRC ROW will be the sole responsibility of the residential user, allowing structures and uses to remain until permits terminate will allow time to plan for any such costs.

POLICY STATEMENT

It is the policy of ARRC to preserve and protect the integrity of its ROW for transportation, communication, and transmission purposes as required by state law. Pursuant to statute, however, reasonable residential uses of the ARRC ROW may be authorized in the sole discretion of ARRC management, but only if they do not restrict train operations; create a safety hazard; or otherwise limit or interfere with transportation, communication, transmission or other parallel uses of the corridor.[4]

POLICY

A. Scope

This policy establishes appropriate procedures, terms and conditions for allowing certain residential uses of the ARRC ROW under a permit system.

B. Coverage

This policy applies to all residential uses within the ARRC ROW. It does not apply to (i) public utility uses, (ii) commercial uses, or (iii) governmental uses. Also not subject to this policy are any permitted or unpermitted uses of the ARRC ROW where such uses constitute residential property owners' sole means of access to their properties.

C. Distribution and Point of Contact

This policy will be posted on the ARRC website at www.AlaskaRailroad.com and also will be available through the ARRC Real Estate and Corporate Affairs Departments. The Real Estate Department will be the main contact for public information concerning this policy. The contact number is (907) 265-2670. Printed copies of this policy will be available at the ARRC Anchorage Headquarters Building located at 327 W. Ship Creek Avenue.

D. References/Authority

Authority for issuance of this policy is established by:

1. AS 42.40.390

[4] AS 42.40.350(b)

EXHIBIT 2
PAGE 2 OF 10

2. AS 42.40.350(b)
3. 45 U.S.C. §1207(e)
4. ARRC Board of Directors (Resolution No. __)

E. Responsibility

The following ARRC management employees are responsible for the implementation, administration and enforcement of this policy, and shall exercise their respective responsibilities under this policy within their sole discretion:

Vice President, Engineering is responsible for determining impacts of existing or proposed residential uses or encroachments within the ARRC ROW and whether those impacts are compatible with this policy. Impacts include but are not limited to safety, erosion, drainage, slope stability, and maintenance activities. The Vice President, Engineering or his delegate shall decide whether to grant or deny a permit application under this policy.

Vice President, Transportation and Mechanical or his delegate is responsible for determining if a proposed permit use is compatible with train operations and safety requirements.

Vice President and General Counsel or his delegate is responsible for ensuring that this policy complies with all applicable governing statutes, advising the corporation regarding compliance with the provisions of this policy, and pursuing legal remedies/relief for non-compliance with the policy and associated permits where appropriate.

Vice President, Corporate Planning and Real Estate or his delegate is responsible for administering this policy, including but not limited to (i) determining, subject to the approval of the Vice President, Engineering, that an applicant qualifies for a permit under this policy; (ii) determining, again where appropriate subject to the concurrence of the Vice President, Engineering, that a permit should be terminated under Sections G.3 and G.4 of this policy; (iii) establishing permit fees under this policy; (iv) providing information about the ARRC ROW to the public (e.g. various widths of the ARRC ROW); and (v) recommending revisions to the policy as necessary or advisable.

Chief Special Agent or his delegate is responsible for investigating a residential user's non-compliance with this policy, issuing trespass citations when appropriate, and providing a violation report and/or evidence to the Legal Department for resolution of non-compliance. The Chief Special Agent shall coordinate with the Real Estate Department's Manager, Land Services to conduct an inspection of the entire ARRC ROW as often as necessary to ensure compliance under this policy.

EXHIBIT 2
PAGE 3 OF 10

F. Definitions

Permit: A written, legally binding contract between ARRC and an adjoining land owner authorizing the latter to use a portion of the ARRC ROW for a Residential Use, as defined below, in exchange for a predetermined fee. The landowner's rights under such contract may not be transferred or assigned to any third party except in conjunction with the transfer to the third party of the landowner's ownership interest in the subject real property and upon notice to ARRC as described in Section G.5 of this policy. Any transferred permit will continue to allow only the same or less extensive Residential Use as the initial permit.

Right-of-Way (ARRC ROW): As required by statute, the Alaska Railroad rights-of-way are "railroad utility corridors" and are of a width at least 100 feet on both sides of the centerline of the main line or a branch line unless the corporation does not own or control sufficient land to allow a corridor of that width.[5]

Residential Use: Any use associated with a Residential Use Area, as defined below. A Residential Use of the ARRC ROW may only occur under a permit issued pursuant to this policy.

Residential Use Area: Area used solely for the purpose or purposes of (i) growing and maintaining a lawn, shrubbery, or garden in the ARRC ROW without structures except as specifically allowed by this paragraph (Lawn and Garden Use); and/or (ii) keeping, maintaining and/or repairing approved residential-related structures in the ARRC ROW (Residential Structure Use). For purposes of this policy, the term "structure" shall have the meaning set forth in Anchorage Municipal Code Section 21.35.020.B; provided, however, that "structures" shall not include trellises, lattice work, raised flower beds and/or similar structures associated with a Lawn and Garden Use. At the discretion of ARRC management, a permitted Residential Use Area may have boundaries different from current use boundaries and may or may not include current improvements.

G. Procedures/Implementation

Upon adoption of this policy, all existing Residential Uses within the ARRC ROW will be required to strictly comply with this policy and with all applicable laws, land use regulations and codes. Existing residential users with or without encroaching structures will be allowed to apply for a permit under this policy, which creates a one-time opportunity for adjoining property owners to legitimize their existing occupancy and use of the ARRC ROW. Any such existing use or structure may continue until termination of the permit as long as the continued use or structure complies with this policy in all respects.

An adjoining residential property owner who wishes to continue an existing Residential Use of the ARRC ROW must submit a completed ARRC permit application form within 180 days of notice of the adoption of this policy and the need to obtain a permit being

[5] AS 42.40.350; see also 45 U.S.C. §1202(11) (defining "right-of-way" for purposes of ARTA).

given by ARRC to the most recent address of the property owner known to ARRC. This requirement applies to all adjoining property owners with existing uses, whether they are covered under an existing permit or not. Each permit application must be accompanied by the following, as applicable:

a. The appropriate permit application fee as provided in Section G.7, below, and as set forth in Addendum A.

b. A legible drawing meeting requirements set forth in the permit application that (i) shows the dimensioned proposed use area within the ARRC ROW, (ii) shows all encroaching structures in the proposed use area, and (iii) indicates the nature and location of each use the applicant seeks to have permitted. As-built drawings will typically be required for proposed use areas containing encroaching structures unless ARRC Real Estate, within its sole discretion, determines that another type of drawing is sufficient.

c. Photographs of the existing uses and proposed permit area.

d. Documentation of the applicant's ownership interest in the adjoining residential property acceptable to ARRC, such as a copy of the most recent tax assessment notice for the adjoining property.

If a property owner with an existing Residential Use subject to this policy fails to submit a permit application within the 180-day application period, or otherwise fails or refuses to comply with the requirements and conditions of this policy or a permit issued under this policy, or has a permit under this policy terminated pursuant to Sections G.3 or G.4, below, the property owner must promptly and at his own expense discontinue the permitted use and remove and dispose of all encroaching structures.

a. If the property owner does not promptly discontinue the use and remove any structures, ARRC will have the right to take an enforcement action requiring the property owner to vacate the area of the ARRC ROW currently being used or encroached upon.

b. Such an enforcement action could lead to ARRC removing, at the property owner's expense, the property owner's personal property and structures from the use area and installing fencing to the limit of the ARRC ROW.

If a property owner who maintains a Residential Use wishes to discontinue that use and/or to remove all improvements to the satisfaction of ARRC, either before or after obtaining a permit for such use or structure, the property owner will be permitted to do so in compliance with the provisions of this policy.

Requests for permits for prospective new Residential Uses of the ARRC ROW may be directed to ARRC management. The decision of whether to grant or deny any such request shall be at management's sole discretion. Any new Residential Uses that are

approved shall strictly comply with the terms and conditions of this policy and the permit issued for such use.

Permits issued under this policy will contain, but not be limited to, the following provisions and requirements:

1. The permit will be personal to the permit holder and neither the permit nor the rights thereunder may be transferred or assigned except in conjunction with the transfer of the permit holder's ownership interest in the subject property. Under no circumstances may a permit under this policy or the rights thereunder be transferred to any person or entity who is not a subsequent owner of the property associated with that permit.

2. Uses and structures allowed by the permit must be discontinued and removed from the ARRC ROW upon the expiration or earlier termination of the permit as more specifically provided below.

3. The permit will automatically terminate on the earliest of the following:

   a. Uses of the permit area that present, or may present, in the sole opinion of the Vice President, Engineering, a concern for employee safety, operational safety or other hazard.

   b. Termination of the permit by either party as provided in item 4 below.

   c. Discontinuation of all uses and/or the removal of all structures permitted under the permit.

   d. Expiration of the term of a permit without the permit being renewed.

4. Permit holders will have the option to terminate permits at any time. ARRC may terminate a permit if the permit holder defaults, including but not limited to failing to pay permit fees, changing the nature of or expanding the scope of the permitted use or structure, failing to notify ARRC of the transfer of the adjoining residential property to a new owner, or violating any other material provision of the permit. ARRC also may terminate a permit if the continued use is determined, in the sole discretion of ARRC management staff, to be incompatible with public or ARRC employee safety, governing statutes, railroad operations, transportation, communication, transmission or other parallel uses of the ARRC ROW. Examples of situations in which a permit may be terminated due to incompatibility of use include but are not limited to determinations by ARRC management that (i) safety or security concerns require ARRC to install a fence or other structure to exclude persons from a portion of the ARRC ROW; (ii) a portion of the ARRC ROW is required for use by ARRC for railroad operations, construction or improvements such as for a double-tracking or realignment project; or (iii) a portion of the ARRC ROW is

required for use by ARRC or others for purposes of another statutory priority use, such as the installation of fiber optic lines or other transportation, transmission, or communication facilities. Once a permit terminates pursuant to the terms of this policy, that permit will not be subject to reinstatement and the use or structure formerly covered by the permit must be ceased or removed.

5. A subsequent owner of the adjoining residential property will be entitled to have a permit for an existing Residential Use issued in the subsequent owner's name subject to timely notification to ARRC that the ownership interest in the adjoining property has been transferred to the new owner. ARRC will not object to the transfer of a permit subject to the new owner's compliance with all aspects of this policy and the permit and further subject to the termination provisions of Sections G.3 and G.4, above.

6. Permits will be recorded in the appropriate Alaska State Recorder's Office by ARRC.

7. Permits will be subject to an application fee, an annual permit fee and a renewal fee. The initial application, renewal and annual permit fee schedule is set forth in Addendum A. The ARRC Real Estate Department will have the sole discretion to adjust the permit fee schedule periodically in order to provide a fair return to ARRC for the use of its property as required by statute, to meet administrative costs or for any other prudent business purpose. The initial annual permit fee shall be charged retroactively to the beginning of the 180-day application period regardless of the date the application is submitted to ARRC. Annual permit fees based on the assessed land value of permit holders' properties shall be adjusted when permits are renewed. The minimum annual permit fee may be adjusted at any time.

8. Vehicles will not be allowed to be parked or stored within the ARRC ROW.

9. Permits will require that permit holders defend, indemnify and hold ARRC harmless against claims by third parties or the permit holders arising in relation to uses or structures covered under the permit or otherwise related to the permit holders' occupancy or use of the ARRC ROW. If a permit holder employs a contractor to conduct work in the ARRC ROW related to permitted uses or structures, the contractor must obtain a temporary construction permit or other appropriate permit from ARRC prior to commencing any such work within the ROW unless ARRC determines in writing not to require such a permit.

10. Permits will require that permitted use areas and structures must be maintained in good condition and may not become unsightly or constitute a public or private nuisance.

11. Permits may require existing or previous permit boundaries to be adjusted and certain improvements to be removed. Depending on the permitted use or structure, this determination shall be based upon the drawing or as-built survey required to be submitted with the applicant's permit application. Compliance with any required adjustment to permit boundaries and any required removal of improvements will be a condition for continuing the permit process and failure to so comply may result in termination of existing permits or rejection of an application for a new permit.

12. Permits shall be for a set duration to be determined by the ARRC Real Estate Department in its sole discretion, and may be renewed by the person holding the permit at the date of expiration. Each permit shall require the permit holder to provide ARRC with written notice in advance of the expiration date of his intent to renew his permit. Failure to pay annual permit fees or to renew a permit will result in termination of the permit as provided in Sections G.3 and G.4, above. Upon a request for renewal, ARRC shall renew a permit subject to the permit holder's past and continuing compliance with all aspects of this policy and the permit and also subject to all other terms of this policy.

13. Permits will provide that the permit holder does not, by virtue of obtaining a permit, receive any ownership or other property interest in the ARRC ROW.

14. Permits will provide that permit holders will not be entitled to any compensation for termination of a permit in accordance with this policy and/or the terms of the permit.

H. Removal of Unauthorized ROW Structures/Uses

ARRC will remove from its ROW, upon discovery, any structure or other property which it deems to be a hazard to railroad operations or public safety. Additionally, structures and property related to Residential Uses shall be removed upon the termination of a permit for the use or structure, as provided under Section G of this policy. The costs associated with removal and disposal of structures or other property under this policy shall be borne by the residential user regardless of whether he/she is a former permit holder and regardless of the reason for any denial or termination of a permit. ARRC may pursue legal remedies and relief for non-compliance with this policy, including but not limited to defaults under permits issued under the policy or continued use or occupancy of the ARRC ROW without obtaining a permit or after a permit has terminated.

I. Hazardous Materials

Any release of petroleum products, wastes, or other chemicals in the areas of the ARRC ROW covered by this policy must be managed in accordance with all applicable statutes, regulations, ordinances and rules of any type. If ARRC incurs costs for such activities, including but not limited to cleanups or other forms of mitigation, the current

user of the ARRC ROW will be invoiced for and responsible to pay those costs. The requirements of this Section I shall be included in permits under this policy, but apply to all current users of the ARRC ROW, whether or not such users have applied for or obtained a permit under this policy.

Addendum A

INITIAL FEE SCHEDULE[6]

1. Permit Application Fee. The permit application fee for a Residential Use Area shall be $250.00.

2. Permit Renewal Fee. The fee for renewing a permit for a Residential Use Area shall be $200.00.

3. Annual Permit Fee.

    a. The annual fee for a permit allowing a Residential Use in a Residential Use Area, as defined in Section F of this policy, shall be the amount obtained by multiplying the area in square feet of the Residential Use Area by $0.25.

    b. Notwithstanding the preceding calculations, the minimum annual permit fee shall be $250.00.

4. Calculating Area of Residential Use Areas. For purposes of determining permit fees, a Residential Use Area shall include all portions of the ARRC ROW lying between the boundary of the ROW and a line parallel to the boundary of the ROW that passes through the furthest point at which the use(s) or structure(s) in question encroach into the ROW.

Example of Permit Fee Calculation: An owner of property that borders for 100 feet along the ARRC ROW uses an area encroaching 20 feet into the ROW for purposes of maintaining a lawn and garden and a storage shed. The proposed Residential Use Area is 2,000 square feet. The annual permit fee for this proposed use area would be 2,000 x $0.25 = $500.00.

[6] As provided in Section G.7 of this policy, this schedule of application and annual permit fees is subject to revision by the ARRC Real Estate Department at its discretion in order to provide a fair return to ARRC for the use of its property, to meet administrative costs or for any other prudent business purpose.

EXHIBIT 2
PAGE 10 OF 10

ALASKA
REVIEW OF SOCIAL AND ECONOMIC CONDITIONS

UNIVERSITY OF ALASKA, INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH, FEBRUARY 1982, Vol. XIX, No. 1

THE ALASKA RAILROAD: OVERVIEW AND OPERATIONAL ALTERNATIVES

INTRODUCTION

This Review *takes a look at the federally owned Alaska Railroad in the context of its apparent pending transfer to the State of Alaska. After describing the history of the railroad—its present physical plant, rolling stock, and its operations—we analyze the most important issues with which the state must deal: railroad land, employees, finances, competitive environment, and passenger service. We also review organizational structures that might be applied to the railroad following the end of federal control and make recommendations for further action. (See box on page 3 for a brief summary of study findings.)*

The Alaska Railroad (ARR) is unique in that it is (1) the only railroad in North America that is a federal agency, (2) the farthest north railroad in North America, and (3) considered (by some) as a frontier development tool. It has enjoyed a varied history and has alternately been the recipient of intense criticism and extensive federal grants. Originally conceived as a development project in the grand style of the Panana Canal (from which it received much of its early equipment), it quickly fell into disrepute, emerged as a military implement, was converted from pauper to spoiled child, and then allowed to sink into an anonymity which has plagued it to the present day.

The Alaska Railroad is an operating agency of the United States Department of Transportation, Federal Railroad Administration (FRA). As such it is subject to all the obscure federal policies visited upon such agencies, and its operational motivations are both political and economic. However, it has also become an important overland transport link in Alaska and a central element in the state's economic development process.

Changing Federal Policy

During the past decade, FRA has become increasingly interested in transferring ownership of the property to a nonfederal entity. The agency first introduced draft federal legislation to facilitate the transfer in 1971. However, the momentary prosperity of the ARR during the Alyeska pipeline construction project diminished federal interest in disposing of the property.

With the return of "normal" economic conditions in 1978, however, FRA was once again motivated to explore means of relieving itself of the ARR. The economic downturn also coincided with a shift in FRA policy, mainly due to its increasing involvement with Conrail and Amtrak.[1] By 1979, it was apparent that both organizations had become major fiscal and political liabilities for FRA, leading the agency to both a fear of and disinterest in attempts to operate *any* railroad. Thus, FRA's policy tended toward the dissolution of any rail property which

[1]Federally controlled railroad properties that had been unsuccessfully managed in the private sector.

This article was adapted from a report prepared for the Alaska Department of Transportation and Public Facilities, Division of Planning and Programming, by the Institute of Social and Economic Research and Bivens and Associates, Inc.

EXHIBIT 3
PAGE 1 OF 36

ALASKA REVIEW OF SOCIAL AND ECONOMIC CONDITIONS

VOL. XIX, No. 1, February 1982

Published by

Institute of Social and Economic Research
University of Alaska
Anchorage • Fairbanks • Juneau

Jay Barton—President, University of Alaska
E. Lee Gorsuch—Director, Institute of Social and Economic Research

Institute Editor: Ronald Crowe
Editorial Assistant: K. Lee Crowe
907-278-4621

Main Institute Office:
707 "A" St., Suite 206
Anchorage, Alaska 99501

FEATURE

John T. Gray
John A. Bivens

The Alaska Railroad: Overview and Operational Alternatives

During the preparation of this article John T. Gray was an assistant professor of transportation with the Institute of Social and Economic Research in Anchorage; he has since resigned to take the position of Manager of Marketing and Sales with the Alaska Railroad. John A. Bivens is a transportation consultant and president of Bivens and Associates, Inc., of Phoenix, Arizona.

appeared to be economically marginal, including those controlled by FRA.

This policy, as it pertains to the Alaska Railroad, was first published in ARR's 1979 annual report (in mid-1980):

> Since the Government of the State of Alaska has substantial surplus funds because of the growth of oil revenues, the Federal Government believes that ownership of the Alaska Railroad should be with the State Government. The Federal Government believes the Alaska Railroad exists primarily for the benefit of the residents and shippers of Alaska; they need and deserve a much larger voice in determining the role they want the railroad to play.

This policy received additional emphasis when the Reagan administration took office in January 1981. The transfer of the ARR was consistent with emerging federal orientation in several areas, including (1) replacing a federal function with a local entity, (2) reducing federal employment, and (3) reducing FRA's funding requests.

The policy also supported FRA perceptions that (1) the ARR no longer served the function of a frontier development tool, but had become part of a more mature transportation and economic system, (2) Alaska could afford to operate and subsidize the railroad if necessary, (3) future prospects suggested that private enterprise might find the railroad an increasingly attractive investment, and (4) the ARR could more effectively support public and private objectives under a revised organizational and institutional structure.

To implement these views, FRA once again prepared draft legislation to authorize transfer of the Alaska Railroad to the state. This legislation was introduced into the U.S. Senate on July 17, 1981.

History of the Alaska Railroad

The ARR came into existence through an act of Congress on March 12, 1914. This legislation empowered the President to acquire and (or) construct a railroad, not to exceed 1,000 miles in length, to connect Alaska's interior navigable waterways and one or more coal fields with an ice-free harbor on the Gulf of Alaska. The Alaska Engineering Commission, which had previously located several potential routes, was directed by President Wilson to purchase the 71-mile Alaska Northern Railway and to extend its line from Seward to the head of navigation of Cook Inlet.

EXHIBIT 3
PAGE 2 OF 36

and northward up the Susitna and Chulitna river valleys to a crossing of the Alaska Range near the headwaters of the Nenana River. From that point the railroad was to be built to the confluence of the Nenana and Tanana rivers and upriver to Fairbanks. Two branches were also constructed to tap coal deposits. One branch extended eastward up the Matanuska Valley and the other eastward from the juncture of the Healy and Nenana rivers. This basic system, with minor additions and deletions, has remained intact from its official completion in 1923 to the present (see Figure 1).

Deterioration and Rehabilitation

The decline of placer mining in the Tanana Valley prior to the completion of the railroad, the conversion of naval vessels from coal to oil soon after completion, and the general lack of economic activity along the line combined to produce operating deficits during the first decade and a half of ARR's operation. From 1924 to 1945, the railroad received no operating or capital appropriations from Congress. This resulted in a continuing deterioration of an already marginal physical structure. During the years before World War II, the railroad was maintained to only

SUMMARY OF ISSUES INVOLVED IN ARR TRANSFER

• Pending Transfer of the Alaska Railroad. The Federal Railroad Administration (FRA) is presently taking steps to transfer the Alaska Railroad (ARR) from the federal government to the State of Alaska. The FRA proposes to transfer the ARR to the state without charging a direct acquisition cost. However, FRA's proposed legislation also transfers all ARR's liabilities and obligations, which have not yet been clearly defined.

• ARR Lands. Lands required for effective railroad operation extend beyond the ARR's rights of way, yards, terminals, and ports, since the railroad requires not only materials-source lands, but also needs to lease lands to traffic-producing tenants. However, much of ARR's land holdings are presently uncertain, because Native claims have been filed on certain portions of it under the 1971 Alaska Native Claims Settlement Act.

• Railroad Finances. A 1980 ICC freight rate study of the ARR concluded that the present rates exceed the variable cost of transportation and fully compensate the carrier. In fact, in the past 3 years, even with poor economic conditions nationally and in Alaska, freight transport on the ARR fully met all out-of-pocket costs and some capital costs.

Passenger service, however, has long required subsidization by the freight traffic, and even this subsidy has not been enough. While an increase in passenger fares seems warranted, fares cannot be raised enough to fully meet the cost of passenger service without driving away passengers. This problem would be somewhat alleviated by separating revenue and cost accounting for passenger and freight service. Management needs to establish an aggressive passenger marketing program, moderately increase passenger fares, and request a public subsidy to cover remaining costs of service.

• Outlook and Benefits of the ARR. The ARR's freight service, available from Seward and Whittier all the way through Anchorage to Fairbanks, serves the needs of a majority of Alaskans. It is, and will continue to be, an important element in Alaska's transportation system. Not only is it essential to development of many of Alaska's resources, but by competing with nonrail carriers, the ARR assures competitive rates for shippers. Without the rail service alternative, costs of moving commodities would be much higher. And some products, such as large bulk shipment of coal, steel, sand and gravel could not be economically moved at all.

• ARR Employees. The ARR has for several years been reducing the numbers of its employees, and a hiring freeze has been in effect since January 20, 1981. As of mid-April 1981, the ARR had 679 employees and 785 authorized positions, a vacancy rate of 17 percent. Freight-user service could suffer should present employment levels persist in an expanding market.

As Department of Transportation personnel, the employees of the ARR have all the privileges and rights of other federal agency personnel. In addition, most ARR employees are members of various labor unions. Enjoying such double protection under existing agreements, employees will not likely wish to relinquish any of their existing rights. As a result, transferring these employees to the state could involve several complex problems.

Meeting all employer retirement and fund contributions for ARR employees will cost about $38 million during the next 20 years (1981 dollars). Or, if we include inflation and salary increases of 10 percent per year (compounded), the cost will total about $195 million, or an average annual contribution of $8.7 million. However, ARR now realizes and could expect to continue to realize adequate revenues from freight service to provide funds for this contribution. Freight revenues could also pay for employee sick leave ($4.3 million) and annual leave ($1.5 million).

• Condition of Railroad. The track, structures, and rights of way of the ARR are generally in good condition and well maintained. For the most part, the lines meet or exceed FRA Class IV standards.

The rolling stock and locomotives are generally well maintained and adequate for the traffic carried. However, much of the locomotive and car fleet is old, being previously well used by the military or other railroads. A fleet modernization program may be needed if traffic increases significantly.

Passenger cars are generally well maintained but are old and in need of substantial modernization.

The ARR is generally capable of servicing its equipment; its mechanical and electrical shops are well equipped and adequately support effective maintenance and modification of locomotives and rolling stock.

EXHIBIT 7
PAGE 3 OF 16

minimal branchline standards. This condition was aggravated by the fact that "official" completion in 1923 had still left a great deal of work to be done before the system could be considered technically adequate.

World War II provided ARR with a rush of traffic and much-needed income, as well as the now-important link with a second ice-free port, at Whittier. However, the war also accelerated deterioration of the property. Even with military assistance between 1942 and 1945, the railroad was almost physically exhausted by the end of the war. This situation demanded a decision on whether to abandon the railroad or rebuild it. The Federal Government decided to rebuild.

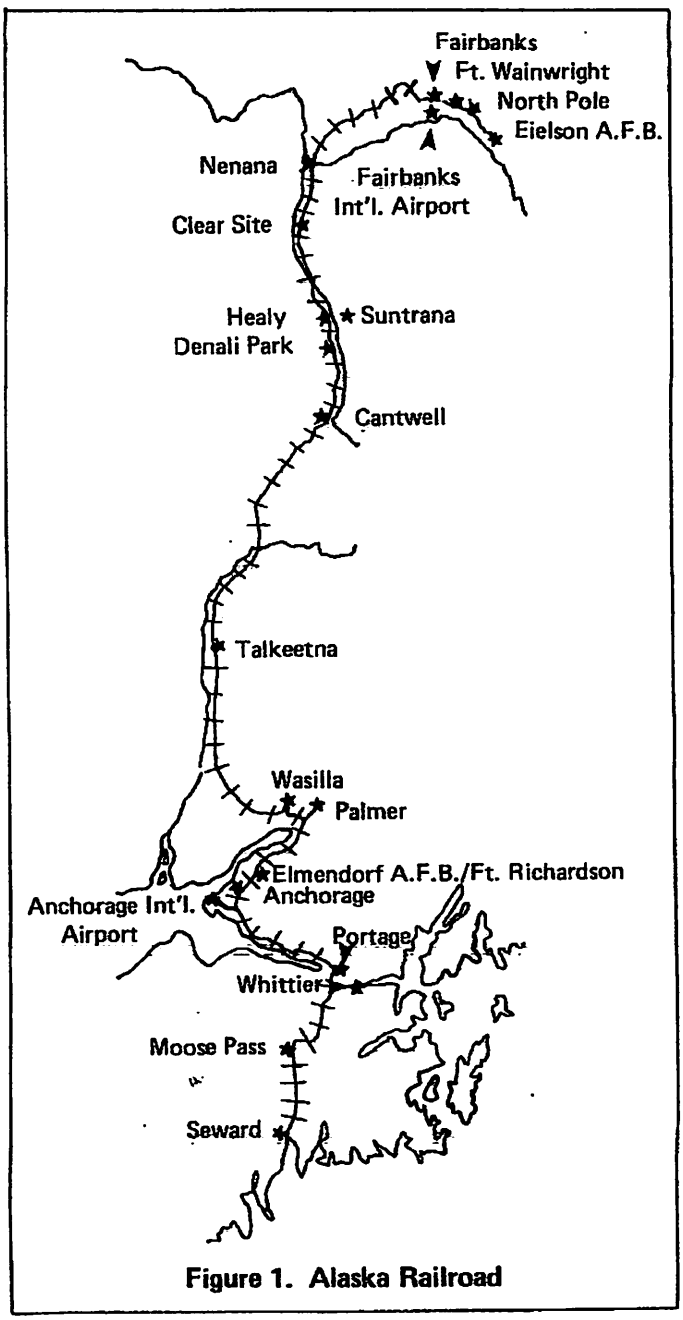


Figure 1. Alaska Railroad

This decision resulted in a project that was to last 30 years and become one of the most controversial episodes in the ARR's history. Actual expenditures began in 1946 and over the construction term amounted to almost $95 million. The actual value of these improvements, however, was considerably greater since much property was transferred at nominal cost from other federal agencies. The rehabilitation included strengthening the roadbed; laying new track; replacing bridges and buildings; buying new locomotives, rolling stock, and maintenance equipment; and building new shops, as well as terminals at Anchorage, Fairbanks, and Seward.

Most of the work, from Whittier to Fairbanks, was completed by 1952; however, the main line to Seward, begun in 1958, was not completed until 1958, and only after a special appropriation was requested by the Defense Department. By the end of the rehabilitation period, the railroad would finally be considered complete and was basically in its present form.

The 1964 Earthquake

Total damage to the Alaska Railroad from the 1964 earthquake amounted to approximately $27 million, of which $25.4 million was obtained through Congressional appropriations.[2] Of the total, almost $11.7 million was required to reconstruct the line from Portage to Seward and the Seward Terminal. Records of the controversy over whether or not the Seward reconstruction should be undertaken indicate that it could not be justified on the basis of capital and future operating costs. However, the Alaska Railroad and its owner, the Department of the Interior, presented funding appeals based on a combination of economic and social factors. One letter stated:

> The decision on reconstruction is not restricted to economic considerations alone; in many respects humane and equitable factors assume even greater significance. The essential fact is that failure to restore rail service means that Seward will disappear as an important factor in Alaska life.

[2]These appropriations should be clearly distinguished from other federal funds invested in the ARR. The railroad's earthquake rebuilding monies were only a small part of the $400 million in disaster relief assistance provided to Alaska. The vast majority of this money went to individuals, private companies, and local governments through a variety of assistance programs. Thus, for policy purposes, the funding of the ARR reconstruction should be treated in the same light as one would all other economic entities of the state, rather than as a federal agency appropriation.

3
4-76

Given the information available at the time, the decision to rebuild to Seward may or may not have been economically sound. The important point is that as a federal agency, the railroad based a major part of its argument to rebuild the line on factors which were not necessarily in its own economic best interest. A private firm, confronted with the same circumstances, would not likely have used the same reasoning nor have made the same decision.

Railroad Barges and the Port of Anchorage

Shortly before the earthquake, two other events occurred which, together with the subsequent loss of Seward, caused a long-term change in the character of both the railroad's traffic patterns and those of Alaska's entire railbelt region. These were (1) the initiation of railcar barge services between Alaska and both Canada and the continental United States and (2) the opening of the Port of Anchorage to year-round container ship service. Of the two, the most important was the barge service—not in terms of movement volumes, but rather in the options made available to Alaska shippers. The action of the railroad and its barge connections made it possible for the first time to ship directly from the manufacturer or major distributor, wherever his location, directly to an Alaska location without reloading in Seattle and Alaska ports. The economic independence from Seattle wholesalers offered by this service forced steamship companies, particularly Alaska Steamship and Sea-Land Service, to establish similar options.

Construction of the Trans-Alaska Oil Pipeline

The final set of events which shaped the present Alaska Railroad were those surrounding its participation in the construction of the trans-Alaska pipeline. During the years 1974 through 1977, the railroad probably moved the largest, most lucrative volumes of traffic since World War II, and the physical system underwent a similar, although somewhat milder, strain. Once again, the only possible solution, given the federal agency status of the railroad, was to transfer property from other federal organizations (most notably locomotives from the military) and to use Congressional appropriations for capital improvements and major maintenance. Twenty-four million dollars in appropriations, in addition to $13 million in improvements financed through earnings, permitted the railroad to emerge, for the first time, from a period of heavy usage in better physical condition than it entered.

THE PHYSICAL PLANT

The Main Line and Branches

The Alaska Railroad (ARR) today has a single track mainline of 419 miles from Whittier to Fairbanks via Anchorage, Wasilla, Healy, and Nenana. In addition, there are six branches with an aggregate total of 115 miles. These include the 28-mile branch from Fairbanks to Eielson, the 10-mile Fairbanks International Airport spur from Ft. Wainwright to the airport, the 4-mile coal branch from Healy to Suntrana, the 7-mile line from Matanuska Junction to Palmer, the 3-mile Anchorage International Airport spur, and the 63-mile line from Portage to Seward.[3]

The mainline has only mild gradients along the water level route between Whittier and Anchorage and up the Susitna Valley as far north as Gold Creek (about 150 miles from Anchorage). However, the severe grades on the next 35 miles to the summit of the pass through the Alaska Range reduce the tonnage ratings of locomotives by about 40 percent. The grades on the north side of the range are much easier, being similar to the water level line in the lower Susitna Valley, with the exception of a single short five-mile stretch. The mainline north of the range to Fairbanks and the Eielson branch pass through generally rolling country with mild gradients.

The most severe portion of the railroad is the line from Portage to Seward, which crosses two mountain barriers with steep gradients. Both restrict southbound traffic, reducing the tonnage a locomotive can handle by 75 percent and 65 percent, respectively, when compared with what can be moved between Anchorage and Portage. Northward grades are slightly milder but still are more demanding than any of the line north of Portage.

Passing sidings are spaced about every 7-to-10-miles so that trains may meet and pass. However, sidings long enough to accommodate most freight trains are less frequent. In addition, there are tracks at various points along the line which serve industries not located at a major yard. Table 1 summarizes the physical features of the mainline and principal branches.

Track Conditions

The track structure of the Alaska Railroad is currently in excellent condition, particularly considering the relatively light traffic. The main line and the line to Seward are maintained to FRA Class IV quality standards which permit freight trains speeds up to 60 miles per hour and passenger trains to 80 miles per hour, if certain safety conditions are met. In fact, the Alaska Railroad must limit its train speeds

[3]It should be noted that the railroad considers the line to Seward as part of the main line, and it is maintained to these standards. However, it has the lightest traffic of the entire system (about 300,000 gross tons annually).

5 3 36

Table 1

Summary of Alaska Right-of-Way Characteristics

Line Segment	Distance	Tonnage Rating Northbound[a]	Tonnage Rating Southbound[a]	Passing Sidings over 3000 ft.	Industrial Tracks Between Stations[b]
Seward-Divide	9.1	875	4,000	0	0
Divide-Primrose	6.4	1,600	850	0	0
Primrose-Hunter	21.6	1,600	4,000	2	3
Hunter-Grandview	4.9	900	4,000	0	0
Grandview-Spencer	10.9	4,000	640	1	2
Spencer-Portage	8.4	4,000	3,000	1	0
Whittier-Portage	12.4	2,600	3,000	1	0
Portage-Potter	36.4	4,000	3,000	1	0
Potter-Anchorage	13.7	2,000	2,500	1	22
Anchorage-Matanuska	36.4	1,850	3,000	3	5
Matanuska-Palmer	6.5	2,000	4,000	0	6
Matanuska-Goldcreek	112.5	1,850	2,500	8	9
Goldcreek-Hurricane	18.2	1,100	2,500	0	0
Hurricane-Honolulu	7.3	1,100	1,325	1	0
Honolulu-Colorado	8.4	1,100	1,800	1	0
Colorado-Summit	15.4	1,800	1,800	1	1
Summit-Healy	45.6	2,700	1,800	1	6
Healy-Nenana	53.6	4,000	1,800	1	7
Nenana-Fairbanks	58.6	3,000	3,000	4	4
Fairbanks-Eielson	28.0	3,000	2,000	0	9
Yards:	Seward Nenana	Healy Anchorage	Whittier Fairbanks		

[a]Tonnage ratings for 3,000 horsepower locomotives.

[b]Additional industrial tracks in yards, at military bases (Ft. Richardson, Elmendorf, Eielson, Ft. Wainwright), and at Anchorage and Fairbanks International Airports.

Source: Alaska Railroad, Timetable No. 109.

for freight and passenger trains to 49 and 59 miles per hour, respectively, since it has no automatic block signal system, one of the FRA safety requirements for higher speeds. In addition, the number of sharp curves places further speed limitations on some sections of the line. These allow the railroad to follow the contour of the land in more mountainous areas so that the relatively mild gradients (which are extremely important to efficient operation) can be maintained.

Tracks, Bridges, and Yards

The track and bridges of both the main line and the Seward line are maintained to accommodate cars carrying a load of up to 100 tons, although the Eielson and Suntrana branches have lower loading limits. Present operation plans call for limiting 100-ton capacity cars to 80 tons when they are used to move bulk products, such as coal and gravel. This is due to the excessive track wear caused by trains composed entirely of 100-ton capacity cars.

The railroad also operates and maintains a number of yards to serve local industries, sort cars, and to maintain its equipment. These vary considerably depending on the purpose for which they are used. The yard at Seward serves the railroad-owned port facilities at that location and includes a number of car marshalling tracks, a small equipment maintenance facility, the dock facilities, and several tracks to local industries. Whittier is designed and used differently; since it is the interchange point for railcar service, the facility is primarily designed to serve the two railroad-owned car-barge slips. Secondarily, facilities in Whittier include those for the Whittier-Portage passenger-auto shuttle service and those for the military dock and petroleum terminal.

Anchorage has the railroad's major classification yard, locomotive and car maintenance shops, headquarters, and some car storage facilities. The yards also serve a number of major and minor indus-

tries including the Anchorage Port, Elmendorf Air Force Base, and Fort Richardson. There are also container-on-flatcar and trailer-on-flatcar facilities in Anchorage.

Healy has a small yard and locomotive service facility and exists primarily to serve the nearby coal mines. The Nenana yard exists solely to serve the railroad's small river port in that town and several other local industries. Fairbanks contains a small classification yard, limited locomotive and car shops, and trackage to serve local industrial facilities. The yard is also the base for service to Fort Wainwright and Eielson Air Force Base, as well as the North Pole Refinery.

Equipment

The Alaska Railroad uses a variety of equipment to produce revenue and maintain the property. The largest and most costly units are the locomotives—the railroad has sixty-five, with an average age of 18.7 years. The most modern of the units are the fifteen 3,000-horsepower road-switcher locomotives built by General Motors between 1975 and 1978. These are comparable to the most modern equipment on any railroad. Ten older 1,600-horsepower road-switcher locomotives were completely rebuilt in 1977 and have a useful efficient life at least through 1992. Four other 2,500-horsepower road switchers acquired in the mid-sixties are old enough to be eligible for complete rebuilding, and one has already been rebuilt. Of the remaining thirty-six units, most were built between 1951 and 1953, and only about ten to twelve are usually in service under present traffic conditions.

Seven of the older car-body type locomotives are used in passenger and mixed train service between Anchorage and Fairbanks, while several ex-military road switchers are used in Anchorage yard service and as backup yard engines around the system. Several of the car-body types might be usefully rebuilt if passenger service is continued. However, the ex-military units are probably near the end of their useful lives. Several of the older locomotives of both types are being cannibalized to provide parts for the others.

The freight car fleet numbered 1,754 units in 1980, with an average age of 32 years. Table 2 shows the distribution of freight cars by functional type. Clearly, the freight car roster is dominated by the open types, including the flat cars, gondolas, open noppers, and dump/ballast cars. This is consistent with the types of traffic being handled with most of the tonnage consisting of bulk materials, such as coal, gravel, logs, and pipe along with trailer- and container-on-flat-car (TOFC/COFC) service. Another important component of the car fleet available to ARR are the tank cars, particularly the privately owned cars leased to oil companies served by the railroad and used for petroleum product distribution throughout the railbelt.

Table 2

Alaska Railroad Freight Cars

Car Type	Number	Most Recent Year Built	Number Built in Most Recent Year
Box	235	1965	34
Flat	389	1976	100
Gondola	394	1943	395
Hopper, Open	348	1981	25
Hopper, Covered	21	1970	9
Tank	139	1970	3
Refrigerator	16	1966	11
Dump and Ballast	157	1958	27
Caboose	27	1977	3
Other	28	1943	2
Subtotal	1,754	1981	
Privately Owned Cars Assigned to Alaska Railroad			
Flat	52	1979	8
Tank	230	1980	16
Subtotal	282	1980	
Total	2,036		

Source: Alaska Railroad 1980 Annual Report and Alaska Railroad Equipment Summary.

Of particular concern is the age of much of the ARR's own fleet and the limited capacity of many of the units. Only 340 cars have been purchased new since 1960 and only 140 cars since 1970. Even though the fleet has been well maintained, maintenance will become more costly as the cars continue to age. The aging problem also creates problems in ARR's interchange of traffic with other railroads. Federal safety standards limit the age of equipment which may be used in interline service. Some of ARR's equipment is already prohibited from participating in this traffic, while other cars are allowed to operate only with waivers.

The limited capacity of some cars could be detrimental to the railroad, particularly for transportation of some future bulk shipments. This is also a difficulty with ARR's tank car fleet (although the private cars assigned to ARR are modern units). With a few exceptions, however, this factor does not appear to limit service of existing traffic.

3
7 36

Table 3

Alaska Railroad Passenger Cars

Type	Number Owned	Number Leased	Average Age
Coach	21	—	29
Dome Coach	3	4	26
Combination Passenger/Baggage	3	—	36
Food Service & Recreation	10	2	27
Baggage	6	—	20
Power Cars	4	—	38
Business Car	1	—	24
Total	48	6	26

Source: FY 1980 Annual Report, The Alaska Railroad.

The passenger car fleet consists of 48 units owned by the ARR and 6 leased from Amtrak for supporting the increased 1981 summer service. Table 3 shows the types and ages of the present equipment. Although not as old as the railroad's freight fleet, the passenger cars are an aging asset which will require a complete rebuilding if the present level of service is to be continued. Twenty-eight of the cars were acquired from the Union Pacific Railroad in 1971, eight came from the Southern Railway in 1980, and the remainder were rebuilt from surplus military hospital cars. In recognition of the need to extensively rebuild the current fleet, if passenger service is to continue, the railroad currently has ten cars being rebuilt under contract to General Electric.

In addition to revenue-producing equipment, the ARR also has 205 units of maintenance and emergency equipment. This includes such items as snow plows, cranes, and cars for housing mobile maintenance forces. This is supplemented by a considerable fleet of on- and off-track machinery used in maintenance and in-house construction work. Also, sufficient shop facilities and machinery are available to perform any level of maintenance required by the car and locomotive fleets; however, space and personnel limitations sometimes preclude programming a large volume of heavy repair or rebuilding work over a short period. Therefore, large projects, such as the previously mentioned passenger car rebuilding may be contracted to outside firms.

OPERATIONS

Clearly, the purpose of ARR's equipment is to provide train service to the railroad's customers. Since rail operations provide the ARR's largest proportion of revenues, they are thus of special interest to this study. Table 4 lists the types of trains operated by the ARR and the number operated in the years 1976-1980; Table 5 indicates the total train miles produced by these trains on each segment of the railroad. Currently, the service can be categorized as follows:

1. Anchorage—Fairbanks — Passenger and mixed train service
2. Anchorage—Fairbanks — Freight service
3. Healy—Fairbanks — Coal trains
4. Anchorage—Palmer — Gravel trains
5. Anchorage—Whittier — Freight service
6. Anchorage—Whittier — Passenger shuttles
7. Anchorage—Seward — Freight service
8. Anchorage and Fairbanks industrial switching trains

Table 6 summarizes the present frequency of these operations along with the winter schedules for the same services. As can be seen, frequency of operation can vary considerably, particularly for the passenger and gravel trains. This leads to equipment utilization problems in that a sufficient number of cars and locomotives must be on hand to meet peak conditions but some can be expected to be surplus during slack seasons. This is aggravated by the difficulty that ARR, as a federal agency, has in

Table 4

Approximate Number of Trains Operated
(All are roundtrips unless otherwise noted)

Service	1980	1979	1978	1977	1976
Anchorage-Seward Freight	46	53	46	68	132
Anchorage-Whittier Freight	129	123	158	187	122
Anchorage-Palmer Local Freight	32	32	38	36	37
Anchorage-Palmer Gravel Trains	102	146	158	187	235
Anchorage-Fairbanks Freight	181	192	213	271	340
Anchorage-Fairbanks Mixed[a]	74	70	70	69	71
Fairbanks-Healy Coal Trains[b]	145	139	139	158	191
Fairbanks-Elelson Industrial Switchers[b]	260	243	243	260	330
Anchorage Airport Industrial Switchers[b]	295	260	260	277	295
Anchorage-Fairbanks Passenger	126	114	114	114	111
Anchorage-Whittier Shuttle Trains	226	222	221	234	209
Special Passenger Trains	14	13	10	—	—

[a]A mixed train includes both freight and passenger service in the same train.

[b]Estimates based on information provided by Alaska Railroad officials.

Source: Crew Call Sheets as computed by Interstate Commerce Commission; conversations with Alaska Railroad officials.

8 3 26

leasing supplemental equipment, a strategy common throughout the rail industry in such circumstances.

Also of interest is the changing traffic pattern that has been occurring during the past 5 years (Table 4). Since costs to operate additional trains (above some minimum level) do not rise as fast as the number of trains and while revenues tend to increase directly with the number of revenue trains, it is evident that the cyclic nature of Alaska's economy very directly affects ARR's net income. Table 4 graphically illustrates the difficulties faced by the railroad's management during the last 3 years of declining and stagnating economic activity.

Table 5 also shows the large part that passenger service plays in ARR operations. With passenger and mixed train service accounting for 48 percent of the 1980 train miles, it is obviously an important element in the cost structure of the railroad.

The length of ARR trains varies considerably by type of service. Freight trains to Seward generally comprise 40 to 60 cars while those to Whittier are 45 to 50 cars, depending on which barges they are meeting. The unit gravel trains between Anchorage and Palmer consistently have either 60 or 80 hopper cars each. The Anchorage-Fairbanks freights range between 60 to 100 cars, and the Healy-Fairbanks freights range between 40 to 60 cars. The mixed trains between Anchorage and Fairbanks will have 2 to 6 passenger and 20 to 25 freight cars while summer passenger trains have 6 to 10 cars. In a particular circumstance, maximum train length may be dictated by length of passing sidings, traffic demands, locomotive availability, union agreements, grades, barge capacity, or climate.[4]

Table 5

Approximate Revenue Train Miles

Rail Segment/Service	1980	1979	1978
Healy-Fairbanks/			
Freight	66,163	67,654	64,953
Mixed	15,259	16,157	16,157
Passenger	28,274	24,908	24,908
Anchorage-Healy/			
Freight	97,103	106,123	119,876
Mixed	33,156	35,107	35,107
Passenger	61,437	54,248	54,124
Anchorage-Whittier or Seward/			
Freight	27,205	26,968	29,526
Passenger	38,054	37,166	35,913
ARR Total/			
Freight	190,471	200,745	214,355
Mixed	48,415	51,264	51,264
Passenger	127,765	116,322	114,945
Total	366,651	368,331	380,564

Source: Computed by Interstate Commerce Commission from Train Mile Reports.

Table 6

Alaska Railroad Train Service
(in trips per week)

Service	Summer 1981	Winter 1981-82
Freight		
Anchorage-Fairbanks	4	5
Anchorage-Seward	bi-monthly	1
Anchorage-Palmer/Local	bi-monthly	–
Anchorage-Palmer/Gravel	20	–
Healy-Fairbanks	3	5
Anchorage-Whittier/AHT[a]	every 5 days	1
Anchorage-Whittier/CNR[b]	every 9 days	bi-monthly
Mixed		
Anchorage-Fairbanks	3	1
Passenger		
Anchorage-Fairbanks	7	–
Anchorage-Whittier	9	3

[a]AHT = Alaska Hydro Train Railcar Barges.
[b]CNR = Canadian National Railway Railcar Barges.

Source: Alaska Railroad officials.

Traffic Base

The ARR transports only a few commodities between a small number of origins and destinations. ARR traffic logically divides itself into two basic components: local and interline. Of the two, the local movements (strictly ARR origins and destinations) generate the most tonnage but relatively low levels of revenue per ton-mile. The interline traffic is that interchanged between ARR and either Alaska Hydro-Train or Canadian National Railway through the car-barge facility at Whittier or the trailer and container movements through the Port of Anchorage that are forwarded by the railroad.

Local

Tables 7 and 8 show the revenue tons transported by the railroad and the resulting revenues. As can be seen, the two consistently largest movements are (1) the coal moved from Healy to power plants at Clear Air Force Station, the University of Alaska in Fairbanks, Fairbanks, Fort Wainwright, and Eielson Air Force Base and (2) the gravel moved from Palmer to the three largest aggregate companies in Anchorage. Both are fairly short hauls and involve

[4]In the winter, decreased airbrake response time and increased train friction may limit length.

3
9 36

Table 7

Freight Traffic Revenue Tons Carried
(in thousands of tons)

Commodity	1981	1980	1979	1978	1977
Coal	653.0	590.2	523.9	593.3	550.0
Sand & Gravel	1,796.8	396.2	637.5	727.2	699.5
Petroleum	399.1	251.7	219.6	373.9	532.3
Forest Products	100.7	108.8	55.2	67.8	82.0
Manufactured Products	311.9	292.1	276.9	305.9	326.7
TOFC/COFC*	112.5	92.4	88.7	99.5	99.7
Other	8.1	9.9	7.1	10.1	15.1
Total	3,362.1	1,741.3	1,808.9	2,177.7	2,305.3

*Trailer-on-flatcar/Container-on-flatcar.

Source: Alaska Railroad Annual Reports.

commodities of relatively low value.

Petroleum products represent the most lucrative of the larger, local movements. Since the construction of the North Pole refinery, this traffic has consisted principally of gasoline moving from Anchorage to Fairbanks. However, there has recently been a growth in the opposite direction in movements of jet and diesel fuel supplies from North Pole refinery to distributors in Anchorage and to the Anchorage International Airport. The railroad also delivers fuel to Fairbanks International Airport and the Anchorage Airport from sources other than North Pole.

The other significant intrastate movements include logs from Nenana to Seward,[5] cement from Anchorage to Fairbanks, pipe from either the Seward or Anchorage ports to Fairbanks for forwarding to the North Slope, and a limited amount of local trailer-on-flatcar business between Anchorage and Fairbanks.

Interline Traffic

Interline traffic differs considerably from local traffic. A major component is trailer-on-flatcar and container-on-flatcar traffic forwarded by the railroad on substitute service agreements with Totem Ocean Trailer Express and Sea-Land Service Company between Anchorage and Fairbanks. While this traffic amounts to only 90,000 to 100,000 tons annually, it carries a premium rate because of its time sensitivity and long distance. This traffic produces almost as much revenue as the much larger coal movement. It is time competitive with over-the-road movements and generally carries a lower tariff than motor carriers offer.

The railroad port at Whittier receives the larger part of the interline business. This traffic is composed of all types of consumer and industrial goods including building products, furniture, chemicals, oil field service equipment, fertilizers, machinery, vehicles, foodstuffs, and other goods. Most of those cars with west coast origins arrive aboard Alaska Hydro-Train (AHT) barges from Seattle. However, cars from mid-western, eastern, and Canadian origins tend to move through Prince Rupert via Canadian National Railway (CNR) and the barges they operate. The AHT movements total 200,000 to 300,000 tons annually while CNR moves about 30,000 to 40,000 tons. While these two comprise only 10 to 15 percent of ARR's total traffic tonnage, they generate between 30 to 40 percent of the revenues because of the value of traffic and the proportion of the total that moves fairly long distances. Presently about 50 percent goes to Anchorage while the remainder goes to Interior or Kenai Peninsula points.

Several characteristics of ARR traffic are important to understand because they define both the present and likely future markets which the railroad will serve. The railroad, as an instrument of mass movement, is generally oriented toward industrial rather than consumer customers; it provides most of its services to a limited clientele which has direct siding access to the system. It should be remembered that rail service is attractive to a relatively limited number of shippers; however, these shippers usually comprise the basic elements of Alaska's economy, such as petroleum production and refining, mining; construction; timber; the military; wholesaling;

Table 8

Freight Traffic Revenue
(in thousands of $)

Commodity	1981	1980	1979	1978	1977
Coal	$4,637	$3,717	$3,207	$3,507	$3,115
Sand & Gravel	2,712	566	1,009	972	879
Petroleum	6,700	4,691	3,877	6,362	11,514
Forest Products	1,734	1,253	886	2,131	1,402
Manufactured Products	13,631	8,225	6,738	8,370	8,691
TOFC/COFC*	4,414	3,054	2,327	2,434	2,639
Other	181	168	114	115	244
Total	34,009	21,664	18,158	22,991	28,483

*Trailer-on-flatcar/Container-on-flatcar.

Source: Alaska Railroad Annual Reports.

[5]This movement ceased in early 1981 with the collapse of the Japanese housing market.

3
10 36

and, potentially, heavy manufacturing, agriculture, and chemicals. Thus, the railroad tends to serve only those organizations which ship in sufficient quantity to make use of the discounts offered by carload, multi-carload, or trainload tariffs. For local traffic, this implies that the primary shippers will be the very largest industries in the railbelt, particularly those related to energy, construction, and resource development. This is particularly true given the small size of Alaska's heavy manufacturing and agriculture sectors. Should these two traditionally rail-oriented groups develop into a significant force in the state, they would become important revenue sources for ARR.

The interline traffic, particularly the railcar movements, is a bit more complex. For these movements several factors are important in determining the appeal of rail service. While the ability to order in carload or greater amounts is important, several other factors also influence the shippers' choice of mode. An important characteristic of many of these movements is that they involve commodities which are either not produced or wholesaled in the Seattle area or which can be procured more inexpensively by going beyond Seattle and dealing in sufficiently large quantities. This is particularly important for the Canadian National traffic. Another important feature of these movements is that they usually involve commodities which normally move by rail on the continental rail system, thus, making it attractive to avoid an additional set of loading and unloading changes at the port of embarkation. A fourth characteristic of considerable importance is the distance of a shipper's plant or warehouse from a rail siding. Only 5 to 10 percent of railcar shipments are distributed to their consignee from a central public warehouse or forwarding facility by truck, and these usually to the smaller, more infrequent shippers.

Together, these factors define a fairly narrow market to which ARR's interline service can appeal. However, as noted earlier, it is a very important market. It is also a fairly volatile one which varies considerably with the levels of activity in specific industrial economic sectors (i.e., construction), rather than being oriented toward the more stable consumer sector. While innovative marketing can stabilize these patterns somewhat and also potentially increase market share, it is unlikely that it can penetrate more than 30 percent of the U.S.-Railbelt Alaska trade without a significant shift in the texture of the Alaska economy or a dramatic change in competition. It is also notable that ARR's ability to enlarge its share of the market is limited by the capability and number of railcar barges which private operators have available and are willing to commit to the service.

Outlook

During the next 3 to 5 years the railbelt economic prospects provide considerable encouragement for the stabilization of the railroad's freight operations at a sufficiently high level to keep it viable. There are enough moderate-to-large-scale construction projects to provide firm prospects for a continuing high level of traffic. In addition, the prospect of moving 800,000 metric tons of coal annually from Healy to a Seward export terminal provides an important long-term, as well as seasonal, element of stability. It is also the type of movement for which the railroad is ideally suited. It adds significantly to revenues without proportionally increasing costs by utilizing already existing capacity and capabilities.

MAJOR RESTRUCTURING ISSUES

Clearly, there is much more to the Alaska Railroad than simply the enumeration of the physical and operational features indicated above. Its land holdings, employees, finances, competitive and regulatory environment, and passenger service must also be considered in any restructuring of the property. These issues have emerged as being the most critical now being faced by the state or any new potential owner or operator of the Alaska Railroad.

Land

The following discussion down through "Native Village Selection Area Claims" page 14, was prepared by the Office of General Counsel of the Federal Railroad Administration.

Land is perhaps the most valuable fixed asset currently controlled by the Alaska Railroad (ARR). It is also an extremely important asset for operation, maintenance, and traffic development purposes. The total lands under control of the railroad are about 38,000 acres. The ARR has acquired its land through executive order, public land order, purchase, trade, and BLM trust deed. The earliest acquisitions were in 1914—the latest (.2 acres), in 1970. While these holdings are not extensive, they are among the most valuable industrial lands in Alaska. Of the total lands, about 12,000 acres are used for the right-of-way. The remaining 26,000 acres are used or reserved for marine and rail terminals, gravel resources, right-of-way erosion protection, industrial leases, gravel and rock reserves, railroad administration, and future development and facility expansion. Since the Alaska Native Claims Settlement Act of 1971 (ANCSA), both the ownership and use of these lands has been clouded. Table 9 indicates the location and quantities of land and the Native villages that have filed claims against particular parcels.

The railroad land holdings fall within seven

3
11 26

Native village selection areas and four Native regions that were established by ANCSA. Approximately 8,035 acres of railroad land, or 21 percent of the total holdings, are located in Native village selection areas and are potentially subject to claims by Native village corporations. Substantially all railroad land, whether or not located in a Native village or regional area, may ultimately be claimed by Cook Inlet Region, Incorporated (CIRI) under the special authorization that allows CIRI to select land outside its regional boundaries.

Right-of-way Lands

The main line right-of-way from Seward to Fairbanks was established by executive order in 1915.[6] The right-of-way lands of two small, private railroads were purchased to form the first 70 miles north from Seward and part of the right-of-way approaching Fairbanks. The balance of the original right-of-way was reserved from public domain by the Alaska Engineering Commission under authority of the Alaska Railroad Act and the 1915 executive order. Other public lands have been acquired over the years and now provide branch line connections to Palmer, Whittier, and other towns. Spur lines have been constructed to provide access to airports and coal fields along the railbelt. Defense lands have been transferred to the railroad for construction of rail lines into several defense installations. The railroad has also purchased some right-of-way lands from private individuals or from state and local governments. The right-of-way is mostly 200 feet wide, with some variations. The right-of-way is wider at several locations where needed for control of washouts and for steep cuts and fills. Narrower rights-of-way are common on several spur lines where the railroad passes through military reservations or where other factors hindered the acquisition of a full 200-foot right-of-way.

Non-Right-of-Way Lands

The 26,521 acres of railroad land other than right-of-way lands were acquired by executive orders, public land orders, transfers, purchases from private owners, and by trade for other lands with state and local governments. These land parcels range in size from 0.4 acres up to 5,830 acres at twenty-seven locations adjacent to the right-of-way and three smaller locations off the railbelt. These lands were acquired to support operation of the railroad. About 1,000 acres were leased to businesses which provide lease revenue and generate rail traffic for the railroad. Another 9,000 acres are used as active gravel and rock quarries or 425 held for the railroad's future gravel and rock needs. Other parcels are used for storage, maintenance, and terminals. About 100 acres are used for the operation of the Yutana Barge Line at Nenana and another 570 acres are part of the Seward and Whittier port and terminal facilities. The largest three parcels are located in the remote areas of Curry (4,970 acres), Midway (3,811 acres), and Healy (5,830 acres). These large parcels are mostly vacant and are held by the railroad for controlling watershed, providing gravel resources, and allowing future development or expansion of the railroad.

The three pieces of land not adjacent to the right-of-way are a presently leased 50-acre parcel in Valdez that was used to handle railcars from ocean-going barges in support of the Alaska oil pipeline construction and two parcels totaling 60.4 acres (60 acres at Holy Cross and 0.4 acres at Tanana) that are leased as docking and storage areas by Yutana Barge Lines.

Native Village Selection Area Claims

Table 9 shows railroad lands that are located within Native village selection areas. Claims have been filed by Native village corporations for virtually all railroad lands that lie within these areas. The extent to which these lands will ultimately be conveyed to the village corporations will depend on determinations made by the Department of the Interior as to which lands are actually used by the railroad and, therefore, exempt from selection under section 3(e) of ANCSA. The Department of the Interior published final 3(e) regulations that went into effect in late 1980, setting narrow standards for determining which lands are actually used by the railroad. Under the regulations, the railroad would not retain any leased land or gravel reserves claimed by a Native corporation, and the railroad's right-of-way would be converted into a limited easement right across land that would be conveyed to the Native claimants. In the first major claim for railroad land within a village selection area, the Federal/State Land Use Planning Commission (LUPC), an advisory body established by ANCSA, recommended that 90 percent of the railroad's land holdings claimed by the Eklutna Village Corporation should be conveyed. This recommendation includes all leased lands, all right-of-way lands, and substantially all gravel reserves and would leave the railroad with only a small storage yard and one gravel pit in this area. The railroad would retain only 240 acres out of its present 2,700 acres in this area. Although the 3(e) regulations are now final, the Department of the Interior has neither formally ruled on

[6]Executive Order No. 1, April 10, 1915.

Table 9

Alaska Railroad Lands

Location	Total Acres	Acres Leased (Annual Lease Revenue)		Acres Containing Gravel & Rock Reserves (Est. Cubic Yards in Ground)		Acres Within Native Selection Area (Name of Native Village)	
1. Seward	299	55	($123,000)		—	—	
2. Crown Point	81	1	($1,600)		—	—	
3. Moose Pass	5.6		—		—	—	
4. Portage	900		—		—	—	
5. Whittier	272	15	($3,500)	100	($150,000)	—	
6. Anchorage	661	332	($1,500,000)		—	—	
7. Eagle River	1,800	0.1	($9,400)	1,450	(9,000,000)	1,800	(Eklutna)
8. Birchwood	251		—	150	(1,800,000)	251	(Eklutna)
9. Eklutna	343		—	343	(2,300,000)	343	(Eklutna)
9a. Eklutna-BLM Gravel Reserve	301		—	301	—	301	(Eklutna)
10. Matanuska	199		—		—	199	(Eklutna)
11. Pittman	145		—	145	(2,100,000)	145	(Eklutna & Knik)
12. Willow	56		—		—	—	
13. Gravel Pit	215		—	215	(2,200,000)	—	
14. Talkeetna	144		—		—	—	
15. Curry	4,970		—	1,200	(10,000,000)	—	
16. Gold Creek	26		—		—	—	
17. Chulitna	100		—	100	(1,500,000)	—	
18. Midway	3,811		—	1,000	(3,900,000)	—	
19. Colorado	44		—	44	(650,000)	—	
20. Broad Pass	1,070		—	600	(1,600,000)	630	(Cantwell)
21. McKinley Park	18.4	0.3	($5,700)		—	—	
22. Healy	5,830	101	($13,380)	600	(5,200,000)	—	
23. Lignite	1,260	278	(2,400)		—	—	
24. Clear	2,780		—	2,780	(40,000,000)	640	(Nenana)
25. Nenana	279	104	($221,000)		—	279	(Nenana)
26. Fairbanks	461	92	($250,000)		—	—	
27. Holy Cross	60	4	($1)		—	60	(Holy Cross)
28. Tanana	0.4		—		—	0.4	(Tanana)
29. Moose Creek	89		—		—	89	(Eklutna)
30. Valdez	50	17	($41,250)		—	—	
Subtotal	26,521.4	999.4	($2,171,231)	9,028	(80,400,000)	4,737.4	
% of Subtotal		3.8%			34.0%	17.9%	
			Right-of-Way Lands			2,863.9*	
Seward-Fairbanks	10,677.2		—		—	—	
Portage-Whittier	184		—		—	—	
Fairbanks-Eielson	470.3		—		—	—	
Healy-Suntrana	111.5		—		—	—	
Matanuska-Chickaloon	434.1		—		—	434.1*	
Subtotal	11,877.1					3,298	
% of Subtotal	27.8%						
TOTAL	38,398.5					8,035.4	
% of TOTAL						20.9%	

*Right-of-way miles in village selection area: Nenana, 40.5 miles; Cantwell, 38.7 miles; Knik, 3.5 miles; Knik and Eklutna, 43.8 miles; Eklutna, 30.6 miles; Chickaloon, 27.3 miles.

Source: Alaska Railroad records.

13 36

the Eklutna claim nor begun to process other claims. However, Department of the Interior officials in Alaska and Washington, D.C. have indicated a willingness to accept the bulk of the LUPC's recommendations. Selections of railroad land in other village areas are expected to follow the outcome of the Eklutna claims. If the result for all railroad land located in village selection areas follows the LUPC recommendation, the railroad would lose up to 90 percent of its lands located in village selection areas. This could mean the loss of 7,554 acres, or 19.8 percent of the railroad's total land holdings; the loss of 19 million cubic yards of gravel and rock reserves; and the direct loss of $230,000 per year in lease revenue.

Cook Inlet Regional Corporation Selection of Railroad Land

A problem that could affect virtually all railroad lands is the special selection authority of Cook Inlet Region, Incorporated. CIRI considers substantially all railroad land holdings, whether located in Native village selection areas or not, to be eligible for selection. CIRI has formally asked that all railroad lands, except those conveyed to village corporations, be placed into the selection pool that was created by the special statutory authority for CIRI to select lands outside its regional boundaries. To date, CIRI's broad interpretation of the law has not been accepted by the Department of the Interior, which maintains that the CIRI selection pool cannot include railroad lands outside the village selections areas. However, CIRI is expected to challenge the Department of the Interior's view. If CIRI is successful in reversing the Department of the Interior's opinion either administratively or in court, substantially all railroad lands would be subject to CIRI selection. It would then be necessary for the Department of the Interior to make a 3(e) actual-use determination for all railroad lands selected, not just railroad lands located within village selection areas. The narrow standards in the final 3(e) regulations would then be applied to all railroad lands and could result in the loss of virtually all ARR's leased lands, gravel reserves, and other properties along the railbelt.

The Uses of Railroad Lands

The authors feel that the railroad's lands are as essential to its operations as are any of the other ARR assets. They believe that if the ARR is to act as a part of the market economy of the state, it must be capable of exercising some degree of control over the lands with which it is associated. Such control ranges from absolute and perpetual surface control over some of the land to more limited powers over other types of real property.

Lands now under the jurisdiction of the ARR may be categorized as follows:

1. Main line and branch line rights-of-way.
2. Terminals and ports.
3. Lands leased to traffic-producing tenants.
4. Material source lands (for example, gravel deposits).
5. Lands leased to nontraffic-producing tenants.
6. Lands held for future operations and traffic development.
7. Former rights-of-way.
8. Other holdings.

In the authors' opinion, each of these types of land requires specific protection if it is to continue supporting the railroad in its role as a functional participant in the state transport network.

Requiring the most protection are the main line and branch line rights of way. The nature of railroad operations requires that these lands be under complete control of the railroad, including at a minimum the right to:

1. Have complete freedom to add to or delete from the land any structures, roadbeds, adjacent rocks, or gravel or to recontour the land as necessary.
2. Move track within the right-of-way or to add or delete track.
3. Provide loading and unloading facilities for railroad customers or for railroad purposes.
4. Add structures as may be necessary for operation.
5. Remove any vegetation which may be required to operate or expand the railroad's services.
6. Fence the right-of-way.
7. Operate any and all trains necessary.
8. Restrict or grant access to persons or vehicles as it sees fit.
9. Construct and maintain any drainage facilities necessary to preserve the right-of-way.
10. Make any provisions necessary to protect the operational capability of the right-of-way even if this requires access to and control of lands beyond the normal right-of-way limits (e.g., avalanche, flood control).
11. Take such action as may be necessary to safely operate in situations where conflicts with other transport modes may exist.

3
14 36

12. Place all necessary communications and signal devices within the right-of-way or to maintain separate rights-of-way for these items where necessary.

The authors believe that all of these elements must be available to enable the railroad to maintain the property, provide for safe operations, protect the public, meet public regulatory requirements, operate efficiently, and be responsive to economic opportunities and influences. The normal mechanism required to exercise these responsibilities is fee ownership of the property by a railroad. In those relatively unusual circumstances in which a railroad cannot obtain fee ownership, then it occupies a land parcel via a railroad easement. This gives the railroad complete control of all surface rights to the property, including the right to exclude the fee owner from the property and to exercise all of the functions noted above. The usual railroad right-of-way is 100 feet to either side of the center line of the main line. It is very unusual for less than this width of land to be available; however, wider rights-of-way are not uncommon. The Alaska Railroad's enabling legislation specifies a right-of-way width of 200 feet total with a supplement of 50 feet for purposes of operating a communications system where necessary. Terminal or port lands usually have no specific width related to track location. Rather, they are specified in the more traditional types of descriptions used generally in real property.

Lands Providing for Railroad Traffic Development

This category of land is second in importance to that of rights-of-way and terminals. The importance of this category goes beyond the lease income generated by the property to the very essence of railroad traffic and marketing. An analysis of the Alaska Railroad's traffic indicates that only a very small portion of operating revenues are derived from customers whose businesses are not directly adjacent to the railroad's right-of-way.[7] The efficient loading or unloading of carloads requires a customer to have direct access to railroad facilities. This factor is of such importance that it is usually quite difficult to serve a customer who is not directly linked to the railroad. One of the primary tools available to a railroad to solicit this type of traffic is land adjacent to its right-of-way on which a shipper can locate his facilities or store his goods. Thus, the lands available for leasing to traffic-producing customers contribute much to the ability of the railroad to sustain its present operation and to be economically viable. Likewise, those lands which are available for future lease to traffic-producing customers represent the long-term capability of the railroad to continue its existence as an economic enterprise.

In the authors' view, the only mechanism which will permit the railroad to manage these lands effectively is complete control of their use. While there is a clear obligation in ANCSA legislation to honor existing leases whether the landowner is the railroad or another party, the only manner in which a continuing commonality of interest between the railroad and future lease holders can be maintained is by providing ownership of those parcels for the railroad or by requiring any future owner to use them for rail traffic purposes so long as the railroad exists. It is not at all likely that the land development interests of the railroad and a future, non-railroad owner would coincide since land sale or lease for non-railroad purposes would frequently generate much higher income than would typical railroad uses.

Lands, Improvement, and Construction

This category includes those properties from which materials such as gravel and rock are obtained for maintenance and improvement. The authors feel that a railroad must have long-term access to such land as well as a fairly unrestricted right to remove materials as required. These needs are basic to the continuing operation of a railroad, because any railroad's roadbed and track will deteriorate rapidly if not regularly maintained and ballast renewed periodically. This renewal requirement is particularly critical in Alaska where the amount of moisture during spring breakup can, if not controlled, make track unusable within a single year. In addition to regular maintenance, there may be very large short-term demands for rock and gravel to repair damage from floods, avalanches, and earthquakes. The ARR annually requires an estimated 200,000 tons of gravel and 40,000 tons of rock for normal maintenance. In addition to this amount are requirements for emergencies and for track improvements, industry access, and alignment improvements. The latter items result from changing demands of railroad traffic and operation patterns. These are produced by such factors as changes in car types and commodities (such as bulk commodities requiring more substantial track), frequency of operations (more traffic requires more frequent attention regardless of commodity), types of operations (need to improve transit times to attract or keep time-sensitive traffic), or the need to improve operating efficiency (lower maintenance costs or operating costs by realigning track).

Unlike the previous land categories, there is no

[7] See "Traffic Base," page 9.

absolute requirement for ownership of the property if the railroad has the access and extraction rights mentioned previously or has access to commercial gravel. However, without railroad ownership of the materials, the costs of maintenance and improvement will be increased in two ways. One will be the commercial cost of gravel and rock. Having to purchase gravel at the current cost of $13 per ton would cost the ARR a minimum of $2,600,000 annually for normal maintenance. These costs would amount to an additional charge of $1.49 for each revenue ton carried by the Alaska Railroad (in 1980 dollars). In addition to this would be any aggregate demands for emergencies, new construction, or rebuilding. These additional costs would either have to be passed to shippers (and, thus, largely to consumers) by freight rate increases or would have to be supported by a public subsidy. Should increased freight rates be chosen, they will probably make the railroad less competitive and result in higher subsidy demands.

Lands Leased to Nontraffic-Producing Tenants

The lands leased to nontraffic-producing tenants are not necessary to the continued operation of the railroad, except where the lands can be converted to traffic-producing properties either by lease to customers for plant location or by exercise of mineral rights. How much these holdings may assist the railroad in its future operations will largely depend on location in relation to commercial opportunities. Even though the presently leased properties are not essential to the operational survival of the railroad, they do provide a major source of income which permits lower freight rates than might otherwise be the case. Should the railroad lose control of this land, the lost revenue would have to be obtained from other sources—either higher freight rates or public subsidy.

Former Rights-of-Way Land

This final land category is probably important only in terms of the future resource development role that policymakers may wish the railroad to play. Specifically, the railroad currently controls the land of a former right-of-way extending eastward up the Matanuska Valley approximately 30 miles past the Sutton, Eska, and Jonesville coal fields to Chickaloon. This right-of-way provides access to coal resources and will be an essential ingredient in any scheme to export coal from the Matanuska Valley.

According to ARR management, any railroad depends almost entirely upon the way it can use its lands if it is to operate effectively and to market that operation reasonably. Without this ability to utilize lands, any railroad is clearly an unattractive investment. Therefore, without a satisfactory resolution of the current questionable status of Alaska Railroad lands, any potential owner should be hesitant about becoming involved with the railroad. If he should do so without obtaining the types of guarantees specified above, it should be with the clear understanding that this course of action may well lead to a large and continuing drain upon his treasury.

Employee Concerns and Obligations

Present Situation

The Alaska Railroad (ARR) is a federal agency under the Federal Railroad Administration (FRA), U.S. Department of Transportation. Few of the positions held by employees of the Alaska Railroad, the only railroad operated by the federal government, are found in other federal agencies since the majority are unique to railroad operations. The ARR employees, having significant railroad operational experience and knowledge, represent one of the railroad's most valuable assets. In addition, the ARR employees have knowledge of the special railroad operational requirements for Alaska, with its difficult climatic conditions and associated maintenance requirements.

Declining Work Force. After the completion of the pipeline, the Alaska Railroad experienced declining traffic and revenues until the 1981 fiscal year (June 1980). Since that time, significant traffic and revenue increases have occurred despite high interest rates, inflation, and generally poor national economic conditions. In the face of increasing costs and declining revenues and traffic, the Alaska Railroad has annually reduced its work force over the last 5 years. For example, in FY 1976, the railroad employed an average of 1,025 persons, but by April 1981, this workforce totaled only 629 employees, including both permanent and temporary workers.[8]

The following table demonstrates the personnel levels by department in mid-April 1981, according to a railroad manning report (see Table 10).

Organized Labor and the ARR. As regards organized labor for its employees, the Alaska Railroad is similar to private railroads in the continental United States. Unlike private sector railroads, however, most labor agreements with the Alaska Railroad

[8]Because the Alaska Railroad is a federal agency, there is substantially larger lag between the acknowledgment of declining revenue traffic and a reduction in the number of employees than would be experienced in private railroad operations.

3
16 36

Table 10

Authorized vs. Actual Numbers of ARR Employees

Department	Authorized Position	Total Employees	Permanent Employees	Temporary Employees
Administration	95	82	77	5
Transportation	236	218	202	16
Engineering	270	181	137	44
Mechanical	142	138	130	8
Marketing	14	10	9	1
Total	757	629	555	74

are perpetually in effect until either organized labor or the railroad management wishes to open the labor agreements for renegotiation. This factor has interesting long-range implications in view of the potential transfer of the railroad's ownership and operations.

At the present time, five unions represent the Alaska Railroad employees. These are listed in Table 11 along with the number of employees which each represents.

The Full-Crew Law. An additional area of concern regarding employee operating agreements and a change from federal status involves a current Alaska statute, the full crew law—the only one left in the United States. It requires a five-man train crew, including a locomotive fireman, for all trains. Currently, because it is a federal agency, the ARR is exempt from this law and operates its trains on the basis of agreements negotiated with labor organizations. Usually, these require only three- or four-man crews for each train. If Alaska does not repeal this law during the course of any restructuring, it is unlikely that the railroad would ever be a self-supporting operation. If the present full crew law continues in force, the state should be prepared to pay several million dollars annually in subsidy for unnecessary labor.

Thus, the Alaska Railroad's employee situation is more complex than that of other railroads since its employees are generally not only members of various labor unions (similar to other railroads) but are also federal employees with all of the rights and benefits which are afforded participants in the federal government's civil service system. The implications of these double protection rights and benefits for the proposed transfer are far reaching and significant.

Financial Implications

Another significant consideration in the potential transfer of the Alaska Railroad from the federal government to the State of Alaska is the financial implications of employee protection, including federal retirement benefits.

The current employees of the Alaska Railroad have participated in and contributed to the federal Civil Service Retirement and Disability Fund. The Alaska Railroad has matched the contributions made by each employee during their employment to date, and these contributions have been made out of railroad revenues. The federal Civil Service Retirement System is under the jurisdiction of the U.S. Office of Personnel Management.

The Civil Service Retirement and Disability Fund is the accumulation of money held in trust by the U.S. Treasury for the purpose of paying annuity, refund, and death benefits to persons entitled to them. The present Alaska Railroad employees are among the persons entitled to these benefits.

The identified federal commitments which were made by the Alaska Railroad to employees at the time of employment include the total cost of relocation back to the point of recruitment of any employee and family recruited from outside Alaska when they choose to return. Other employee commitments include participation in the Federal Employees Group Life Insurance Program, health insurance benefits, accrued sick and annual leave, credit for time served as federal employees, turnaround trips to the point of recruitment every two years (as distinguished from relocation), and protection against arbitrary dismissal by the Merit Systems Protection Board.

There are many unanswered questions related to the employees and protection of their rights. These questions can best be answered and the problems

Table 11

Labor Organizations Representing ARR Employees

Organization	Employees Represented
American Train Dispatchers Association	20
Brotherhood of Railway Carmen	37
United Transportation Union	127
American Federation of Government Employees*	315
International Association of Machinists and Aerospace Workers	80
Total	579

*The American Federation of Government Employees represents both white- and blue-collar workers.

3
17 36

solved by the federal government since it is their system and not Alaska's which has given the employees their protection. Failure to solve these obligations prior to the transition phase may well lead to lengthy and costly litigation as well as to excessive employee turnover. Thus, careful consideration of these factors as part of the federal transfer legislation would benefit all concerned.

We should also note that several of the existing labor agreements will continue in force until either the labor organizations or the railroad management wishes to open negotiations. It is probably best that these agreements remain in force for a specified time, after which they would be subject to new negotiations. The transfer legislation could provide for such negotiations and establish the framework for setting labor agreements.

In summary, ARR's legal obligations to its employees are extensive, and the federal government is in a much better position than the state to provide them with a proper transitional program. Such a program would protect the employees, the State of Alaska, and the federal government.

Finances

Its status as a federal agency complicates the financial condition of the Alaska Railroad. For example, none of the traditional measures of financial health such as price-earning, debt-equity, or even revenue-expense ratios properly portray the condition of the operation. In addition, the burden of passenger service (about 35 percent of all trains operated in 1980) distorts even the traditional railroad operating efficiency measures which might otherwise be employed. Financial reporting is done by methods and for reasons which differ from private practice and which are not even entirely consistent with federal government standards. Similarly, public sector capital budgeting and justification is not organized or presented using the methods of the rail industry. The differences result both from conflicting management objectives and requirements for management information which are dictated as much by federal control as by the need to manage operations.

The ARR receives operational funds from four primary sources:

1. Revenues earned by transporting freight and passengers.
2. Income from property leased to others.
3. Reimbursable services performed for others.
4. Congressional appropriations for acquiring capital assets and for major maintenance.

This income is all placed into a single revolving fund account with the U.S. Treasury against which the railroad draws to support its day-to-day operations and fund capital expenditures. Income placed in the account remains available until extended by ARR either for operations, capital expenditures, or on work authorized by appropriation.

While the revenue from the railroad's own operations is largely independent of external control,[9] those resources obtained by Congressional appropriation are subject to many of the same restraints common to the budgets of all federal agencies. These requirements dictate a budgetary process which may have both revenue-based funding and appropriated funding used for similar purposes, while justification for their use may be quite different. The justification for appropriated funding is similar to that seen for other agencies which seek money to maintain the existing property and operations and to comply with federal guidelines. This is somewhat different from the approach used on most private rail systems where budgets are developed and justified on the basis of the profitability of operations and the investments being funded.

With this background, let us look in more detail at the railroad's financial situation. This analysis will deal with the *financial statements, revenues and expenses, assets and liabilities, and capital budgets.* We will review both the information available from this material and its limitations. In addition, where possible, we will explain the future implications of these items.

Reporting Financial Information

The Alaska Railroad prepares three public financial documents. One of these, the *capital budget and appropriation request*, will be dealt with in another part of this section. The other two are the *annual report* and the *monthly financial statements.* While both provide useful information, they are limited in scope when compared to similar documents prepared by private railroads.

Annual Reports. The annual reports are prepared following the end of each federal fiscal year (September 30). They summarize the previous year's financial performances and contain a limited amount of operational data as well as a narrative outline of the previous year's events. The financial information includes a brief income statement, balance sheet, and

[9]The only restraint upon expenditures of these revenues is that they must be used for a function authorized the railroad in its enabling legislation, as amended.

a statement of changes in financial position. None of these are entirely consistent with private practice in stockholder reports, principally due to the federal status. The differences are most clearly apparent in the balance sheet where liabilities include only a limited number of current items and neither long-term liabilities nor stockholders' equity. The long-term liabilities do not exist since the railroad is debt free and need not provide for taxes. Substituted for stockholder's equity is an item termed "Proprietary Interest of the United States Government," which is the sum of all federal appropriations plus retained earning from operations.

The income statement varies from that of private practice in that it does not account for fixed charges other than depreciation. It is important to note that the ARR, as is common with most railroads, does not capitalize and depreciate its track structure. Rather, it uses the practice known as betterment accounting, which charges any replacement material regardless of the amount of expenditure, to current maintenance expenses and capitalizes only the improvements. While the result of this practice for a private railroad is to present the financial status in a more conservative light, the effect on the Alaska Railroad is slightly different. Because the ARR seeks federal appropriations to perform some major track maintenance (which becomes part of the proprietary interest), this work is effectively capitalized (whether it involves replacements or improvements) and is then not depreciated. Effectively, this practice tends to understate the long-term capital requirements to maintain an adequate track structure while at the same time, it overstates current maintenance expenditures.

Table 12 shows the changes in fixed asset values which have taken place in the 1976-1981 period. The increase is due primarily to additions to equipment (mostly fifteen new locomotives) and to structures.

A difficulty on the asset side of the balance sheet involves establishing the value of assets. It should be remembered that a considerable portion of the ARR properties were transferred from other federal agencies, often at a cost of only transport charges or salvage value. The entire line from Whittier to Portage is in this category. To what extent this type of accounting for the assets understates their true value is not certain. For present day-to-day operational purposes, it is not of great importance except that it understates the depreciation charges and thus the capital reserve requirements. Any restructuring will necessitate the identification of appropriate asset values for rate-making and other purposes.

Table 12

End of Fiscal Year Fixed Assets
($ in millions)

	Date					
	9/81	9/80	9/79	9/78	9/77	9/76
Land*	.27	.27	.62	.43	.27	.27
Buildings	12.32	12.36	12.39	12.15	11.96	11.51
Other Structures & Facilities	112.13	111.69	110.69	108.83	107.63	107.20
Equipment	45.84	44.03	41.33	40.93	40.93	36.36
Nonoperating Property	1.88	2.99	3.93	3.54	3.54	3.44
Total Fixed Assets	172.44	171.34	168.96	165.88	164.33	159.28

*Only purchased lands are included in this statement. See Table 9 for values of all lands.

Source: Alaska Railroad Financial Statements.

The lands controlled by the railroad are also not included in assets, except for those directly purchased by the ARR, because most of the land was transferred to the railroad at no cost by executive order or public land order.

Monthly Financial Statements. The monthly financial statements are much more detailed than the annual reports. They provide both an income statement and a balance sheet in the same format as the annual report. However, each line item is further broken down into relevant details. Conceptually, the same limitations apply to these statements as to the annual reports. This investigation, however, discovered an additional serious limitation: the inability to isolate passenger- from freight-service costs. While revenues are separately reported, costs are separated in only a few categories. Those that are recognized appear to be only a few of the short-term, out-of-pocket costs. This clearly does not reflect the full, direct cost of providing the passenger service, which constitutes 30 to 40 percent of all train miles operated. Because of the importance of this function of the ARR, we allocated the costs left unassigned by the financial statements and present them later in this section.

Another important difference between the ARR and normal industry reporting occurs in the area of operational statistics, which allow the analyst to prepare efficiency measurements. While the annual report contains limited data on operations, the financial statements have none. Those in the annual report are not equivalent to those required of private railroads in their annual reports to the ICC or even to

many of those prepared for stockholders. This area represents an important deficiency in the ARR's public reports.

With these explanations in mind, it is appropriate to look at the financial performance of the Alaska Railroad during the past several years.

Financial Performance

The Alaska Railroad has experienced rather varied financial circumstances over the past decade. It experienced some of its best years during 1975 and 1976 and some of its worst in 1979 and 1980. The ARR's cyclic performance during these years is representative of the entire financial and operational history of the railroad. It also indicates the sensitivity of the railroad's financial performance to traffic changes which would be considered minor on most railroads.

Table 13 summarizes the income and expense performance between October 1975 and September 1981. As can be seen, revenues had fallen by 1979 to half their 1976 level; expenses stabilized after 1977 and remained so through 1980. This indicates the sensitivity of the profit or loss to changes in revenue rather than to cost factors. This is a basic fact for all light-density railroads; they must operate at certain minimum levels if they are to handle available traffic and maintain certain operable levels. That is what has occurred on the Alaska Railroad. To retain traffic, it has had to maintain and operate the property at a certain level. However, it would cost only marginally more to operate at a considerably higher level, generating much more revenue. The 1981 results further illustrate this problem. As noted below, the composition of costs and revenues provides significant insight into the various cost factors.

Table 13

Revenues and Expenses
($ in millions)

	FY 81	FY 80	FY 79	FY 78	FY 77	FY 76
REVENUE						
Operating	$40.78	$26.74	$23.08	$27.44	$33.38	$46.06
Nonoperating	3.16	2.13	2.08	1.65	1.65	1.15
Total	43.94	28.89	25.16	29.09	35.03	47.21
EXPENSES						
Operating	40.36	34.38	31.28	33.30	35.70	49.67
Nonoperating	.27	.34	.21	.21	.25	.18
Total	40.63	34.72	31.49	33.51	35.95	49.85
Gain (loss)	3.31	(5.83)	(6.33)	(4.42)	(.92)	(2.64)
Depreciation Included in Expenses	3.27	3.53	3.22	3.20	3.12	2.61
Cash Gain (loss)	6.58	(2.30)	(3.11)	(1.22)	2.20	(.03)

Source: Alaska Railroad Financial Statements.

Table 14

1978 Revenues and Expenses
($ in millions)

	Freight	Passenger	Other	Total
Revenue-Total	$23.69	$1.50	$3.77	$28.96
Operating	23.69	1.50	2.12	27.31
Nonoperating			1.65	1.65
Cash Expense	21.99	6.35	1.98	30.32
Engineering	4.24	0.64		4.88
Mechanical	5.29	1.28		6.57
Transportation	9.30	2.95		12.25
Traffic	0.29	0.13		0.42
Communications	0.30	0.14		0.44
Administration	2.57	1.21		3.78
Other Operating			1.86	1.86
Nonoperating			0.12	0.12
Depreciation	2.81	0.26	0.12	3.19
Total Expense	24.80	6.61	2.10	33.51
Gain (Loss) Before Depreciation	1.70	(4.85)	1.79	(1.36)
Fully Allocated Gain (Loss)	(1.11)	(5.11)	1.67	(4.55)

Sources: Alaska Railroad Financial Statements and Annual Report recomputed using ICC cost allocation methods.

Tables 14, 15, and 16 provide a more detailed analysis of 1978, 1979, and 1980 revenues and expenses distributed to freight and passenger service and to other activities. It is important to note that the method used by this analysis develops fully allocated costs.[10] That is, the method allocates both the direct, short-term, out-of-pocket costs and the various types of joint costs and overhead to the appropriate service. This estimates the resources used to supervise the passenger trains' operation and maintenance, to market and administer them, to provide the incremental track maintenance required by them, to service and supply them, and to control their activities. It should be realized that if the passenger trains were eliminated, many of these joint and common costs would remain. However, over the long term, it would be possible to eliminate them

[10] Where the financial statements provided specific cost breakouts (such as passenger or freight car maintenance), these were used directly rather than being allocated.

Table 15

1979 Revenues and Expenses
($ in millions)

	Freight	Passenger	Other	Total
Revenue-Total	$19.08	$1.96	$4.11	$25.15
Operating	19.08	1.96	2.03	23.07
Nonoperating			2.08	2.08
Cash Expense	20.10	6.17	2.00	28.27
Engineering	3.35	0.59		3.94
Mechanical	4.77	1.15		5.92
Transportation	8.86	2.89		11.75
Traffic	0.31	0.16		0.47
Communications	0.25	0.13		0.38
Administration	2.56	1.25		3.81
Other Operating			1.91	1.91
Nonoperating			0.09	0.09
Depreciation	2.82	0.25	0.15	3.22
Total Expense	22.92	6.42	2.15	31.49
Gain (Loss) Before Depreciation	(1.02)	(4.21)	2.11	(3.12)
Fully Allocated Gain (Loss)	(3.84)	(4.46)	1.96	(6.34)

Sources: Alaska Railroad Financial Statements and Annual Report recomputed using ICC cost allocation methods.

or to divert the resources they represent to more productive uses.[11]

The analysis indicates that the nonrail activities have consistently shown a positive net income. The freight service has shown a positive cash flow (net income before deduction of depreciation) in 1978 and 1980, but 1979 indicates a $1.02 million cash loss. For the 3 years, the total cash gain on freight operations was $2.48 million. While this is not sufficient to cover all depreciation charges, it does represent an impressive performance, particularly when considered in relation to the weak Alaska economy during this period. With freight and other activities combined, the cash flow is positive for all 3 years, and total net income is positive (or zero) in 1978 and 1980. This leaves the passenger service as the principal source of the substantial losses shown in the annual reports. Such a result is consistent with the problems experienced by other North American railroads during the past 30 years.

[11]Where ARR accounting records did not specifically allocate costs to either freight or passenger service, they were so allocated using methods prescribed by the Interstate Commerce Commission to the extent that the required operating statistics were available. See Code of Federal Regulations, Title 49, Part 1242.

There are two possible causes for the passenger service's poor financial situation: excessive expenses or inadequate revenues. An examination of the various expense categories indicates that they are not excessive considering the substantial proportion of the operations represented by passenger service. Given the nature of passenger train operations, this is in fact a substantial compliment to the ARR management. This result is confirmed by comparing the ARR passenger service to that of the Denver and Rio Grande Western (D&RGW) passenger service for comparable periods. During 1978 to 1980, approximately the same number of passenger train miles were operated by both railroads. Expenses were also comparable; however, the D&RGW revenues were 50 percent to 100 percent greater, resulting in a significantly smaller loss attributed to passenger service. ARR revenues, on the other hand, were not large enough to be comparable to the proportion of total operations represented by passenger service.

A more detailed discussion of the passenger problem is contained in the following section (Competitive and Regulatory Environment). It appears, however, that it would be impossible to generate enough passenger traffic to make the net income from passenger operations positive. This is the basis of a substantial long-term public policy question. It

Table 16

1980 Revenues and Expenses
($ in millions)

	Freight	Passenger	Other	Total
Revenue-Total	$22.72	$2.09	$4.08	$28.89
Operating	22.72	2.09	1.92	26.73
Nonoperating			2.16	2.16
Cash Expense	20.92	7.60	2.67	31.19
Engineering	3.20	0.59		3.79
Mechanical	5.27	1.59		6.86
Transportation	9.34	3.58		12.92
Traffic	0.33	0.20		0.53
Communications	0.25	0.15		0.40
Administration	2.53	1.49		4.02
Other Operating			2.42	2.42
Nonoperating			0.25	0.25
Depreciation	3.08	0.32	0.13	3.53
Total Expense	24.00	7.92	2.80	34.72
Gain (Loss) Before Depreciation	1.80	(5.51)	1.41	(2.30)
Fully Allocated Gain (Loss)	(1.28)	(5.83)	1.28	(5.83)

Sources: Alaska Railroad Financial Statements and Annual Report recomputed using ICC cost allocation methods.

3
21 26

is also important to realize that, except for a modest depreciation charge against passenger service, this analysis has not included any capital costs.

Since it appears that freight service is a fairly stable income source even in economically depressed years, it is useful to examine the effects of adding a major additional long-term movement. For purposes of this discussion, it is assumed that the recently announced pending coal movement from Healy to Seward for export saw its initial operation in 1980. The revised income statement is shown in Table 17 based on the proposed 800,000 metric tons moving at a rate of $10.10 per ton. Operation expenses are based on data supplied by ARR, and depreciation costs are computed at current rates based on the assumption that all new equipment is used for the movement. For this analysis, only freight and other activities are considered. The changes in performance due to this single movement are considerable. An overall net income of $0 becomes a positive $1.82 million, and total cash generated goes from $3.21 million to $5.37 million. This clearly indicates both the dependence of a light-density railroad on single movements and, more importantly, the positive effects of a substantial traffic source with long-term prospects.

Thus, the overall indication is of a property that has undergone substantial financial changes over the past 5 years. Although it has seen serious diminution in the volume and ton-miles of available freight traffic, there has been sufficient control of costs to maintain an overall positive cash flow each year after the passenger service is deducted from the results. A high-revenue, moderate-cost movement such as that proposed for coal could add stability to the performance.

Table 17

1980 Financial Performance with Potential Coal Traffic

800,000 Metric Tons = 881,600 Short Tons ($ in millions)

	Freight	Other	Total
Without Coal			
Revenue	$22.72	$4.08	$26.80
Operating	22.72	1.92	24.64
Nonoperating		2.16	2.16
Cash Expense	20.92	2.67	23.59
Operating	20.92	2.42	23.34
Nonoperating		0.25	0.25
Depreciation	3.08	0.13	3.21
Total Expense	24.00	2.80	26.80
Gain (Loss) Before Depreciation	1.80	1.41	3.21
Fully Allocated Gain (Loss)	(1.28)	1.28	0.00
With Coal			
Revenue	31.62	4.08	35.70
Operating	31.62	1.92	33.54
Nonoperating		2.16	2.16
Cash Expense	27.66	2.67	30.33
Operating	27.66	2.42	30.08
Nonoperating		0.25	0.25
Depreciation	3.42	0.13	3.21
Total Expense	31.08	2.80	33.88
Gain (Loss) Before Depreciation	3.96	1.41	5.37
Fully Allocated Gain (Loss)	0.54	1.28	1.82

Source: Table 16 and Alaska Railroad records.

Capital Budgets

Unlike private railroads, the Alaska Railroad does not have access to capital markets. It cannot borrow funds for equipment and cannot mortgage its property to generate capital. These factors mean that the only methods of obtaining funds for capital improvements are through internal generation (either depreciation charges or financial surplus) or federal appropriation. It also means that it must have sufficient capital to pay cash for improvements.[12]

Table 18 lists the capital and major maintenance expenses between July 1975 and September 1980 along with the source of funds. Clearly, about 75 percent of the funding came from appropriations rather than from earnings. As noted in the previous section, it appears that the principal reason for this is the negative impact of passenger service on income. It also indicates that without passenger service, the ARR would have produced $7.79 million internal capital between 1978 and 1980 instead of the $1.2 million actually available. This would have reduced the necessary appropriation from $17.3 million to $9.51 million, even assuming that no money had been retained from earlier, more prosperous years. Clearly, the recognition of passenger service as a public good requiring public support could have a major impact upon the railroad's capital budget flexibility.

[12]The usual method used by private railroads to purchase rail equipment is through the "Philadelphia Plan," in which the down payment is 20 percent of purchase price, with the balance paid over 15 years. Because rail equipment offers excellent security, the interest rates are usually substantially below the prime rate.

Table 18

Capital and Major Maintenance Programs
($ in millions)

Use	1980	1979	1978	1977	1976[a]	Total
Buildings	$0.2	$0.1	$0.1	$0.1	$0.5	$1.0
Roadbed, Track, Structures	3.3	2.2	2.8	3.9	4.2	16.4
Equipment	1.8	0.7	0.3	4.5	12.6	19.9
Other Projects	0.2	6.4[b]	0.4	0.3	0.5	7.8
Total	5.5	9.4	3.6	8.8	17.8	45.1
Fund Source:						
Appropriations	5.0	9.3	3.0	6.0	9.0	32.3
Railroad Earnings	0.5	0.1	0.6	2.8	8.8	12.5

[a]1976 was a 15-month fiscal year.

[b]$6.3 million for repairs to Seward and Whittier docks.

Source; Alaska Railroad 1980 Annual Report.

It is in capital budgeting that the Alaska Railroad differs the most financially from private operations. This difference results from, and is evident in, several features of the budget, including the distribution among expenditure types, the budget process and line item justifications, and the types of programs included in the budget. As noted earlier, many of the budgeting objectives, fund sources, and utilization capabilities differ. These variations are reflected in the documents themselves.

The budget tends to be heavily weighted toward improving facilities and light equipment rather than purchasing rolling stock. In private industry, the reverse tends to be true. There are three reasons for the difference. One is the ease with which private industry can finance equipment. This ease permits a relatively modest cash flow to leverage substantial amounts of equipment purchases, particularly when used in conjunction with reasonable interest rates and tax advantages related to interest, investment tax credits, and accelerated depreciation. Obviously, the ARR cannot take advantage of any of these. A second reason that equipment expenditures receive less emphasis, particularly in marginal years, is that individual items are so expensive. A locomotive costs $750,000 to $900,000, while cars run $40,000 to $50,000 each. Thus, if an ARR budget is cut by FRA, OMB, or the Congress, an event which occurs regularly, it is easier to reduce the size of track programs than equipment purchases, since the former tends to comprise a large number of smaller items and personnel requirements. With track or structure programs, at least some of the improvement can usually be made, but an equipment acquisition program must often be written off entirely even if a portion of the funding is not approved. A third reason for these budget priorities is that it is easier to repair older equipment and to keep it operating than it is to operate over track which has not been properly maintained. Ultimately, the differences in budget priorities provide for physical facilities maintenance in the manner of most federal agencies, but they do not necessarily respond to marketplace influences.

The next difference between ARR's budget and those of private capital arises in the budget development process and the basis for project selection and justification. On private railroads, the projects for a capital improvement plan are developed on the basis of either rate of return or net present value of the proposal. The ability to contribute to the profitability (usually long term) of the organization is the primary criteria of selection. On the Alaska Railroad, this does not appear to be strictly the case. ARR budgeting documents must conform to U.S. Department of Transportation requirements. These requirements rarely reflect a need to operate profitably. Thus, the justification for projects in the ARR budget is almost inevitably based on cost minimization criteria or satisfaction of federal requirements. While cost minimization is an important part of developing an efficient operation, it may or may not reflect the most profitable use of resources. Such an approach also fails to consider the opportunity costs of alternative uses of capital. Between the 1978 and 1982 budget requests, that of 1979 was the only one which contained a cost-benefit analysis and a computation of internal rate-of-return for individual projects. In no case was there an attempt to estimate overall returns for groups of projects. These overall numbers may be considerably different from the sum of individual returns due to various project interdependencies and timings. It should be emphasized that the majority of these problems result from the requirement that the ARR follow federal budgeting procedures rather than allowing its management to develop programs, as much as possible, on the same basis as private firms.

The final difference between ARR and private budgeting practices is the type of projects incorporated into the capital budget. The ARR's budget includes both strict capital items and major maintenance, which would be part of ordinary expenses under ICC accounting rules and within most private organizations. This causes the income requirements to be understated. This problem is exacerbated by

3
23 36

the use of betterment accounting for track structure as explained earlier. The proportion of the budget which is actually devoted to maintenance rather than to capital expenditures is difficult to estimate from available data. However, the FY 1982 budget, at the minimum level, lists such items as cross-tie replacement, track surfacing, vegetation control, equipment repair and refurbishing, and building repair, none of which appear to be normal capital items. Once again, the requirement to conform with federal budgeting (this time coupled with railroad betterment accounting) distorts the financial picture of the railroad.

The final capital budgeting item which requires review is the question of deferred maintenance. ARR defines deferred maintenance as:

> ". . . the accumulated maintenance that would have to be performed in order to bring the physical plant up to the material condition and capacity considered necessary to accommodate the level of freight and passenger traffic expected."

In 1977, the ARR estimated deferred maintenance at $58.9 million, with this increasing to $63 million by 1980. Of the 1977 total, $38.7 million was considered to be delayed capital expenditures.[13] Table 19 shows the breakdown of the 1977 total by functional area. It is important to realize that these areas do not represent items which make it unsafe or difficult to operate the railroad. These are items which should be programmed projects but have had implementation delayed. It is not unusual practice in the rail industry to adopt this strategy when revenues are not at an adequate level. Since much of the programming is on a cyclical basis and the items are long-term assets, the practice becomes critical only when it is continued over an extended period. It is also possible to "trade" capital expenditures in exchange for higher current maintenance expenditures. Both are part of the situation at the ARR. This is particularly true for the roadbed and track category where many of the charges are for subgrade which should be upgraded to eliminate future maintenance demand. However, the principal result of not performing the work will be higher current costs, not unsafe conditions or major operational problems. This is the nature of many of ARR's problems, particularly the delayed capital expenditures, although a good deal of the tie renewal appears to be true deferred maintenance.

Thus, it appears that while deferred maintenance may become a long-term difficulty if there is a very large traffic increase (more than the currently projected coal traffic), it does not seem to be a major current problem. The solution of the problem remains difficult to project until the type of financial structure under which this railroad will be operating can be determined. If structured correctly, the projected organization may provide considerable potential to address the problem, certainly more than the present federal structure.

Table 19

Deferred Maintenance by Functional Area
($ in millions)

Rail Relay	$ 7.8
Tie Renewal	7.5
Other Roadbed and Track	15.7
Tunnels	1.7
Bridges	4.3
Buildings	4.9
Other Fixed Facilities	15.7
Communications	0.9
Equipment	0.4
Total	58.9

Source: Alaska Railroad FY 1982 Budget Submittal Documentation.

Competitive and Regulatory Environment

The Alaska Railroad both competes and cooperates with Alaska motor carriers and, through its barge connections, with marine carriers operating between Alaska and the United States. Because the local freight carried by ARR is unsuitable for road haulage due to its bulk, the railroad is relatively free from local competition. The exceptions to this are some petroleum products movement and the local TOFC/COFC service between Anchorage and Fairbanks, which amounts to less than 10 percent of the total traffic between these two points.

However, there are numerous examples of local tariffs which represent cooperative arrangements. In fact, the Anchorage-Fairbanks TOFC/COFC represents one such tariff, while others include grain between Delta and rail points, pipe from Seward or Anchorage to Prudhoe Bay, cement from Anchorage to interior points, and petroleum products between a variety of places. Table 20 lists several Alaska Railroad tariffs which include through rates involving both the Alaska Railroad and motor carriers. Motor carriers also provide drayage services in Anchorage

[13] Once again, the effect of betterment accounting for track is to increase the apparent level of deferred maintenance. Actually, many track-related deferred-maintenance items are delayed capital expenditures.

Table 20

Alaska Railroad Tariffs Involving Joint Rail-Motor Rates

Tariff	Between	Contents
3065-C	Prince Rupert, B.C., and Ak.	Water/rail/motor rates
3095-A	Washington & British Columbia and Alaska	Water/rail/motor rates
3101-K	British Columbia, Idaho, Montana, Oregon, Washington, Wyoming, and Alaska	Rail/water/rail/motor rates
3016-J	Alaska Points	Rail/motor and motor/rail rates

Source: Alaska Railroad Tariffs 3065-C, 3095-A, 3101-K, 3016-J.

and Fairbanks for the railroad. Table 21 provides a partial list of motor carriers involved in joint arrangements.

It is the interline traffic which brings the railroad into the most direct competition with private carriers. However, even here, ARR is functioning in cooperation with other private firms. The nature of the commodities moved makes the interline traffic more competitive than the local.[14] The marine competitors in this service are Sea-Land Service and Totem Ocean Trailer Express, who operate container ships and roll-on-roll-off trailer ships, respectively, between Puget Sound ports and Anchorage. Both also have through tariff arrangements with motor carriers, as well as with the railroad.

The importance of this traffic is in the volumes available and its high value. The total container, trailer, and railcar traffic through Anchorage and Whittier is presently about 1,350,000 tons annually. Of this, the railroad hauls about 250,000 tons. Some of this is not subject to alternate routings (like heavy machinery, many chemicals, heavy structural shapes); however, most could move by any carrier.

The shipper's choice of carrier is usually based on a combination of price and service characteristics depending on value of cargo and delivery requirements. The most recent innovation used to influence market share was the introduction of contract rates by the railroad. These require the shipper to provide a certain minimum number of carloads in exchange for certain long-term rate maximums and service guarantees. This type of rate was authorized by federal legislation in 1976 and has begun to gain fairly wide acceptance nationally only in the last 2 years. It has created considerable controversy in Alaska, principally because of its success. It has also been the subject of court action and a congressionally mandated ICC investigation to determine whether the prices in the railroad's contracts are in conformance with statuatory requirements. Preliminary results indicate that the rates exceed the minimum levels allowed by law and are well below maximum allowable levels.[15]

It is the Interstate Commerce Commission which is responsible for regulation of the economic relations of the various Alaska motor, rail, and water carriers. Executive Order 11107 of April 25, 1963, placed the Alaska Railroad partially under the jurisdiction of the ICC for rate-setting purposes. There were two exceptions which have created difficulties in the railroad's relationship with its competitors, both in terms of marketing and in rate making. These two sections provided that:

1. "The Secretary . . . shall allocate . . . a proper portion of the capital investment of the railroad . . . to the national public purposes for which it had originally been built." (This part of the railroad's valuation was to be excluded from the costs on which rates were based.)
2. " . . . Rates and charges shall not be deemed to be unjust or unreasonable by reason of failure to yield sufficient revenues to cover any amounts for taxes not actually required by law to be paid or provide a return on capital investment."

Effectively these two provisions allowed the railroad to retain most of its rate-making freedom. This situation remained basically unchanged until 1980 when passage of the Staggers Rail Act (and the subsequent appropriation bill) mandated an investi-

[14] See "Traffic Base," pages 9-11 for a description of the competitive commodity types.

[15] It should also be noted that the ICC investigation has, for the first time, included a cost of capital for the federal investment in the railroad as a part of the basis for determining the legality of rates.

Table 21

Motor Carriers Involved in Through Tariffs with the Alaska Railroad

Alaska West Express, Inc.
Big State Motor Freight, Inc.
Drilling Mud Haulers
Four Star Terminals, Inc.
Frontier Transportation Company
K & W Trucking Company, Inc.
Kodiak Oilfield Haulers, Inc.
Mukluk Freight Line, Inc.
Sourdough Express, Inc.
Weaver Brothers, Inc.

Source: Alaska Railroad Tariffs 3095-A and 3016-J.

gation of the Alaska Railroad's rail-water rates (the competitive interline movements) to determine whether they were in conformance with the provisions of the act. This represented a substantial change in policy, since the Staggers Act contains very specific provisions regarding the allowable cost basis for rates. The statutory language of the Act makes it clear that the railroad is expected to meet these cost-based tariff requirements, which now form much of the basis for the interline rate making.[16]

Provisions of the Staggers Rail Act provide the basis for marketing and management of rail service delivery. They provide for a good deal of latitude in implementation; however, they do require that economic efficiency be a basic consideration in developing any service and pricing package. They also place a number of restrictions on the relationships between carriers.

Establishing a clear set of pricing rules for the Alaska Railroad is probably the most important function of the new regulatory legislation and the subsequent ICC investigation. These rules define an area of marketing flexibility not previously available. These statutory bounds for pricing also allow the railroad to compete more freely, and they protect its competitors from predatory pricing. However, it is important that they be applied as outlined in the statute if they are to be effectively implemented. Artificial restrictions on the ARR do not appear to be in the best interests of either the state, the ARR's competitors, or the railroad. If Alaska is to develop a financially viable transport system, all participants must become active competitors rather than relying on artificial constraints.

---

[16]The Staggers Rail Act of 1980 was enacted following a long period of dissatisfaction with results of ICC regulatory activity and its effect on the financial viability of the rail industry. It had been preceded 3 months earlier by the Motor Carrier Act of 1980 which withdrew most of the economic regulations applicable to the trucking industry. The goals of the rail act were:

1. "To assist the railroads of the nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense.
2. To reform federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system.
3. To assist the rail system to remain viable in the private section of the economy.
4. To provide a regulatory process that balances the needs of carriers, shippers, and the public.
5. To assist in the rehabilitation and financing of the rail system."

The regulatory environment of the Staggers Act provides a setting for both the competitive and cooperative arrangements between the Alaska Railroad and other carriers. The whole regulatory structure is still in the implementation stage, and the precise application procedure for the new system is not yet known with any degree of certainty. However, it is certain that the new regulations, if imaginatively applied by management, will provide the railroad with considerable opportunity to improve its profitability while simultaneously forcing improvement in the quality of management data and its use. They provide a basic framework for establishing the Alaska Railroad as an integral competitive segment of the state's transport system.

Passenger Service

The Alaska Railroad provides regular scheduled passenger service and special passenger trains. There are two distinct parts of the scheduled passenger service: the long-distance service between Anchorage and Fairbanks and the specialized shuttle service between Portage and Whittier.

The Anchorage-Fairbanks service includes express trains daily in each direction with stops only at Talkeetna and Denali Park during the summer tourist months (May-September). In addition, there are three local mixed trains (passenger and freight cars) per week during the summer. The local trains stop as necessary for passengers along the route and permit hunters, fishermen, and hikers to reach parts of Alaska inaccessible by road. The mixed trains are limited by union agreements to a maximum of twenty-five freight cars per train unless granted a special exemption. The express trains operate with coaches, a dining car, a lounge car, a dome car, and a baggage car for checked luggage. In the winter, there is mixed train passenger service once per week. Mixed trains in both summer and winter have coaches and a diner for passenger service. The summer trains represent one of the most salable tourist attractions in Southcentral and Interior Alaska.

Additional passenger service is offered by the Alaska Railroad in the form of a shuttle train between Portage and Whittier, a distance of 12.4 miles. The train moves autos, trucks, buses, (with passengers allowed to remain in their vehicles) on special quick-loading flat cars and also carries passengers in coaches for the 35-minute trip, which includes three-and-one-half miles of tunnels.

This shuttle train provides access to the state ferry service between Whittier and Valdez and access for the private and commercial boat owners who moor their craft at Whittier. The railroad is the only

means of overland transportation to and from Whittier. The equipment originates out of Anchorage and returns to Anchorage each night. The shuttle train from Portage to Whittier provides a summer schedule of three round trips three days per week, four round trips two days per week, and two round trips on the remaining two days of the week. In the winter, the shuttle makes two round trips between Portage and Whittier on Sunday, Wednesday, and Friday, returning to Anchorage each night.

Table 22 indicates the total numbers of passengers carried by the Alaska Railroad during the ten fiscal years from 1971 to 1980. Passenger traffic has been increasing annually since 1975. There were about 154,000 passengers carried in 1953, making it the highest year in passenger service on the railroad. The passengers carried in 1979 reached the second highest level (151,045) followed in 1980 by almost as many (150,678).

Table 22

Alaska Railroad Passengers Carried
FY 1971-1980

Fiscal Year	Passengers
1971	94,000
1972	102,000
1973	74,000
1974	84,000
1975	81,000
1976	84,500
1977	103,632
1978	126,277
1979	151,045
1980	150,678

Source: Alaska Railroad records.

Table 23 shows the passenger service in the last 2 years. While the Anchorage-Fairbanks run suffered a traffic loss, there was a substantial gain on both the Portage-Whittier shuttle and special trains. The railroad operates excursion train services for special events such as the Alaska State Fair in Palmer and scenic trips to Seward.

It is important for the State of Alaska and the railroad to focus on the purpose and function of the passenger service. The State has already provided financial subsidy to assist in meeting some of its operational deficit and in providing improved shuttle service. The passenger equipment now in service is old and will soon have to be substantially rehabilitated to compete in the marketplace. The passenger cars are, in general, well-maintained, but are now in need of modernization, including installation of all-electric heating and air conditioning. The interiors have not been refurbished except for upholstery. According to a memorandum by AMTRAK evaluating the Alaska Railroad passenger service, dated November 21, 1979, the estimated cost to rehabilitate passenger equipment would be about $6 million. The railroad, in the next few years, can keep sufficient equipment in service, particularly with the recent acquisition of eight long-distance coaches from the Southern Railway. In the long term, however, the form, style, and mechanical aspects of passenger train service in Alaska must be re-evaluated.

Table 23

Alaska Railroad Passenger Service
FY 1979–1980

Service	FY 1980	FY 1979	Percent Change
Anchorage-Denali Park-Fairbanks	54,165	61,207	−11.5%
Anchorage-Portage-Whittier (Shuttle)	87,357	84,730	+ 3.1
Specials	9,156	5,108	+79.2
Total	150,678	151,045	− 0.2%

Source: Alaska Railroad Annual Reports.

It should be clear from previous portions of this report that if the State of Alaska is to have passenger train service on the Alaska Railroad, it will require a substantial public operational and capital subsidy. The freight and other revenues of the railroad have, in the past, been used as a subsidy supplement to the passenger revenue. This is known as "cross-subsidy"—taking freight income to pay for passenger operating expenses. However, the authors feel that such cross subsidization is not in the best interest of the ARR, if the railroad is to function efficiently as a business enterprise within the state's total transportation system.

In the "Finances" section of this report, we attempted to ascertain more accurately the revenue and expenses of freight and passenger service (page 20). Our analysis indicated that the cost of passenger service is reasonable when comparing the number of passenger trains operated to the total number of trains. Therefore, the operational costs for passenger service appear to be appropriate. The problem is that there are simply an insufficient number of passengers to pay operational costs. Raising fares to provide revenue equal to such operational costs would reduce the number of passengers served, leading to a continu-

3
27 36

ation of the deficit.

Revenue and expenses have been allocated between passenger and other categories. The results of these allocations may be found in Table 24. In each of the past 3 years, passenger service has shown a substantial loss while freight and other railroad services have shown a gain. This is true even in the light of unfavorable economic conditions and low traffic volumes during these years. The financial losses in passenger service have been sufficient to cause the Alaska Railroad to have an overall loss. Thus, cross-subsidization of passenger service by freight service clearly is detrimental to the railroad. The subsidy required for each passenger carried was as follows: 1978—$38.41; 1979—$27.87, 1980—$36.57.

It should also be noted that in this analysis the passenger service received credit for revenue from the vehicles as well as the passengers hauled on the Portage-Whittier shuttle service and for mail and baggage revenues.

Table 24

Alaska Railroad Revenue and Expenses
FY 1978–1980
($ in millions)

	FY 1978	FY 1979	FY 1980
Passengers			
Revenue	$1.50	$1.96	$2.09
Cash Expenses	6.35	6.17	7.60
Gain (Loss)	(4.85)	(4.21)	(5.51)
Freight and Other			
Revenue	27.46	23.19	26.80
Cash Expenses	23.97	22.10	23.59
Gain (Loss)	3.49	1.09	3.21

Note: Depreciation is not included but may be found elsewhere in the report.

Sources: Alaska Railroad reports; Interstate Commerce Commission Investigation; computed by Institute of Social and Economic Research, University of Alaska, and Bivens and Associates, Inc.

Passenger service is important to Alaska; it is a service that can and should be provided by the ARR. However, the interests of the railroad and the state would best be served if passenger and freight service were separated both operationally and by cost accounting. In that way, passenger service would still be provided as required and requested, but with the understanding that the service requires public subsidy.

RESTRUCTURING ALTERNATIVES

Congress may soon pass legislation for the transfer of the Alaska Railroad from the Federal Railroad Administration, U.S. Department of Transportation, to the State of Alaska. Before such a transfer can take place, the State of Alaska must determine the organizational structure it will use to own and operate the railroad. This organizational structure will most probably become the basis for state legislation.

A potential approach to the state's ownership and operation of the ARR in the period of transition is discussed on pages 34 and 35 of this report ("Alaska Railroad Transition"). The purpose of this section is to describe various organizational alternatives for the state to consider before it selects the most appropriate organization for the Alaska Railroad.

Existing Organizational Limitations

In selecting an appropriate organization for a state-owned and/or state-operated Alaska Railroad, policymakers must understand the limitations of the existing organizational structure in order to avoid perpetuating them. These limitations are briefly described below:

- **Inability to Obtain Adequate Capital Investment Funds.** Although the Alaska Railroad, like any rail property, is capital intensive, the ARR has no continuing means for obtaining adequate funds for essential capital investments. All capital funds for the Alaska Railroad have been obtained out of the revenue generated by the railroad or from Congressional appropriations. The railroad is debt free, which is advantageous. However, the funds available from the two current capital sources, revenue and appropriations, have been insufficient to modernize much of the car fleet and other equipment including passenger cars. The process for obtaining the needed capital appropriations is difficult and usually political, providing the railroad with little assurance that the required funds will be available when necessary. The funding mechanisms presently available also make it impossible for the ARR to realistically plan and budget more than a year in advance. There is a need for the Alaska Railroad to be able to borrow capital investment funds and/or to raise such funds from a variety of public and private sources.

- **Marketing is Difficult Because of Competitive Issues.** As a federal agency, the Alaska Railroad faces difficult marketing conditions. If the railroad markets aggressively, other transportation firms allege that the reason for the railroad's traffic

28 36

success is public financial support. On the other hand, the lack of adequate marketing may result in the need for public subsidy. The Interstate Commerce Commission (ICC) was mandated by the Staggers Rail Act of 1980 to investigate such allegations. The ICC study has been completed and found that the questioned rates charged by the Alaska Railroad are compensatory and do not constitute predatory pricing, as was alleged by some of its marine and highway competitors. The Alaska Railroad needs the freedom to agressively market its transportation services.

- **Management Does Not Have Required Flexibility.** Alaska's economic activity is dynamic, which means that rail service needs also change frequently. Under its federal agency status, the Alaska Railroad management does not have the flexibility required to be responsive to changing rail service needs. Even though the railroad has enjoyed a certain autonomy through the years, there are endless federal regulations which must be followed in the transactions of daily business. The ARR management needs flexibility in operating the railroad if they are to make it a self-sufficient component of Alaska's economy and if the ARR is to contribute its full capability to Alaska's overall development.

- **Employees are Unsure of Their Status.** Most of the employees of the Alaska Railroad belong to unions in addition to being federal agency personnel. Therefore, the employees are uncertain whether they work for a railroad or for a federal agency. In effect, the railroad personnel have two sets of rules by which personnel matters are settled, and often these regulations conflict, causing confusion and sometimes hampering performance. They certainly make administration of the property difficult.

- **Needs for Rail Services Have Changed.** The Enabling Act for the Alaska Railroad established as primary purposes for the railroad the connection of Interior Alaska with open Pacific Ocean harbors and the stimulation of development. These purposes have either been fulfilled or are no longer applicable. There has not been a recent policy evaluation or a determination for various aspects of rail service in Alaska based on the changes which have occurred. These include such changes as:

  1. Statehood.
  2. Energy development in Alaska.
  3. Changes in Alaska ports and port development.
  4. Marine transportation interface changes.
  5. Railroad deregulation and availability of contract rates.
  6. Less reliance on rail transport for defense installations.
  7. Improvements in nonrailroad transportation in Alaska.

  Due to these circumstances, the state must clearly determine the role that the Alaska Railroad should now play as part of the Alaska transportation system.

- **Alaska Railroad is Burdened with Federal Agency Requirements.** The Alaska Railroad, in addition to the requirements placed on other common carriers by federal regulations, must also meet various federal agency requirements. Because it is a federal agency, numerous reports are required of the railroad that do not conform to railroad practices or procedures. The railroad must, therefore, spend time trying to force its operation into a format which was designed for other federal agencies. This results in nonproductive time and increased documentation either in preparing reports of no significant management value, explaining why the Alaska Railroad cannot comply with federal requirements, or explaining what was reported in an attempt to comply with external demands.

- **Procurement is Cumbersome and Slow.** The Alaska Railroad must follow federal procurement regulations. Since the Alaska Railroad is the only railroad owned and operated by the federal government, the equipment, materials, and supplies for the railroad are not common federal agency purchases. There are unnecessary delays in obtaining essential supplies and equipment which often limit the railroad's ability to either anticipate or react to market opportunities. The procurement process is also a public process which tends to preclude negotiated purchases and requires direct cash outlays, thereby increasing the costs.

- **Passenger Service is Subsidized by Freight.** Railroad passenger service is more of a social service than a business. Fares (which could be higher than they currently are) cannot be raised sufficiently to cover the true cost of the service. However, rail passenger service is publicly subsidized throughout the United States and the rest of the world. Since the rail freight service is used to subsidize passenger service in Alaska, the public has had to provide the Alaska Railroad with tax revenues for its operation, maintenance, and rehabilitation from

time to time. The accounting system on the Alaska Railroad does not adequately separate the freight and passenger costs for railroad expenses. There is a need to separate the freight and passenger costs and to allocate the passenger cost to the public as a social service.

- **Alaska Railroad Cannot Negotiate Solutions to its Problems.** As a federal agency, the Alaska Railroad has a high degree of public visibility. This tends to preclude the ARR's negotiating solutions to its problems or taking advantage of business opportunities. In the past, the railroad has been able to make certain business decisions without the necessity of Washington approval. Recently, however, there appears to be a shift toward centralization of decision making which prevents negotiations for business within Alaska.

Railroad Perspective: Public Service or Business?

The history of the Alaska Railroad bears out this split perspective of the railroad; is it public service or business? Viewed historically from a public service perspective, the Alaska Railroad has been a success. It has generally accomplished its public service mission by connecting Interior Alaska with open Pacific Ocean ports. The railroad has assisted in developing the urban communities in what has been called the "Railbelt" of Alaska. The ARR serves Alaska's coal fields; it has opened up the Matanuska Valley agricultural areas; it has fostered settlement of public lands. In addition, the ARR has moved large volumes of commodities to and from Alaskan communities and between them at a reasonable cost. Products have been made available at affordable transportation costs. The movement of military personnel and material by rail has aided the national defense structure. The railroad has also provided passenger trains as a public service function.

However, the view of the Alaska Railroad from the business perspective has been less clear and more intermittent. The business perspective involves railroad economics—meeting fully allocated costs plus a return on the investment. The Alaska Railroad has generally not been a profitable business enterprise, except for a few years of substantial traffic resulting from the war or pipeline construction.

This dichotomy between public service and business railroad operation has been reflected in the management and personnel of the Alaska Railroad. Marketing of the railroad's services, as previously mentioned, has also reflected this conflict of perspective. The management decisions which have been made on the railroad have, on occasion, reflected both the public service and the business perspectives.

Faced with the prospect of state ownership and (or) operation of the Alaska Railroad, the decision-makers in the State of Alaska must decide whether the property is to be governed from a public service or a business orientation. The long-range implications of this decision for the people of Alaska are significant. Much debate, discussion, and careful consideration will be required to determine this policy, and the state must also consciously decide where to draw the line between the public service and business sectors of the enterprise.

One major implication of the state's railroad perspective is in the selection of the organizational alternative for the Alaska Railroad. The organizational structure chosen by the state will not assure that the railroad will be operated from the perspective selected, but the appropriate organization can help to facilitate its operation within the framework established by the State of Alaska.

Finally, the transfer of the ARR to the state will provide Alaska with an opportunity to benefit from the railroad's past experience under federal government operation and resolve the uncertainty and conflicts of running the railroad as a public service versus a business operation.

Assumptions and Criteria for a State Railroad Organization

The following assumptions concerning the railroad and its relationship to the state were used to develop the criteria and proposals for an organization to operate a state-owned railroad:

1. The Alaska Railroad is to be transferred to the State of Alaska without direct compensation of the federal government, but with indirect costs to the state for existing liabilities and any requirements for capital investments.
2. The State of Alaska wishes to operate the railroad in the most efficient manner, minimizing the cost to the taxpayers of the state.
3. The Alaska Railroad is an important element of the state's transportation system, and any state investments relating to transportation will be made with full recognition of the importance and intermodal nature of the railroad.
4. The Alaska Railroad can and will be responsive to changing needs and opportunities for transportation services.
5. The railroad revenues are to be used to provide essential rail service, maintain and

improve railroad property, and meet operational expenses.

6. The public's capital investments are to be protected.
7. The rail service rates are to remain competitive.
8. Public railroad operational subsidies are to be minimized.
9. Rail users are to receive good service, including adequate service frequency, an adequate number of cars, and appropriate car types.
10. The Alaska Railroad is to cooperate with the state, local governments, ports, businesses, industries, and other transportation modes within established policies and legal constraints.

Establishing criteria designed to meet the rail service needs of Alaska will enable the state administration and legislature to evaluate the organizational alternatives subsequently described. Each organizational structure can be measured by the extent to which it satisfies the following criteria:

1. Ability to obtain access to public and private capital funds.
2. Freedom of management to make the railroad's operational decisions within established policies.
3. Clear-cut lines of management responsibility and accountability for decisions.
4. Marketing freedom within established policies and budgetary constraints.
5. Clear decision-making authority without a cumbersome and bureaucratic process.
6. Separation of freight and passenger service functions and accounting.
7. Ability to efficiently procure necessary supplies, equipment, services, and materials within appropriate policies and budgetary authority.
8. Management capability to make long-term commitments within established policies.
9. Management freedom to negotiate solutions to problems and to take advantage of service opportunities.
10. Industrial development capability on Alaska Railroad land.
11. Performance-based personnel management, including the direct ability to hire, fire, promote, train, supervise, and direct required railroad employees.
12. Ability to provide financial and other incentives for performance.

We recognize that it may not be possible or acceptable to have a state organization which fully meets all of these criteria. However, these criteria are important in defining the long-term objectives for the Alaska Railroad. The State of Alaska should seek an acceptable organizational structure which will enable the railroad to operate as effectively as possible within these areas.

Organizational Alternatives Considered

When we began this study, various alternatives were considered possible. Among these were:

- Keeping the status quo—letting the ARR continue to operate as a federal agency.
- Allowing the ARR to operate as a federal agency corporation like the Consolidated Railroad Corporation (Conrail) or Amtrak.
- Selling the ARR to private investors.

However, during the early stages of this study the federal government made clear its intentions to divest itself not only of the ARR, but also of Conrail and Amtrak, which precluded the first two alternatives. Further, the difficulty a private investor would have in financing the marginally profitable ARR, in addition to the complex issue of unresolved land-transfer problems, effectively precluded the third alternative. Thus, there emerged but three remaining alternatives that seemed to offer workable opportunities for the ARR. These included the state (1) operating the ARR as a line agency of the state, (2) operating it as a state public corporation or authority, or (3) leasing it out for operation by a private party. We examine these three alternatives in the following paragraphs.

Three Possible Alternatives

The Railroad as a State Line Agency

Under this approach, the state would take title to the railroad in a manner similar to state ownership of such other transportation facilities as airports, the Marine Highway System, and state highways. However, we should note that the long-term availability of railroad assistance funding from the federal government, either for capital or operating purposes, is very uncertain. There currently exists no trust fund for railroads as there is for airports or highways.

Under this alternative, the Alaska Railroad would logically be made a division or some other unit of the Alaska Department of Transportation and Public Facilities. The railroad personnel would therefore become employees of the state with all of the benefits available to other state employees.

Policy direction for the Alaska Railroad as a

state line agency would come from the governor, from the legislature through normal legislative processes, and from the commissioner of the department involved.

There are several advantages to establishing the Alaska Railroad as a state line agency. The management lines of authority and responsibility would be clear. The institutional structures and resources of the State of Alaska could be readily available for use on the railroad. Alaska Railroad employees would have the fringe benefits and other advantages of state employment, including reasonable job protection. Since the railroad already has a cadre of experienced and trained operational personnel, the transition from federal agency status to state agency status would be easier than other alternatives.

However, there are also significant disadvantages in organizing the railroad as a state line agency. The ARR would encounter most of the same limitations as a state agency as it now does as a federal agency. One of the most critical limitations would be the inability to obtain essential capital investment funds except by state appropriations. The competitive issues related to marketing, management flexibility, state agency regulations, procedures and requirements; the potential for even more direct political influence on operational decisions; and the public-service-versus-business-orientation questions are all disadvantages of this approach.

While the state agency alternative should be considered, it clearly does not meet most of the criteria established for a viable railroad organization. If the Alaska Railroad is to adequately fulfill its transportation role within its technological limitations, a state agency organizational structure is the least desirable of the three alternatives discussed in this report. It would be unfortunate if the State of Alaska were to place the Alaska Railroad in an organizational structure that perpetuated the limitations of federal agency status.

The Railroad as a State Public Corporation or Authority

There are precedents for this approach, both nationally and internationally. The West Virginia Railroad Maintenance Authority and the British Rail Corporation, with some variations, will serve as examples.

The West Virginia Railroad Maintenance Authority. The State of West Virginia has since 1975 owned and operated a railroad[17] similar in some ways to the ARR. The West Virginia Maintenance Authority (WVMA) consists of seven part-time members, including the governor as an ex-officio member. The other six members are appointed by the governor, with the consent of the state senate, for staggered 6-year terms. The authority selects its own officers and appoints an executive director (the chief administrative officer). The employees of the authority in West Virginia work for the state and are non-union.

The WVMA has all the powers needed to own and operate a railroad. These powers include the ability to plan, carry out projects, acquire property, sell or transfer property, contracts, and sue or be sued. The WVMA may raise capital via railroad authority revenue bonds. It may also acquire railroad rights in other states. In addition, the authority has the power of eminent domain.

The railroad experience in West Virginia has been generally successful, and with some modification, lessons learned there may be applicable to Alaska.[18]

The British Rail Corporation. Since its inception in the late 1940s, British Rail has operated as a profit-oriented transportation company, providing both freight and passenger service. A government-appointed chairman and an autonomous board of directors provide general policy for running the corporation, with each director responsible for a particular facet of the operation (passenger, maintenance, capital investment, etc.).

British Rail's chief executive is responsible to the board and the chairman, at the same time serving as a member of the board. The principal officers of British Rail serve at the pleasure of the Chief Executive.

The levels and nature of British Rail's passenger service are negotiated between the government and the corporation, with the government paying for passenger service provided.

British Rail's capital investment package overseen by the Minister of Transport includes a 5-year plan, the first 3 years of which are fixed. This establishes the capital limits, within which investments must fall. British Rail can only borrow through the government, and major projects must be approved by the Minister of Transport.

The ministry of Transport, through its Railways Division, oversees the capital investment program of British Rail. It also has some safety responsibilities. Regulation is not institutionalized. The marketplace drives most policy decisions of British Rail.

[17] The West Virginia Railroad carries no commercial passengers.

[18] A copy of the West Virginia Maintenance Authority Act is on file at the Alaska Department of Transportation and Public Facilities.

32 3 36

Like the West Virginia Railroad Authority, the British Rail Corporation offers a potential organizational model for the Alaska Railroad. If the Alaska Railroad, under state jurisdiction, were organized as an authority or public corporation under carefully worded state legislation, most of the federal agency limitations could be removed. Properly established under this approach, the Alaska Railroad could meet all of the criteria previously outlined for a state railroad organization.

The principal advantages of a public corporation or authority alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management can be given flexibility and responsibility and can also be held accountable for its decisions. Passenger service can be accounted for separately and not subsidized by freight service. The state could determine the appropriate levels, locations, and other areas of passenger train service in accordance with their willingness to pay for the service selected. The freight rail service could be marketed and required to meet fully allocated costs. Thus, under this organizational scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

A State Railroad with Private Operations

A third alternative would be for the State of Alaska to own the railroad and contract with private enterprise to provide for operations. The main difference between this and the other alternatives is the operation of the Alaska Railroad by a private organization.

Several states, such as South Dakota and Oklahoma, are using this approach. These states, among others, have experienced abandonment of significant rail lines that they considered essential to their economy and transportation systems. These are using state and federal funds to acquire and rehabilitate extensive rail lines. The Department of Transportation, as a representative of the state, takes title to the rail property (usually excluding rolling stock). The state then selects a private railroad with the required management experience, skills, and interest in operating its equipment over the line to furnish shippers and receivers with rail service. An operating agreement is negotiated with the private common carrier for rail service. The operational limitations of the railroad can be whatever the state and the railroad agree upon.

The negotiated operating agreement can include such provisions as the assignment of maintenance responsibilities; liabilities; frequency, level, and type of rail service; car supply; revenues; and costs. Thus, all of the appropriate criteria for a state railroad organization can be reflected in the operational agreement. This can even extend to the provision of required capital.

A major advantage of this approach is that once the operating agreement has been negotiated, the state has only a supervisory or overseer responsibility, plus whatever financial requirements have been determined by the negotiations. The railroad operations can include public service rail requirements as well as being performance based.

A substantial difficulty with this alternative for the Alaska Railroad is that no private railroad carrier is operating within the state. Too, there is the problem of the existing Alaska Railroad personnel. While the present railroad employees have the necessary knowledge of railroad operational peculiarities in Alaska, these are federal agency employees, with long-term rights rather than private employees whose rights are subject to negotiation. This could present such a significant liability to prospective private operators that it might be difficult to find interested parties. This approach, therefore, may be impractical unless the responsibility for the current Alaska Railroad personnel is assumed by the Federal Railroad Administration, while a private carrier, with the necessary qualifications, can be attracted as the operator. However, no one knows at this time whether or not such a private operator exists.

One variation to the alternatives described above is a concept under consideration in Iowa. It is an old concept which has proved successful in other organizations but which is new in its application to railroading. It involves the use of a general partner and limited partnerships.

A limited partnership is a very flexible institutional arrangement which could potentially attract substantial private capital. A major consideration in developing this institutional approach is the designation of the general partner. In order to legally establish a limited partnership, at least one financially responsible general partner must be found or established. The State of Alaska could establish an organization which could become the general partner for this railroad venture. Although limited partners are not subject to liability beyond their investment in the partnership, there is usually no limit to the liability of the general partner.

A limited partnership is, by law, a nontaxable entity. All gains or losses from the venture flow directly back to the investors (partners) for tax purposes. Partnerships are thus attractive because (1) there is no double taxation of income as with

corporations and(2) partners can take full tax advantage of losses, depreciation allowances, and tax credits. The ability to take advantage of depreciation allowances will become more important if the Reagan Administration's accelerated depreciation proposal is enacted. It would be necessary, of course, to examine legal constraints in Alaska for public involvement in limited partnerships. In Iowa, there is no apparent constitutional prohibition against public involvement in such arrangements.

It may be possible in such a limited partnership to attract rail users, businessmen, private individuals, and Alaska Railroad employees, among others. Thus, it would be advantageous to those with direct rail interests to see the Alaska Railroad succeed as a business venture while offering only limited individual liability. The idea and concept may be worthy of further consideration.

Alaska Railroad Transition

Transition Legislation and Problems

As noted earlier, the Federal Railroad Administration (FRA) has determined that the original intent of the Enabling Act for establishing and operating the Alaska Railroad has been met and federal responsibilities discharged. Thus, for the past several years, several federal administrations and the Department of Transportation have discussed divestiture of the Alaska Railroad by the federal government. However, it has only been since January 1981 that the decision was made to prepare legislation for such a divestiture and implementation steps taken.

The FRA has shown some urgency in getting the transfer legislation introduced and passed. This urgency results from a reduction of employees in the Federal Railroad Administration, as well as desire to cut the capital fund request of the Alaska Railroad. FRA's schedule calls for passing the legislation this fiscal year. The legislation proposes that the State of Alaska meet the transfer conditions within one year of enactment of the legislation. The draft legislation also provides for transferring the Alaska Railroad to other interested parties should the State of Alaska not meet the conditions for transfer within this time period.

The proposed legislation further embodies a number of discretionary "strings" attached to the transfer which would enable the federal government to ensure that the State of Alaska own and operate the Alaska Railroad in a manner commensurate with FRA's preconceived ideas. Failure by the state to conform to the provisions of the Act would be grounds for the FRA to reclaim the railroad within a 10-year period. The rationale for the continuing federal interest in the Alaska Railroad is predicated upon the offer of a no-cost transfer to the state.

In summary, there are numerous problems associated with the transfer of the Alaska Railroad from federal to state ownership. Federal transfer legislation will likely be passed by Congress before these problems have been resolved. The U.S. Department of Transportation has not determined the land, the structures, the right-of-way, nor equipment to be included in the transfer. Arrangements have not yet been made to provide for an orderly transfer of the employees from federal agency status. There is no organizational framework established within Alaska to accept the ownership, operation, or employees of the railroad. The FRA is anxious to relinquish ownership, operation, employee, and funding responsibilities of the Alaska Railroad. This could potentially result in postponement of major ARR operational decisions. Such postponement could jeopardize the smooth long-range operation of the railroad and perhaps result in lost traffic—an event not in the best interest of Alaska. In addition, the employees are left in a state of "limbo," not knowing for whom they will work, if they will have a job, how the transition will occur from federal employment, or what happens to the benefits received as a federal employee. The employees lack information, and many of their questions cannot be satisfactorily answered at this time.

State legislation will probably be required to accept the transfer of the Alaska Railroad. The state, however, has made no decision on the transfer question or on the organizational structure required to own and/or operate the railroad. The current railroad assets, obligations, and liabilities have not clearly been defined, which leaves the state with inadequate information on the short- and long-term financial and other requirements accompanying the proposed transfer.

The railroad needs to continue operation without disruption, since disruption would detrimentally affect the state's economy and economic development. And this would come when economic activity is quickly increasing .

These are some of the more important transitional problems. Unfortunately, these problems have not yet received the attention needed to determine their full implications. Time and additional efforts are required to provide the Alaska decision-makers with the information necessary to act in the best interest of the state. The complexities and extent of these transitional problems are likely to result in legal actions and court adjudication. A transitional bridge is needed to facilitate the smooth transfer of the Alaska Railroad from the federal government.

An Orderly Transition

Even if we assume that satisfactory federal legislation can be drafted and passed by Congress for the transfer of the Alaska Railroad from federal to state ownership, there will remain a significant period for transition. Along with land, employee, competition, and various obligation problems, the smooth transition to state ownership and operation is a most perplexing problem. How the transition is handled will have either a positive or adverse impact—long term as well as short term—on the railroad and its operations as well as on the State of Alaska.

During this transitional period, certain needs must be met if the railroad is to fulfill its important and special transportation function in Alaska. These include the need to:

- Continue the freight and passenger operation of the Alaska Railroad.
- Preserve as many potential operational and organizational alternatives for the state as possible.
- Provide adequate legal protection for the Alaska Railroad throughout the transitional period.
- Provide interim protection and transitional assistance for the employees of the Alaska Railroad.
- Provide adequate time for adjudicating the legal issues which have been raised by the transfer question, such as land title, equipment and railroad property; employee rights and benefits; existing or pending court cases; railroad agreements, contracts, and obligations.
- Establish an orderly process and procedure for solving problems which have been identified or which may arise during the transition.
- Provide the time required for the state administration and the legislature to consider the issues, to seek solutions to problems, and to deliberate carefully on the implications of each proposed state legislative bill without being faced with a stringent schedule and a crisis-type atmosphere.

Given the general mood of the Reagan Administration and the Congress to reduce federal expenditures and the federal perception of great Alaskan wealth, it is quite possible that Alaska Railroad transfer legislation will be passed this year. The State of Alaska will probably be faced with the need for a package of legislation which sets the tone and organizational framework for state ownership of the railroad if Congress passes transfer legislation. Under these circumstances, there is a genuine need to provide for an orderly transition from federal to state ownership. Sufficient time must be allowed to work out the myriad transitional problems.

* * * *

RECENT INSTITUTE PUBLICATIONS

The Institute of Social and Economic Research was established in 1961 for the purpose of conducting interdisciplinary research in the social sciences and related fields. The institute is part of the University of Alaska and has branches in Anchorage, Fairbanks, and Juneau. In addition to the *Alaska Review of Social and Economic Conditions*, the institute publishes ISER *Reports*, *Occasional Papers*, *Research Summaries*, and other special publications. Recent institute publications include:

REVIEWS
(Free subscription upon request)

- "Alaska's Revenue Forecasts and Expenditure Options," O. Scott Goldsmith.
- "Prices and Incomes—Alaska and the U.S.," Michael J. Scott and Linda E. Leask.
- "Vocational Education in Alaska: Central Issues and Problem Areas," Judith Kleinfeld and Lynn Wright.
- "Prospects for a Bottomfish Industry in Alaska," Michael J. Scott.
- "Alaska's Unique Transportation System," John Gray.
- "Different Paths of Inupiat Men and Women in the Wage Economy," Judith Kleinfeld.
- "Prices and Incomes—Alaska and the U.S., 1967-1980," ed. Linda Leask.

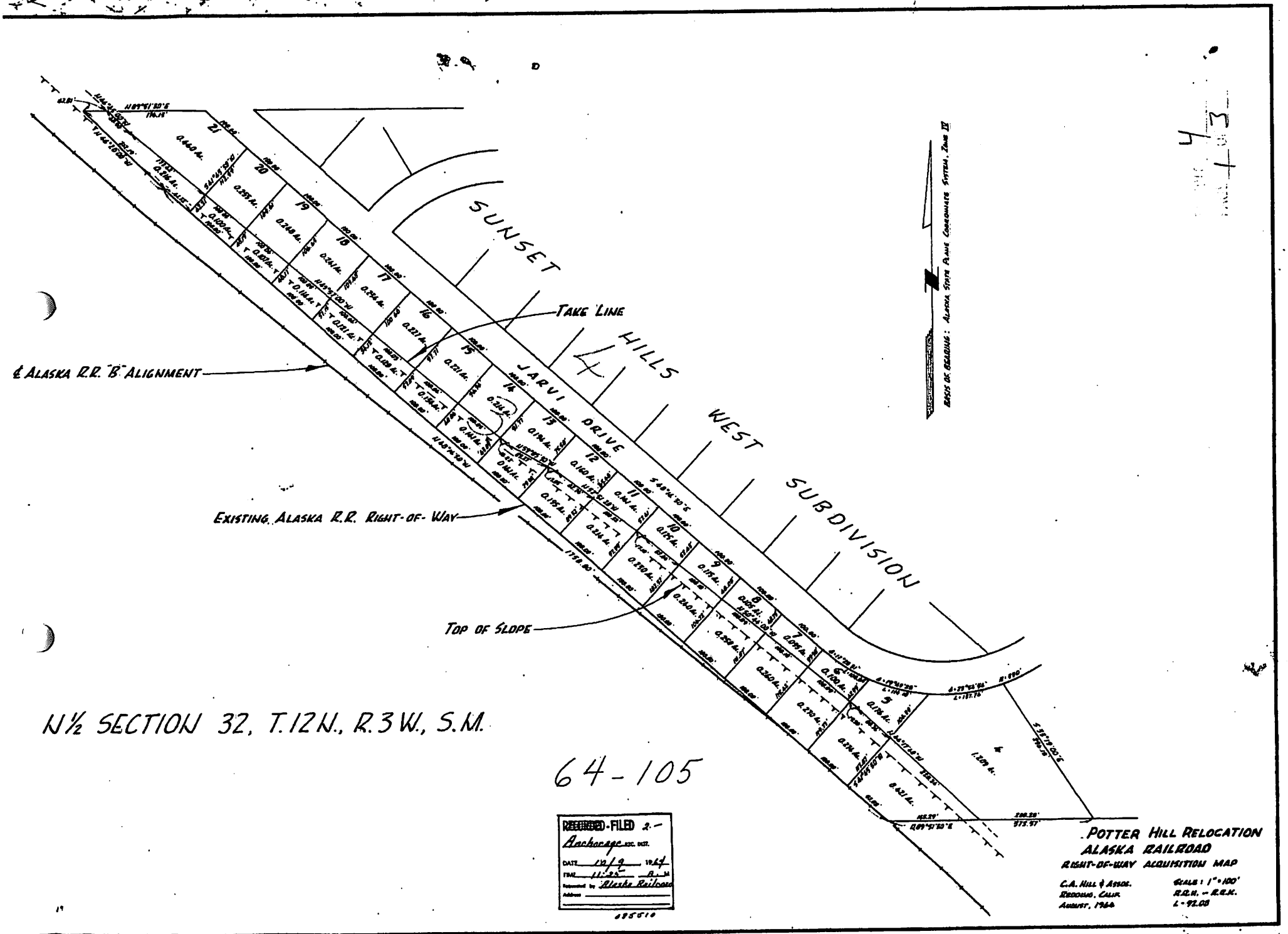
REPORTS

- *The Subarctic Athabascans—A Selected Annotated Bibliography*, Arthur E. Hippler and John R. Wood $15.00
- *An Aleut Bibliography*, Dorothy M. Jones and John R. Wood. $15.00
- *Alaska's Constitutional Convention*, Victor Fischer $4.00
- *Energy Development and the North Slope Inupiat: Quantitative Analysis of Social and Economic Change*, Jack Kruse, et al. $6.50
- *North Slope Borough Government and Policy-making*, Gerald A. McBeath. $6.50
- *The Dynamics of Alaska Native Self-Government*, Thomas A. Morehouse and Gerald A. McBeath $7.50
- *A Century of Servitude: Pribilof Aleuts Under U.S. Rule*, Dorothy K. Jones $9.00

For further information on institute publications, contact the Anchorage office of the Institute of Social and Economic Research, 707 "A" Street, Suite 206, Anchorage, Ak., telephone 278-4621.

INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH
University of Alaska
Lee Gorsuch, Director
707 "A" Street, Suite 206
Anchorage, Alaska 99501

Non-Profit Org.
U.S. Postage
PAID
Anchorage, AK
Permit No. 540


SUNSET HILLS WEST SUBDIVISION
JARVI DRIVE
TAKE LINE
℄ ALASKA R.R. "B" ALIGNMENT
EXISTING ALASKA R.R. RIGHT-OF-WAY
TOP OF SLOPE
BASIS OF BEARINGS: ALASKA STATE PLANE COORDINATE SYSTEM, ZONE III
N½ SECTION 32, T.12N., R.3W., S.M.
64-105
RECEIVED-FILED 2-
Anchorage REC. DIST.
DATE 12/9 1964
TIME 11:05 A M
Recorded by Alaska Railroad
Address
POTTER HILL RELOCATION
ALASKA RAILROAD
RIGHT-OF-WAY ACQUISITION MAP
C.A. HILL & ASSOC.
REDDING, CALIF.
AUGUST, 1964
SCALE: 1"=100'
R.O.W. — R.R.R.
L-92.08
4-3-1
64-105 F.C.R.

MORTGAGORS: PETER E SLAIBY & REJANI M SLAIBY

PROPERTY: 14200 JARVI DRIVE,
ANCHORAGE, ALASKA 99515-3499

LOTS 13 & 14, BLOCK 3,
SUNSET HILLS WEST SUBD.
(According to Plat No. P-600)

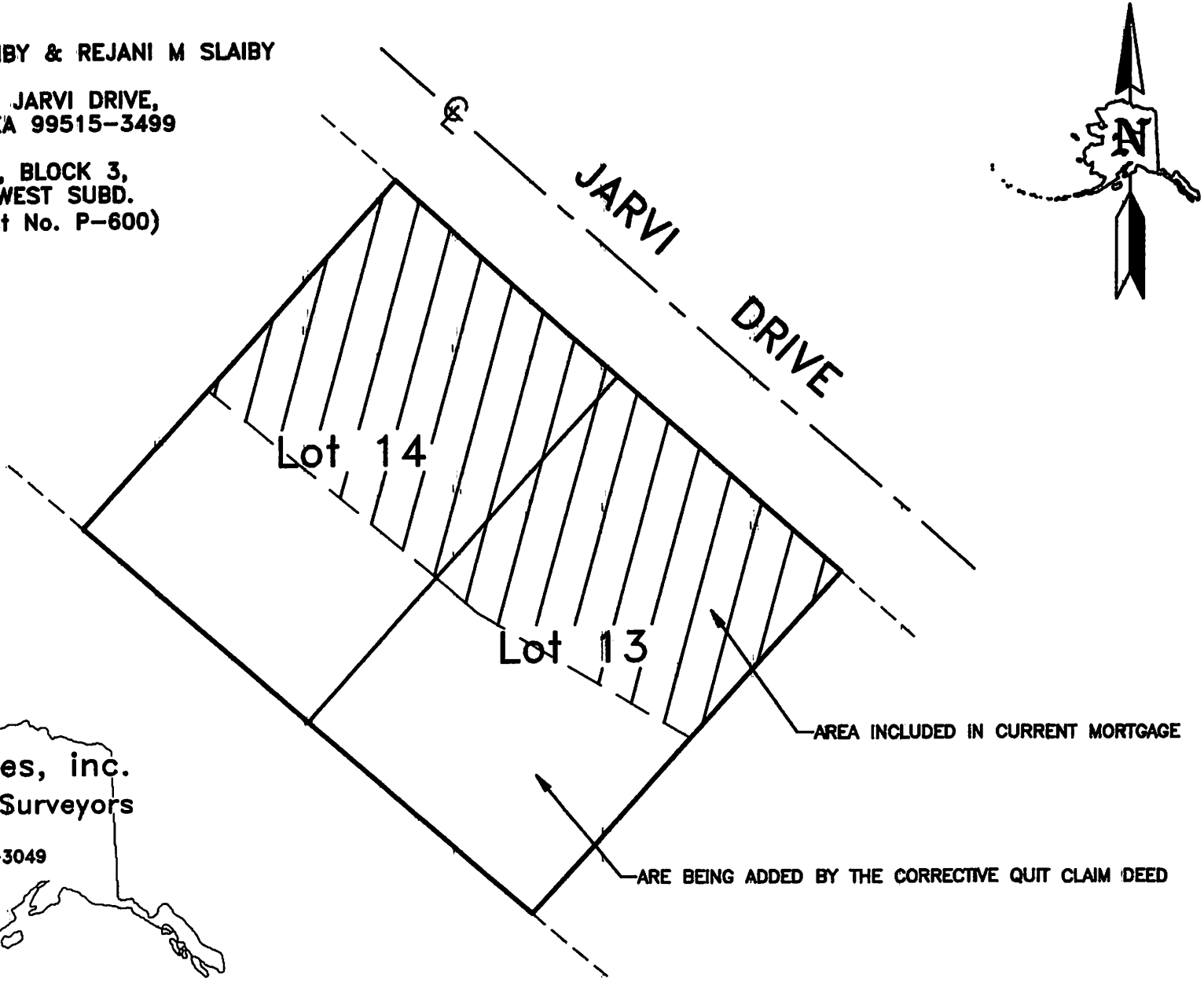
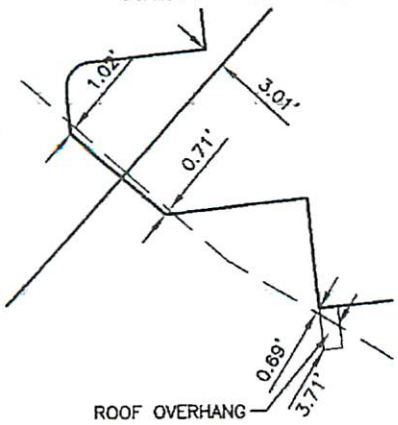


EXHIBIT A
PAGE 2 OF 2

Prepared by
Lang & Associates, inc.
Professional Land Surveyors
11500 Daryl Avenue
Anchorage, Alaska 99515-3049
(907) 522-6476
(907) 522-4625 Fax
ken@langsurvey.com
jonathan@langsurvey.com

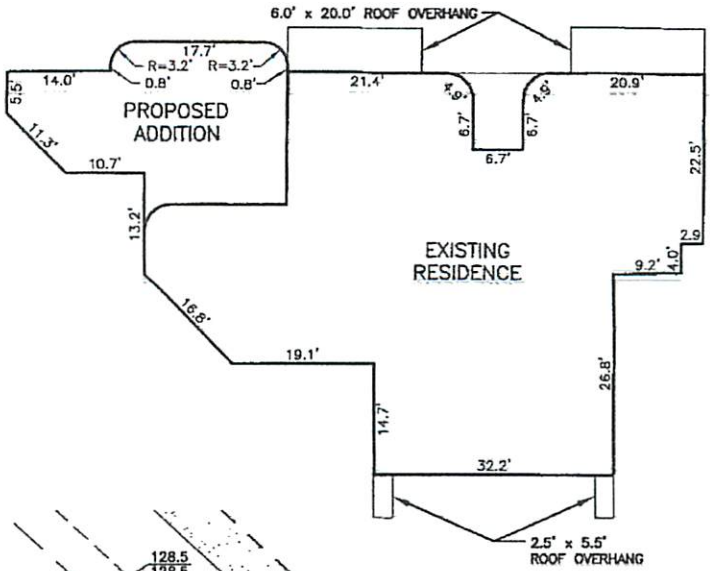
ENCROACHMENT DETAIL

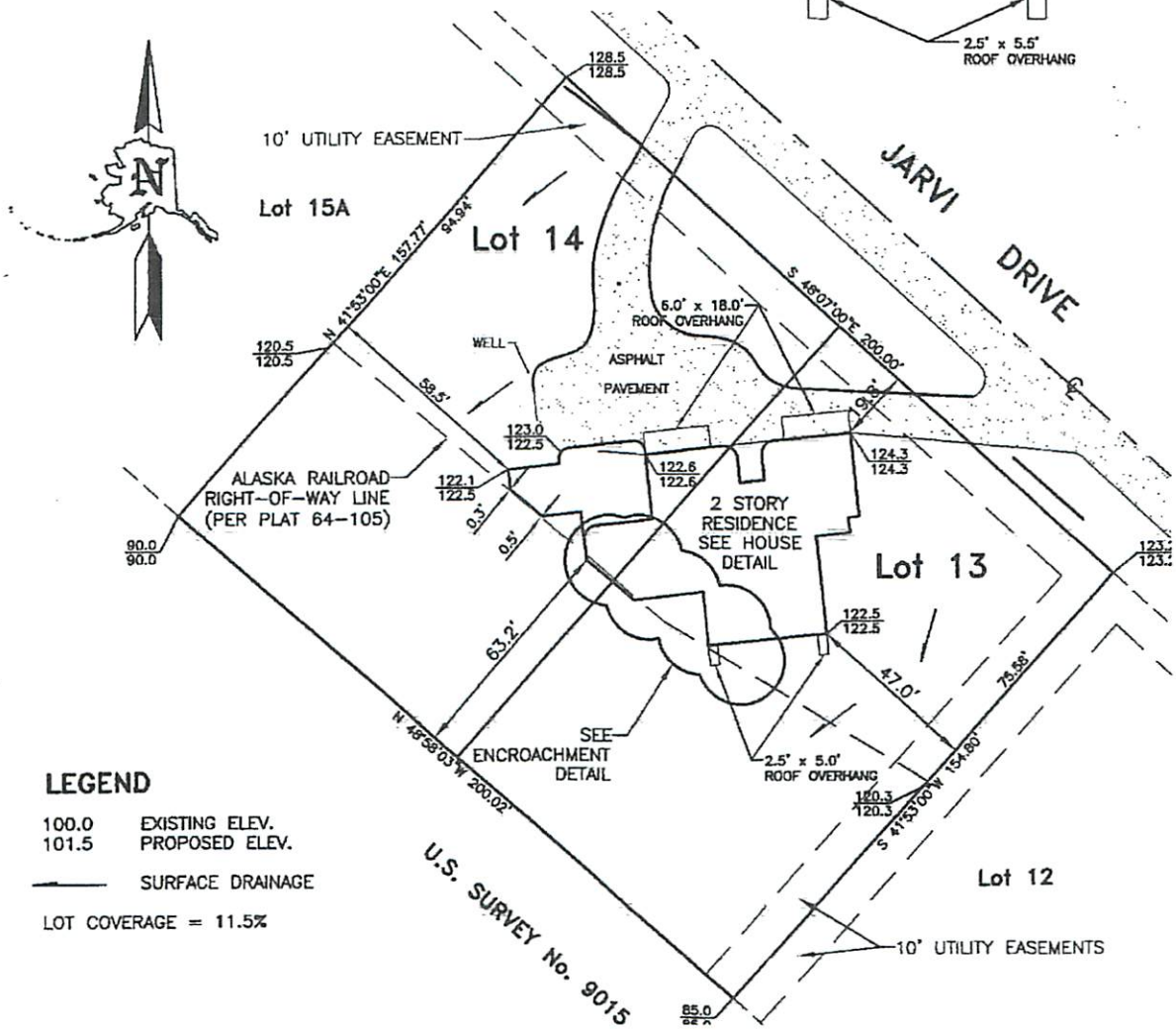
SCALE: 1" = 20'



HOUSE DIMENSION DETAIL

SCALE: 1" = 2





LEGEND

100.0	EXISTING ELEV.
101.5	PROPOSED ELEV.
———	SURFACE DRAINAGE

LOT COVERAGE = 11.5%

EXHIBIT 4
PAGE 3 OF 3

[redacted] '82 APR 22 P3

Anchorage 011615 4—1038-R

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by Edwin A. Jarvi, according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto, for the following described Land:

Seward Meridian, Alaska.

T. 12 N., R. 3 W.,

sec. 29, SE¼SW¼ and SW¼SE¼;

sec. 32, N½NE¼.

The area described contains 160 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Edwin A. Jarvi, and to his heirs the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Edwin A. Jarvi, and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in

RECORD OF PATENTS: Patent Number 1129550

EXHIBIT 5
PAGE 1 OF 2

Vol 52 Page 421

Anchorage 011418

4—1044
(October 1949)

connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

And there is, also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat., 305).

Excepting and reserving, also, to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat., 755), all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in the District of Columbia, the SIXTH day of SEPTEMBER in the year of our Lord one thousand nine hundred and FIFTY and of the Independence of the United States the one hundred and SEVENTY-FIFTH.

For the Director, Bureau of Land Management.

Patent No. 1129889

By Jas F. Nonier
Chief, Patents Section.

U. S. GOVERNMENT PRINTING OFFICE 1—38294-1

2

Anchorage Precinct Anchorage Alaska Nov. 13, 1950
Filed for record 2:30 P.M by Edwin A. Jarvis
Rec'd Rec'd, Dist. Recorder

EXHIBIT 5
PAGE 2 OF 2

65: 13, 020 BOOK 305 PAGE 170
Anchorage Recording District

WARRANTY DEED

THIS INDENTURE, made and entered into this 2nd day of July, 1965, by and between EDWIN A. JARVI and YULA C. JARVI, husband and wife, parties of the first part, hereinafter known as the Grantors, and the UNITED STATES OF AMERICA and its assigns, parties of the second part, hereinafter known as the Grantees,

W I T N E S S E T H:

That the Grantors, for and in consideration of the sum of TWENTY-FOUR THOUSAND ONE HUNDRED FIFTEEN ($24,115.00) DOLLARS, lawful money of the United States of America, and other good and valuable considerations in hand paid by the said Grantees, the receipt of all of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said Grantees the following-described real property situate, lying and being in the Anchorage Recording Precinct, Third Judicial District, State of Alaska, and more particularly described as follows, to-wit:

PARCEL 1

All that portion of the Southwest one-quarter (SW 1/4) of Section Twenty-Nine (29), Township Twelve North (T 12 N), Range Three West (R 3 W), Seward Meridian, Alaska, included within a tract of land described as follows:

BEGINNING at the most westerly corner of Lot Twenty-One (21) in Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof, and running thence North 89°51'30" East 47.81 feet along the northerly line of said Lot Twenty-One (21); thence North 46°45'00" West 233.84 feet; thence North 43°15'00" West 392.94 feet, thence North 39°45'00" West 294.74 feet; thence North 36°35'00" West 294.73 feet; thence South 36°26'20" East 525.41 feet; thence South 40°35'00" East 455.00 feet; thence South 46°28'00" East 204.81 feet to the point of BEGINNING, all bearings being based on the Alaska State Plane Coordinate System, Zone 4.

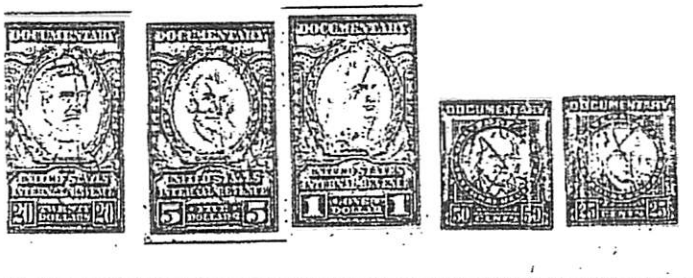
PARCEL 2

Lots Six (6), Eleven (11), and Twelve (12) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof recorded July 17, 1961, under Plat No. P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

PARCEL 3

Lot Ten (10) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska

J. L. McCARREY, JR.
ATTORNEY AT LAW
BOX 1388
ANCHORAGE, ALASKA
BROADWAY 7-8701



BOOK 305 PAGE 171
Anchorage Recording District

PARCEL 4

A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:

All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

The above-described premises are being acquired for the Alaska Railroad, Department of the Interior.

SUBJECT TO the reservations, restrictions and easements now of record.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments and appurtenances, including any alleys, streets, ways, strips or gores abutting or adjoining the land, thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, all and singular, together with the appurtenances and privileges incident thereto, unto the said Grantees forever, and the said Grantors hereby covenant and agree that they are the lawful owners of said premises; that they have the legal right to sell the same, and by these presents do warrant and will forever defend the said Grantees against any and all persons lawfully having or claiming any right, title or interest therein adverse to said Grantees, in the quiet and peaceable possession thereof; that the said premises are free from all encumbrances except any easements, restrictions and reservations of record.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands and seals the day and year first hereinabove written.

RECORDED-FILED 5—
Anch REC. DIST.
DATE 7/2 1965
TIME 11:55 A.M.
Requested by Title

Edwin A. Jarvi
EDWIN A. JARVI

Yula C. Jarvi
YULA C. JARVI

UNITED ~~STATES OF AMERICA~~
THIRD ~~JUDICIAL DISTRICT~~) ss:
STATE OF ALASKA)

THIS IS TO CERTIFY that on this 2nd day of July, 1965, before me, the undersigned, a Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared EDWIN A. JARVI and YULA C. JARVI, Grantors, known to me and known to be the identical individuals named in and who executed the foregoing instrument, and they did acknowledge to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public in and for Alaska
My Commission expires: 12-29-68

RETURN TO
Title Ins. & Trust Co. — Escrow Dept.

J. L. McCARREY, JR.
ATTORNEY AT LAW
BOX 1122
ANCHORAGE, ALASKA
BROADWAY 7-6701

EXHIBIT 6
PAGE 2 OF 2

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

NOV - 4 2

M-37025

Memorandum

To: Secretary
Assistant Secretary for Land and Minerals Management
Assistant Secretary for Water and Science
Director, Bureau of Land Management

From: Solicitor

Subject: Partial Withdrawal of M-36964–*Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way*

This memorandum addresses the scope of a railroad's authority to authorize activities within a right-of-way ("ROW") granted pursuant to the General Railroad Right-of-Way Act of March 3, 1875, 18 Stat. 482 ("1875 Act"). This issue was most recently addressed in Solicitor's Opinion M-36964–*Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way*, 96 I.D. 439 (1989) ("Opinion M-36964")–which opined upon what approvals, if any, a telecommunications company must obtain from the Bureau of Land Management ("BLM") in order to install a fiber optic communications line and associated facilities within existing railroad ROWs granted pursuant to: (i) the Act of July 27, 1866, 14 Stat. 292; (ii) the Act of March 3, 1871, 16 Stat. 573; and (iii) the 1875 Act. While addressing that specific question, Opinion M-36964 also opined more generally about a railroad's authority to authorize activities within those ROWs.

Our review of Opinion M-36964 responds to (1) criticisms of the 1875 Act portion of Opinion M-36964 by a federal District Court in *Home on the Range v. AT&T Corporation*, 386 F. Supp. 2d 999 (D. Ind. 2005), and (2) concerns raised in connection with a proposal by Cadiz, Inc., to construct the Cadiz Water Conservation & Storage Project ("Cadiz Project"), which includes the construction of a 42-mile water conveyance pipeline in the Mojave Desert within the Arizona & California Railroad Company's ("ARZC") 1875 Act ROW.[1] The Acting Assistant Secretary, Water and Science, relied on Opinion M-36964 in 2009 to conclude that the ARZC "may allow others to use [its 1875 Act] ROW for any purpose without the involvement of the

[1] *See also* Cong. Research Service, "Property Rights Related to Railroad Rights of Way Granted to Arizona & California Railroad Company," at 3-4 (Jun. 17, 2009) (questioning Opinion M-36964's conclusions regarding the scope of a railroad's authority within an 1875 Act ROW).

Attachment 1-1

BLM and that no federal authorization or analysis would be required for the construction of the [Cadiz Project's] pipeline" within ARZC's ROW across BLM-administered lands.[2]

For the reasons set forth below, this memorandum withdraws the guidance provided by Opinion M-36964 as it relates to a railroad's rights within an 1875 Act ROW based on our findings that:

- Opinion M-36964's conclusions with respect to the activities that a railroad may undertake, or authorize others to undertake, within an 1875 Act ROW are not consistent with the Act, the relevant legislative history, prior interpretations of the Act, or the established rule that railroad ROW grants are liberally construed in favor of the purposes for which they were enacted, but otherwise are subject to the general rule that any ambiguities in grants of lands from the public domain are to be resolved in favor of the Federal government; and

- Within an 1875 Act ROW, a railroad's authority to undertake or authorize activities is limited to those activities that derive from or further a railroad purpose, which allows a railroad to undertake, or authorize others to undertake, activities that have both railroad and commercial purposes, but does not permit a railroad to authorize activities that bear no relationship to the construction or operation of a railroad.[3]

I. BACKGROUND

A. The 1875 Act

A railroad ROW is a unique property right; it is "a very substantial thing," that has "the attributes of the fee, perpetuity and exclusive use and possession." *Western Union Telegraph Co. v. Pennsylvania R.R.*, 195 U.S. 540, 570 (1904) (internal citations omitted).[4] Railroad ROW grants were created by Congress beginning in the 1850s to encourage railroad construction and, by extension, the settlement of the west. *Great Northern Ry. Co. v. United States*, 315 U.S. 262, 273 (1942). The nature of individual ROW grants, however, is not uniform and depends upon the specific statute authorizing a particular grant. Initially, Congressional policy was to provide lavish grants of lands from the public domain; however, by 1872 this policy "incurred great public disfavor" causing Congress to provide more limited grants to facilitate railroad construction. *Id.* at 273-74. The 1875 Act provides in pertinent part:

> Sec. 1. That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any

---

[2] The Acting Assistant Secretary's conclusion was contained in a letter, dated January 13, 2009, which responded to a letter from Senator Feinstein of California inquiring about what federal approvals or environmental analyses would be necessary to allow the construction, operation and maintenance of the Cadiz Project. On June 30, 2009, Senator Feinstein requested that the Department review Opinion M-36964.

[3] Neither this memorandum nor Opinion M-36964 addresses the questions of: (i) what interest the United States retains in railroad ROWs granted pursuant to the 1875 Act, or (ii) what happens to such ROWs after they are no longer in active use. The focus of this memorandum is on a railroad's rights within an active 1875 ROW.

[4] The Court in *Western Union Telegraph* looked at the interrelationship between a railroad ROW act and an act giving certain eminent domain authorities to telegraph companies, not the scope of the 1875 Act.

State or Territory ... or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

Sec. 2. That any railroad company whose right of way, or whose track or road-bed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of the said canyon, pass, or defile, for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade. ...

Sec. 4. That any railroad company desiring to secure the benefits of this act, shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way ...

18 Stat. at 482-83.

B. Canon Of Construction Applicable To Railroad ROW Grants

The established rule governing the interpretation of grants of federal lands holds that "public grants are construed strictly against the grantees" and that any doubts "are resolved for the Government, and not against." *Leo Sheep Co. v. United States*, 440 U.S. 668, 682 (1979). However, the Supreme Court has cautioned that this canon does not "apply ... in its full vigor to grants under the railroad acts." *Id.* Due to the unique nature of those grants, the Supreme Court has articulated a modified version of this familiar canon which states:

> When an act, operating as a general law, and manifesting clearly the intention of Congress to secure public advantages, or to subserve the public interests and welfare by means of benefits more or less valuable, offers to individuals or to corporations as an inducement to undertake and accomplish great and expensive enterprises or works of a quasi public character in or through an immense and undeveloped public domain, such legislation stands upon a somewhat different footing from merely a private grant, and should receive at the hands of the court a more *liberal construction in favor of the purposes for which it was enacted.*

Id. at 683 (emphasis added). Nevertheless, while railroad ROW grants are to be liberally construed to carry out their purpose, they are still "subject to the general rule of construction that

any ambiguity in a grant is to be resolved favorably to a sovereign grantor – 'nothing passes but what is conveyed in clear and explicit language.'" *Great Northern*, 315 U.S. at 272 (internal citations omitted); *see also United States v. Union Pacific*, 353 U.S. 112, 116 (1957) ("land grants are construed favorably to the Government, [such] that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.").

C. Prior Interpretations Of The 1875 Act

Consistent with the approach to statutory interpretation outlined above, the Supreme Court concluded that the 1875 Act "clearly grants only an easement, and not a fee [interest]." *Great Northern*, 315 U.S. at 271.[5] The Court observed that the purpose of the 1875 Act was to "permit the construction of railroads through the public lands and thus enhance their value and hasten their settlement," but expressly noted that "[t]he achievement of that purpose does not compel a construction of the right of way grant as conveying a fee title to the land ... [as] a railroad may be operated though its right of way be but an easement." *Id.* at 272. The Court based its conclusion that the 1875 Act granted only an easement on two considerations.

First, the *Great Northern* Court looked to the text of the 1875 Act itself. It observed that "Section 1 [of the Act] indicates that the right is one of passage since it grants 'the,' not a, 'right of way' through the public lands." *Id.* at 271. Similarly, the Court observed that Section 2 also supported the conclusion that the right conveyed by the 1875 Act was "one of use and occupancy only, rather than the land itself" based on its declaration "that any railroad whose right of way passes through a canyon, pass or defile 'shall not prevent any other railroad company from the *use and occupancy* of the said canyon, pass, or defile, for the purposes of its road, *in common* with the road first located.'" *Id.* (emphasis in original). Finally, the Court found "especially persuasive," the statement in Section 4 that "all such lands *over* which such right of way shall pass shall be disposed of *subject to* such right of way." *Id.* (emphasis in original). The Court concluded that "[a]pter words to indicate the intent to convey an easement would be difficult to find," because the "reserved right to dispose of the lands subject to the right of way is wholly inconsistent with the grant of a fee." *Id.*[6] The text of Section 4 is noteworthy because the railroad ROW statutes that preceded the 1875 Act contained no such provision. *Id.* at 278.

Second, the Court considered the legislative and policy changes that occurred contemporaneously with the passage of the 1875 Act. *Id.* at 272-77. The Court explained that prior to 1871 Congressional policy was geared towards "subsidizing railroad construction by lavish grants from the public domain." *Id.* at 273. As a result, courts interpreting those pre-1871

---

[5] *See also Himonas v. Denver & R.G.W.R. Co.*, 179 F.2d 171 (10th Cir. 1949) (same). The dispute in *Great Northern* was whether the railroad or the United States retained the rights to the mineral estate underlying an 1875 Act ROW. The Supreme Court held that those rights were retained by the United States, based in part on its conclusion that an 1875 Act ROW was merely an easement. Prior to *Great Northern*, the Supreme Court had indicated that the 1875 Act conveyed a limited fee. *Rio Grande W. Ry. Co. v. Stringham*, 239 U.S. 44, 47 (1915). However, *Great Northern* explicitly overruled this interpretation, concluding that the *Stringham* decision was "inconsistent with the language of the [1875] Act, its legislative history, its early administrative interpretation and the construction placed on it by Congress in subsequent legislation." *Great Northern*, 315 U.S. at 279.

[6] This interpretation is also consistent with the Act's legislative history. *Great Northern*, 315 U.S. at 272 n3 (*citing* Cong. Globe, 42d Cong., 2d Sess., 2137 (1872)) (the 1875 Act "grants no land to any railroad company").

railroad ROW statutes have concluded that they granted "limited fee" interests in the lands described by the ROWs. By the 1870s, however, "[t]his policy incurred great public disfavor," and in 1872 the House adopted a resolution, dated March 11, 1872, which stated:

> *Resolved*, That in the judgment of this House the policy of granting subsidies in public lands to railroads and other corporations ought to be discontinued, and that every consideration of public policy and equal justice to the whole people requires that the public lands should be held for the purpose of securing homesteads to actual settlers, and for educational purposes, as may be provided by law.

Id. at 273-74 (*citing* Cong. Globe, 42d Cong., 2d Sess., 1585 (1872)). Based on this change, after 1871 "outright grants of public lands to private railroad companies seem to have been discontinued." *Id.* at 274. In its place, post-1871, Congress encouraged the "development[] of the Western vastnesses" through the 1875 Act by "grant[ing] rights *to lay track* across the public domain," *Id.* at 274-75, but that the "right[s] granted ... [were] of use and occupancy only." *Id.* at 270 (observing that Section 2 of the 1875 Act confirms this conclusion) and 275 ("It is improbable that Congress intended by [the 1875 Act] to grant more than a right of passage.").[7]

The *Great Northern* Court also observed that its conclusion about the nature of the 1875 ROW grants was confirmed by the Department's first interpretation of the Act, contained in the general ROW circular of January 13, 1888, 12 L.D. 423. *Id.* at 276. That circular concluded that "[t]he act of March 3, 1875, is not in the nature of a grant of lands; it does not convey an estate in fee, either in the 'right of way' or the grounds selected for depot purposes. It is a *right of use only*, the title still remaining in the United States." 12 L.D. at 428 (emphasis added). This interpretation was confirmed in regulations adopted by the Department on May 21, 1909. 37 L.D. 787, 788 ("A railroad company to which a right of way is granted [under the 1875 Act] does not secure a full and complete title to the land on which the right of way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose.").[8] Lower courts have recently affirmed the more limited nature of the 1875 Act ROW grants. *See Home on the Range*, 386 F. Supp. 2d at 1017 (observing that Section 4 of the 1875 Act is wholly inconsistent with the grant of a fee interest); *Hash v. United States*, 403 F.3d 1308 (Fed. Cir. 2005) (same).[9] And while the Supreme Court has questioned the need for *Great*

---

[7] *Wyoming v. Andrus*, 602 F.2d 1379, 1382 (10th Cir. 1979) ("The 1875 Act is ... significant in that it reduced the quality of the grant to the railroads.").

[8] The *Great Northern* court did note that there had been a shift in the regulatory interpretation of the 1875 Act towards "describe[ing] the right as a 'base or qualified fee'." 315 U.S. at 276. The Court, however, dismissed that subsequent interpretation and did not "regard [it] ... as binding on the Department ... since it was impelled by what ... [the court] regard[ed] as inaccurate statements in [*Rio Grande W. Ry. Co. v. Stringham*, 239 U.S. 44, 47 (1915)]."

[9] Unlike the ROWs at issue in Opinion M-36964 and *Home on the Range*, the ROW at issue in *Hash* was found by the court to have been abandoned. *See Hash*, 403 F.3d at 1318; *Ellamae Phillips Co. v. United States*, 564 F.3d 1367, 1370 (Fed. Cir. 2009). As a result, one of the questions addressed by the court in *Hash* was what interest was retained by the United States in the 1875 Act ROW at issue there. While that specific question is outside the scope of this opinion, *see* note 3, the Federal Circuit has narrowed the reach of the holding in *Hash* to the specific facts of that case. *See Ellamae Phillips*, 564 F.3d at 1373-74. As noted below, other courts confronted with the same question as the Federal Circuit in *Hash* and *Ellamae Phillips* have concluded that the United States retains a reversionary interest in an 1875 Act ROW. *See, e.g., Idaho v. Oregon Short Line R.R. Co.*, 617 F. Supp. 207, 212 (D. Idaho 1985); *Marshall v. Chicago & Northwestern Transp. Co.*, 31 F.3d 1028, 1032 (10th Cir. 1994).

Northern's "easement" versus "limited fee" distinction, it has only done so in the context of resolving the question of which party held title to the mineral estate under a ROW granted pursuant to the Act of July 1, 1862, 12 Stat. 489. *See Union Pacific*, 353 U.S. at 119. After the *Union Pacific* decision, *Great Northern's* distinction between pre-1871 and 1875 Act ROWs remains relevant to determining what rights a railroad received under the 1875 Act relative to the government grantor. [10]

Based on the preceding, we conclude that the rights conveyed by the 1875 Act are narrower than the pre-1871 acts, contrary to Opinion M-36964's conclusion that a railroad received "an interest tantamount to fee ownership" in the 1875 Act ROWs. The implication of this conclusion and analysis of the rights that accompany an 1875 Act ROW are discussed in Section II below.

II. ANALYSIS

A. The Conclusions In Opinion M-36964 With Respect To The 1875 Act Are Inconsistent With The Act, Its Legislative History, Prior Interpretations, And The Applicable Canons of Statutory Construction

Opinion M-36964 addressed the specific question of whether MCI Telecommunications Corporation ("MCI") had to obtain a ROW grant or permit from the BLM in order to install a fiber optic communications line and associated equipment shelters within existing railroad ROWs granted to the Southern Pacific Transportation Co. ("Southern Pacific"), or its predecessors, under various railroad ROW acts.[11] Although Opinion M-36964 addresses the specific question presented by MCI and Southern Pacific, per its terms "it is intended to provide general guidance in similar situations." 96 I.D. at 439.

Opinion M-36964 concluded that railroad ROWs granted pursuant to the two pre-1871 railroad acts at issue "conveyed a 'limited fee' interest in the [ROW],"[12] and as such that those pre-1871 ROWs were "privately owned, except for reserved minerals, [and] not subject to the administrative jurisdiction of th[e] Department." 96 I.D. at 444-45, 450.[13] With respect to the 1875 Act grants, Opinion M-36964 concluded that those grants carried with them "the right to

---

[10] Similarly, while the significance of the shift in Congressional policy identified in *Great Northern* has been questioned in the academic literature, *see, e.g.*, Darwin P. Roberts, *The Legal History of Federally Granted Railroad Rights-of-Way and the Myth of Congress's "1871 Shift"*, 82 U. COLO. L. REV. 85 (2011), the *Great Northern* court's analysis has not been rejected or questioned by subsequent courts.

[11] While MCI's line was primarily a commercial trunk line, a portion of its capacity was dedicated to the railroad.

[12] The limitations on the "limited fee" created by the pre-1871 grants are (i) that the mineral rights underlying them were reserved to the United States, and (ii) that they were subject to an "implied condition of reverter in the event that the company ceased to use or retain the land" for railroad purposes. 96 I.D. at 444.

[13] Given the multitude of railroad ROW acts, especially pre-1871, it should be noted that the key factor in determining what rights a railroad has within a particular ROW is not determined by the date the ROW grant was issued, but rather by the terms and interpretation of the act establishing the grant. For purposes of this analysis, we do not disagree with the conclusions articulated by Opinion M-36964 with respect to the pre-1871 grants at issue there, but note that courts have found certain other pre-1871 grants to convey lesser interests. *See, e.g., Energy Transp. Sys., Inc.*, v. *Union Pac. R.R. Co.*, 606 F.2d 934, 936-38 (10th Cir. 1979) ("*ETSI I*") (concluding that Section 2 of the Pacific Railroad Act of 1862 and 1864 conveyed a ROW only, while Section 3 conveyed a fee interest); *Energy Transp. Sys., Inc.*, v. *Union Pac. R.R. Co.*, 619 F.2d 696 (8th Cir. 1980) ("*ETSI II*") (same).

7
6 16 Attachment 1-6

exclusive use and occupancy of the land," such that the rights conveyed by those grants were "unlike an ordinary common-law easement ... [and were] tantamount to fee ownership." According to Opinion M-36964, the interest conveyed under the 1875 Act includes the right to authorize others to use the surface, subsurface, and airspace when not inconsistent with railroad operations, analogous to the authority available to the holders of the pre-1871 ROWs at issue. *Id.* at 447, 450, 451 (internal citation omitted). In reaching those conclusions, Opinion M-36964 overruled a July 5, 1985, memorandum and a February 24, 1986, letter by the Associate Solicitor, Energy and Resources, addressing a proposal by U.S. Telecom, Inc., to install a buried communications cable within railroad ROWs granted under the Act of July 1, 1862, and the 1875 Act. 96 I.D. at 440-41. The Associate Solicitor's 1985 memorandum had opined that such ROWs were surface easements; that the subsoil was unappropriated public land; and that the railroad could not authorize third parties to install buried systems in the subsoil, especially where such systems were not railroad-related. 96 I.D. at 440-41.

Opinion M-36964's conclusion with respect to the scope of an 1875 Act ROW grant has been the subject of some debate since its issuance, and was specifically criticized by the *Home on the Range* court. In that case, the court found that Opinion M-36964 "did not cite any law for th[e] proposition" that 1875 Act grants were tantamount to fee ownership and faulted the Opinion for "effectively ignor[ing] the Supreme Court's decision in *Great Northern*, which took pains to distinguish between the 'limited fee' granted by the pre-1871 statutes and the easements granted by later statutes." *See Home on the Range*, 386 F. Supp. 2d at 1022. To support its conclusions regarding the 1875 Act, Opinion M-36964 cited only two cases – *Great Northern*, 315 U.S. 262 and *Idaho v. Oregon Short Line R.R. Co.*, 617 F. Supp. 207 (D. Idaho 1985). Opinion M-36964's interpretation of those cases is incorrect.

Opinion M-36964 asserts that the Supreme Court in *Great Northern* confirmed "the significant rights of the 1875 Act grantees, i.e., use and occupancy ... [and] did not limit the grantees' rights to those of a *common-law* easement." 96 I.D. at 447 (emphasis in original). While we agree with the observation that an 1875 Act ROW is not akin to a common law easement, that observation does not, as M-Opinion 36964 concludes, mean that the rights in a ROW conveyed by the 1875 Act are the same as those conveyed by the pre-1871 railroad ROW acts. Without any analysis, Opinion M-36964 relies on *Great Northern's* acknowledgment that a railroad ROW is a unique property right to support the proposition that the 1875 Act grants an interest tantamount to a fee. 96 I.D. at 447. This leap is directly at odds with one of the express holdings of the case, namely that the 1875 Act conveys an easement and not a fee interest.

Opinion M-36964's reliance on *Oregon Short Line* is also misplaced. As the *Home on the Range* court explained, the *Oregon Short Line* case did not deal with the question of the scope of an 1875 ROW; rather, it addressed "only the use of the ... [ROW] itself." *Home on the Range*, 386 F. Supp. 2d. at 1019. The court in *Oregon Short Line* was asked to determine whether the United States retained a reversionary interest in an 1875 Act ROW pursuant to 43 U.S.C. § 912. In concluding that the United States retained such an interest, the court also affirmed that the 1875 Act did not "convey to the railroads a fee interest," but rather a ROW "suitable for railroad purposes," *Oregon Short Line*, 617 F. Supp at 212. This holding is at odds with Opinion M-36964's characterization of the case as supporting its conclusion that the 1875 Act conveyed an interest "tantamount to a fee." 96 I.D. at 447.

Opinion M-36964 also relies on the following statement by Justice Frankfurter in his dissent in *Union Pacific* to support its analysis of the 1875 Act:

> [*Northern Pacific Ry. v. Townsend*, 190 U.S. 267 (1903)] ... *also serves to refute the suggestion that the railroad in its use of the right of way is confined to what in 1957 is narrowly conceived to be "a railroad purpose"* . . . The Court [in *Townsend*] recognized that the land could revert to the grantor only in the event that it was used in a manner inconsistent with the operation of the railroad . . . *Had Congress desired to make a more restrictive grant of the right of way, there would have been no difficulty in making the contingency for the land's reversion its use for any purpose other than one appropriately specified.*

96 I.D. at 446 (emphasis in original) (*quoting Union Pacific*, 353 U.S. at 131-32). While Justice Frankfurter's statement in isolation suggests that railroad ROW grants are broad, it was made in the dissent in reference to a pre-1871 ROW grant, as Opinion M-36964 acknowledges. 96 I.D. at 446. Moreover, in the same dissent, Justice Frankfurter observed that the 1875 Act "was significantly different from the Act of 1862 and its companions" in terms of what they granted a railroad. *Union Pacific*, 353 U.S. at 127-130; *see also Home on the Range*, 386 F. Supp. 2d. at 1022. Thus, Justice Frankfurter's dissent does not provide even implicit support for Opinion M-36964's conclusion with respect to the 1875 Act.

Finally, in addition to being unsupported by the case law, Opinion M-36964's construction of the 1875 Act is also inconsistent with the canons of construction holding that while railroad ROW grants are to be liberally construed with the respect to the purpose for which they were enacted, they are nevertheless still subject to the general rule that any ambiguities in grants of federal lands are to be resolved in favor of the United States. Opinion M-36964 reasoned that because 1875 Act grants carried with them "the right to exclusive use and occupancy of the land" that was "unlike an ordinary common-law easement," they therefore conveyed a property right "tantamount to fee ownership." 96 I.D. at 447, 450 (internal citation omitted). Opinion M-36964's interpretation of the scope of a railroad's "exclusive use and occupancy" of the surface and non-mineral subsurface of an 1875 Act ROW is inappropriate for two reasons. First, it impermissibly extends the scope of such ROW grants beyond the purposes for which the 1875 Act was enacted, namely the "construction of ... [a] railroad." 18 Stat. at 482. Second, Opinion M-36964's conclusion that a railroad's "exclusive use and occupancy" of an 1875 Act ROW allows it to undertake or authorize *any* activity that is *not inconsistent* with railroad purposes ignores judicial precedent which establishes that the railroad's "exclusive use and occupancy" is more limited – i.e., it extends only to activities that derive from or further a railroad purpose. By interpreting the 1875 Act as granting such broad rights, Opinion M-36964 construed it in a manner that is not favorable to the government in direct contradiction to the rule that grants of federal lands are to be construed strictly against the grantees. Moreover, Opinion M-36964's construction is inconsistent with the Act's text and legislative history. *See* Section I(C) above.

Based on the foregoing, we conclude that Opinion M-36964's interpretation of the 1875 Act is inconsistent with the Act itself, the applicable legislative history, Supreme Court precedents, and the applicable canons of statutory construction. As explained above, the purpose of the 1875 Act was to provide a ROW for "railroad purposes." Construing the 1875 Act, as we

must, in a manner most favorable to both the purposes for which it was enacted and to the Government, leads to the conclusion that a railroad's exclusive use and occupancy of such ROWs includes all those activities that either derive from or further a *railroad purpose* (*see* Section I above), but does not include, as Opinion M-36964 opines, rights that are "tantamount to a fee." *See Home on the Range*, 386 F. Supp. 2d at 1024. Therefore, we withdraw that portion of Opinion M-36964 that relates to the scope of the 1875 Act. The implications of this conclusion are addressed in the next section.

B. A Railroad's Authority To Authorize Other Activities Within An 1875 Act ROW Is Limited To Those Activities That Derive From or Further A Railroad Purpose

While the *Home on the Range* court confirmed that the scope of an 1875 Act ROW grant is limited to those activities that are "derived from or further a railroad purpose," 386 F. Supp. 2d at 1024, it did not attempt to define "railroad purpose." Section 1 of the Act sets forth a list of the rights accompanying the grant, including the "right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side tracks, turn-outs, and water-stations." 18 Stat. at 482. While the general canon of statutory construction for grants of federal land would conclude that activities not expressly identified in that list would be prohibited, under the more liberal canon applied to railroad ROW grants courts have concluded that railroads were given as part of their authorization to construct, the right to conduct whatever activities would be necessary to construct and operate said railroad. Therefore, courts confronted with such questions examine the activity in question to determine whether it "derive[s] from or further[s] a railroad purpose"[14] to determine whether it is within the scope of the ROW grant. *Home on the Range*, 386 F. Supp. 2d at 1024. Some courts and commentators refer to this inquiry as the "incidental use doctrine." *See, e.g., Mellon v. S. Pac. Transp. Co.*, 750 F. Supp. 226, 230 (D. Tex. 1990).

This inquiry starts with the basic premise that a railroad has the exclusive right to utilize the entirety of its ROW for the purposes of operating a railroad, which means "the free and perfect use of the surface of the land ... and ... as much above and below its surface as may be needed [to] ... further[] the business of the railroad." 65 AM JUR 2D RAILROADS § 75;[15] *Mellon*, 750 F. Supp. at 230 ("[A] railroad may make many uses of its right-of-way including the building of side tracks, building, telegraph lines, and other structures necessary for its business.")

---

[14] This is in contrast to ROWs granted under Title V of the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1761, *et seq.*, where the scope of the grant is explicitly defined in the ROW grant itself.

[15] Railroad operations include "the right to tunnel the land, to cut embankments, to grade and make roadbeds, and to operate and maintain a railroad with one or more lines of track with proper stations, depots, turnouts, and other appurtenances of a railroad," unless a particular activity is specifically prohibited under the terms of the grant. 65 AM JUR 2D RAILROADS § 75; *see also* 10-78A POWELL ON REAL PROPERTY § 78A.14; *see also* Section 1 of the 1875 Act, 18 Stat. 482. They also include the right to take material, earth, stone, and timber from the public lands adjacent to the roadbed that are necessary for the construction of the railroad. *See, e.g.*, 18 Stat. at 482. And, while generally such ROWs included exclusivity of use, there are limitations on that exclusivity in the 1875 Act context. *See* Section 2 of the 1875 Act, 18 Stat. at 482 (stating that a railroad with a ROW through a canyon, pass, or defile, "shall not prevent any other railroad company from the use and occupancy of the said canyon, pass, or defile.").

9.7.16 Attachment 1-9

(internal citations omitted);[16] *Union Pac. Ry. v. Chicago, R.I. & P. Ry.*, 163 U.S. 564, 581 (1896); *ETSI v. Union Pacific R.R.*, 435 F. Supp. 313, 317 (D. Wyo. 1977), *aff'd*, 606 F.2d 934 (10th Cir. 1979) (a railroad may use its ROW for "all uses incidental to railroad purposes"). Determining whether an activity "derives from or furthers a railroad purpose" requires a fact specific case-by-case inquiry. Courts conducting such inquires have allowed railroads to:

1. Run telephone lines (and previously telegraph lines) to "provide for communications between stations." 10-78A POWELL ON REAL PROPERTY § 78A.14; *Home on the Range*, 386 F. Supp. 2d at 1021 (observing in dicta that an 1875 Act ROW included the right to install "telegraph or other communication technology for the purpose of facilitating the operation of the railroad itself.");[17] *see, e.g., St. Louis, Iron Mountain & S. Ry. Co. v. Cape Girardeau Bell Tel. Co.*, 114 S.W. 586, 587 (Mo. Ct. App. 1908) (same);[18] *Grand Trunk R.R. Co. v. Richardson*, 91 U.S. 454, 468 (1876) (observing that it does not matter if the activity in question "may also be for the convenience of others" in addition to the railroad);[19]

2. Construct structures, such as commercial warehouses, where convenient, to facilitate the delivery of freight that may ultimately be shipped on the railroad. *See, e.g., Miss. Inv. Inc. v. New Orleans & N.E.R. Co.*, 188 F.2d 245, 247 (5th Cir. 1951) (concluding that a warehouse for receiving freight constructed within a railroad ROW easement was "consistent with the purposes for which the easements were acquired [i.e., railroad purposes].");[20]

---

[16] The court in *Mellon* addressed a challenge to another segment of the same MCI fiber optic line at issue in Opinion M-36964. While the court in *Mellon* did not specifically characterize the nature of the railroad ROW grant at issue there, it held that the railroad had the authority to authorize the installation of the fiber optic line within its ROW because the line was incidental to railroad operations as it was used, in part, to provide communication capacity to the railroad. *See generally Mellon*, 750 F. Supp. at 230; *see also Long Beach v. Pac. Elec. Ry. Co.*, 283 P.2d 1036, 1038 (Cal. 1955) ("railroads may use their rights of way for certain commercial activities," so long as "they contribute to the railroad's business.") (internal citations omitted).

[17] It should be noted that in *Home on the Range*, the court specifically observed that AT&T offered no evidence to suggest that its fiber optic line in any way furthered the purpose of the railroad itself. 386 F. Supp. 2d at 1021.

[18] The court in *Cape Girardeau*, construing a railroad's rights within a state railroad ROW that had been deemed to grant an easement, stated that "telegraph and telephone are conveniences so essential, if not indispensable to the purposes of a railroad, that a railroad company may establish and construct one or both along the line of its right of way, to be used in the prosecution of its business in operating the road, and such use, essential as it is, is not an additional servitude upon the fee," *Cape Girardeau*, 114 S.W. at 587, and that "the mere commercial use of the telephone under the circumstances mentioned, is entirely consistent and in no manner interferes with the railroad ... easement." *Id.* at 590.

[19] *Compare The Am. Tel. & Tel. Co. of Baltimore City v. Pearce*, 18 A. 910, 912 (Md. 1889) ("a line of telegraph on a railroad right of way is an *additional burden*, unless constructed for the use of the railroad company in the operation of its road and dispatch of its business.") (internal citations omitted; emphasis in original), *and W. Union Tel. Co. v. Nashville, C. & St. L., Ry. Co.*, 237 S.W. 64, 89 (Tenn. 1921) (observing that a railroad company operating within a ROW easement was not "entitled to operate a commercial telegraph along its right of way entirely disconnected from its own business.").

[20] *Grand Trunk*, 91 U.S. at 468; *Or. Short Line R. Co. v. Ada County*, 18 F. Supp. 842 (D. Idaho 1937) (same); *see also* Solicitor's Opinion M-36016, *Lease of Railroad's Station Grounds at Parker*, Arizona (1949) (recognizing that warehouses for receiving freight constitute a use incidental to railroad purposes); Railroad Right of Way – Lease for

3. String power lines. *Long Beach v. Pac. Elec., Ry. Co.*, 283 P.2d 1036 (Cal. 1955) (power lines necessary for operation of electric railroad);[21] and

4. Construct combined bulk and retail oil facilities. *Mitchell v. Ill. Cent. R.R. Co.*, 51 N.E.2d 271 (Ill. 1943) (affirming construction of a facility within a railroad ROW easement for the receipt and shipment of bulk oil via the railroad, where such facility also sold oil to retail customers).

These precedents establish that railroads have the right to undertake a range of activities within their ROWs, including commercial activities, so long as the activity is derived from or furthers a railroad purpose consistent with the discussion above. A railroad's right to undertake activities within an 1875 Act ROW includes the right to authorize other parties to undertake those same activities. *See, e.g., Grand Trunk*, 91 U.S. at 468 ("[I]f the [railroad] ... might have put up the buildings, why might it not license others to do the same thing for the same object ...?"). For example, in *Grand Trunk* the freight warehouse that was determined to be related to a railroad purpose was constructed by a third party under a license from the railroad. *See also Miss. Inv. Inc.*, 188 F.2d at 247 (a third party warehouse authorized by the railroad was "not so foreign to railroad purposes as to constitute [an] ... additional servitude not permissible under the right ... acquired for railroad purposes.").[22] Consistent with these cases, Opinion M-36964 affirmed that a railroad can authorize a third party to undertake any activity within a railroad ROW that the railroad itself would be able to undertake. 96 I.D. at 446;[23] *see also* Section II(C) below.

Based on the preceding, we conclude that Opinion M-36964's assertion that a railroad has the broad authority to approve any activity within an 1875 Act ROW so long as it is not inconsistent with railroad operations, 96 I.D. at 450-51, is incorrect because it does not require a demonstration that such activities derive from or further a railroad purpose. Therefore, Opinion M-36964's conclusion about the types of activities that may be authorized by a railroad in an 1875 Act railroad ROW is hereby withdrawn consistent with the analysis above. As a result, any activity undertaken or authorized by a railroad on public lands within an 1875 Act ROW that does not derive from or further a railroad purpose would require authorization from the Department.[24]

Warehouse Purposes, 29 L.D. 569 (1900) (same); *Garry v. Atchison Topeka and Santa Fe Ry. Co.*, 378 P.2d 609 (NM 1889).

[21] *Compare with Tompkins v. Atl. Coast Line. R. Co.*, 79 S.E.2d 41, 47 (Ga. Ct. App. 1953) ("The grant of an easement for railroad purposes does not include an easement for an electric-power transmission line, unconnected with the operation of the railroad.") (internal citations omitted); *Muncie Elec. Light Co. v. Joliff*, 109 N.E. 433 (Ind. Ct. App. 1915) (same).

[22] *See also Hartford Ins. Co. v. Chicago, M. & S.P. Ry.*, 175 U.S. 91, 99 (1899); *Chicago, R.I. & P. Ry.*, 163 U.S. at 581; *Mitchell*, 51 N.E.2d at 275.

[23] Opinion M-36964's conclusion with respect to the authorization of third party activities by a railroad is not affected by this withdrawal of the 1875 Act portion of that Opinion.

[24] *See, e.g., infra* notes 19 and 21; *see also ETSI II*, 619 F.2d at 700 (concluding that the State of Nebraska's interest in the subsurface of the servient estate underlying a railroad ROW was sufficient to "permit the state to convey to ETSI a pipeline easement" underneath the railroad ROW). We would note that in circumstances where the authority to undertake or authorize a specific activity lies with the servient estate owner, and not the railroad, such an activity

C. Implications Of This Memorandum For The Activities Specifically Referenced In Opinion M-36964

Based on this withdrawal of Opinion M-36964's conclusion with respect to the 1875 Act, we analyze the implications of the withdrawal on the activities specifically addressed in Opinion M-36964. As noted above, Opinion M-36964 considered the specific question of what approvals, if any, MCI had to obtain from the BLM in order to install a fiber optic communications line and associated facilities along Southern Pacific's railroad ROWs across BLM-administered lands, including ROWs granted pursuant to: (i) the Act of July 27, 1866, 14 Stat. 292; (ii) the Act of March 3, 1871, 16 Stat. 573; and (iii) the 1875 Act. As explained above, this Opinion does not alter the conclusions of Opinion M-36964 with respect to the 1866 or 1871 act ROWs.

With respect to the fiber optic line installed along Southern Pacific's 1875 ROW, we find that the outcome reached by Opinion M-36964 was correct, namely that the installation of the line was within the scope of the railroad's authority to authorize, but that the basis given for that conclusion, as set forth above, was incorrect. MCI demonstrated that its fiber optic line, in addition to providing commercial communication services, also furthered railroad operations. Prior to the issuance of Opinion M-36964, MCI provided a letter to the Department from Southern Pacific which stated that Southern Pacific "will use the fiber optic capacity it receives from MCI to improve the efficiency of its own communications systems, and thereby improve the safety of its operations."[25] Such evidence demonstrates that MCI's line furthered, at least in part, a railroad purpose, as required by the incidental use doctrine, and therefore, Southern Pacific had the authority to approve the installation of MCI's line in its ROW across BLM-administered lands without approval from the Department.

III. CONCLUSION

Based on the foregoing analysis, we withdraw that portion of Opinion M-36964 containing conclusions with respect to the scope of a railroad's authority within an 1875 ROW.[26] This withdrawal is based on our findings that:

- Opinion M-36964's conclusions with respect to the activities that a railroad may undertake, or authorize others to undertake, within an 1875 Act ROW are not consistent with the Act, the relevant legislative history, prior interpretations of the Act, or the

---

cannot interfere with the railroad's use of the ROW for railroad purposes. *See, e.g., ETSI I*, 606 F. 2d at 938; *ETSI II*, 619 F.2d at 696 n. 4, 697.

[25] Letter from Southern Pacific Transportation Company, Roger W. Pearson, to Steven P. Quarles, Crowell & Moring, counsel for MCI, dated Mar. 28, 1988; Memorandum from S. Quarles, Crowell & Moring, on Behalf of MCI, to the Solicitor of the Department of the Interior, "MCI's Buried Fiber Optic Line Use of the Southern Pacific Right-of-Way Requires No FLPMA Permit from Interior" (undated) (on file with author) (arguing, in part, that MCI's fiber optic line is allowed without BLM approval under the incidental use doctrine); *see also* 96 I.D. at 439 (observing that the MCI line "furthers railroad purposes").

[26] The subsurface/surface distinction in the Associate Solicitor's 1985 memorandum, which had been overruled by the 1875 Act portion of Opinion M-36964, has not been reinstated by this memorandum, because that distinction is not relevant to determining what can, or cannot, be undertaken within an 1875 Act ROW. As stated above, the key question is whether or not the activity in question has a railroad purpose or is derived from or furthers such a purpose.

7
12 16 Attachment 1-12

established rules that railroad ROW grants are liberally construed in favor of the purposes for which they were enacted, but otherwise are subject to the general rule that grants of lands from the public domain are construed strictly against the grantee and that any doubts as to the scope of the grant are resolved for, and not against, the Government; and

- A railroad's authority to undertake or authorize activities within an 1875 Act ROW is limited to those activities that derive from or further a railroad purpose.

The BLM should exercise its discretion under Title V of FLPMA to determine the extent to which development actions within 1875 Act ROWs have been taken in reliance on Opinion M-36964. The BLM should, in light of this Opinion, evaluate those prior actions on a case-by-case basis. Such evaluations should consider the relationship of those prior actions to railroad purposes, as outlined above, in order to determine what actions, if any, need to be taken with respect to such ROW activities. BLM may prioritize these evaluations through its ongoing inventory of resources on the public lands.[27]

Hilary C. Tompkins

[27] This Opinion was prepared with the substantial assistance of Dylan Fuge and Michael Hickey in the Solicitor's Office.

ON NOVEMBER 4, 2011, THE SOLICITOR OF THE UNITED STATES DEPARTMENT OF THE INTERIOR ISSUED OPINION M-37025 WHICH PARTIALLY WITHDREW THE SOLICITOR'S 1989 OPINION M-36964 AND CLARIFIED THE SCOPE OF A RIGHT OF WAY ESTABLISHED UNDER THE GENERAL RAILROAD RIGHT OF WAY ACT OF MARCH 3, 1875 (1875 ACT). HERE ARE SOME QUESTIONS AND ANSWERS ABOUT THE 1875 ACT AND OPINION M-37025.

1. What is the General Railroad Right of Way Act of March 3, 1875?

The General Railroad Right of Way Act of March 3, 1875 (1875 Act) granted railroad companies a 100 foot right-of-way (ROW) on public land on either side of a railroad line subject to certain terms and conditions. Thousands of miles of 1875 Act ROWs are estimated to exist on public land in the western United States.

2. Were there other statutes that authorize the granting of ROWs on public land to railroad companies?

Yes. There were a number of acts pre-1871 that granted railroad companies ROWs. These pre-1871 acts were generally for specific companies or routes, and provided fee title to the lands over which the railroad was constructed, including to certain public land on either side of a railroad line subject to certain terms and conditions.

3. Are the pre-1871 acts and the 1875 Act still in effect?

No. In 1976, Congress enacted the Federal Land Policy and Management Act (FLPMA). Title VII of FLPMA repealed the various railroad ROW statutes but recognized existing ROWs established under those statutes as valid existing rights.

4. What is an "M Opinion"?

An "M Opinion," which is short for "Memorandum Opinion," is a formal written opinion by the Solicitor that presents the official legal interpretation of the Department of the Interior on matters within the Department's jurisdiction. M Opinions are binding on all Department offices and officials and may be withdrawn, overruled, or modified only by the Solicitor, the Deputy Secretary, or the Secretary.

5. What did Opinion M-36964 do?

Opinion M-36964 was issued by the Solicitor in 1989 and arose in the context of MCI Communication's request to install a fiber optic line within three different railroad ROWs across BLM land held by the Southern Pacific Railroad Company pursuant to (i) the Act of July 27, 1866; (ii) the Act of March 3, 1871; and (iii) the 1875 Act. With respect to the pre-1871 ROWs, Opinion M-36964 concluded that a Southern Pacific held a fee interest and therefore could authorize any activity within those ROWs (including the installation of fiber optic line) so long as it did not interfere with railroad operations. With respect to the 1875 Act ROW, Opinion M-36964 concluded that Southern Pacific held an interest that was "tantamount" to a fee and thus could similarly undertake or authorize any activity within these ROWs (including the installation of fiber optic line) so long as it did not interfere with railroad operations.

6. What does Opinion M-37025 do relative to the 1875 Act?

Opinion M-37025 was issued by the Solicitor on November 4, 2011. It withdraws those portions of Opinion M-36964 regarding the 1875 Act based on the fact that those portions are

inconsistent with a longstanding Supreme Court precedent – *Great Northern Ry. Co. v. United States*, 315 U.S. 262 (1942) – and two recent federal court decisions – *Hash v. United States*, 403 F.3d 1308 (Fed. Cir. 2005) and *Home on the Range v. AT&T Corporation*, 386 F. Supp. 2d 999 (D. Ind. 2005) (the latter questioned the legal basis for Opinion M-36964's conclusion). Specifically, Opinion M-37025 rejects Opinion M-36964's conclusion that the 1875 Act is "tantamount" to a fee. Rather, Opinion M-37025 states that the scope of an 1875 Act ROW is limited to those activities that derive from or further a railroad purpose. As result, Opinion M-37025 activities that are not related to railroad purposes are outside the scope of the ROW grant and that such activities require BLM authorization pursuant to applicable law. Approval of any such uses by the BLM will require coordination with the railroad to ensure such uses do not interfere with railroad operations within the ROW.

7. What does Opinion M-37025 do relative to the pre-1871 Acts?

Nothing. Opinion M-37025 specifically states that it does not alter the conclusions of Opinion M-36964 with respect to the pre-1871 Acts. Therefore, the conclusion of Opinion M-36964 that railroad companies possess a fee interest in these pre-1871 ROWs is unchanged.

8. What are examples of activities within a railroad ROW that derive from or further a railroad purpose?

Although each situation must be evaluated on a case by case basis, examples of activities within an 1875 Act ROW that may serve a railroad purpose include: telegraph, telephone and fiber optic lines that provide for both railroad and commercial communications; warehouses that provide for receipt of freight by the railroad while also providing other retail services; transmission lines that provide power to the rail line and commercially; and station grounds, maintenance yards, and related improvements.

9. What should the proponents of a new use within an 1875 Act ROW on BLM land do?

Proponents of new uses within an 1875 Act ROW should contact BLM for a determination of whether the proposed use serves a railroad purpose. As explained above, if BLM determines that a proposed use *does* serve a railroad purpose, BLM authorization is not required and the railroad company may undertake or authorize the use at its discretion, subject to any other applicable legal requirements. If, however, BLM determines that the proposed use *does not* serve a railroad purpose, BLM authorization is required and the proponent must submit an application to the agency for processing in accordance with applicable law, regulation and policy.

10. What actions, if any, will BLM undertake regarding uses that already exist within 1875 Act ROWs based on Opinion M-37025?

The BLM is currently developing guidance that addresses the relationship of Opinion M-37025 to existing uses within 1875 Act ROWs on BLM land and the actions, if any, that the agency should take to ensure compliance with the new Opinion.

11. Who should I contact for further information?

You may contact the BLM's Washington Office, Branch of Rights of Way at 202-912-7342 if you have further questions concerning the applicability of Opinion M-37025 to 1875 Act ROWs on BLM land.

REPRESENTATIVE FRACTION – A fraction expressing scale in which the numerator is unity and the denominator is the number that the unit distance must be multiplied by in order to obtain its distance on the ground in the same units. For example, 1/12,000. Also seen as 1:12,000 and 1-12,000.

RESERVATION – A withdrawal, usually of a permanent nature; also, any Federal lands which have been dedicated to a specified public purpose. See MINERAL RESERVATION.

RESERVED LAND – Federal lands which are dedicated or set aside for a specific public purpose or program, and which are, therefore, generally not subject to disposition under the operation of all of the public land laws.

RESERVOIR-SITE RESERVE – A reservation of public lands which have potential value as a site for a water storage reservoir.

RESIDUAL ERROR – 1) The total error of closure of a traverse. 2) In mathematics, the difference between as observed value of a series and its corresponding adjusted value. 3) Any remaining error after all adjustments are made.

RES JUDICATA – A matter settled by judgment. The rule of *"res judicata"* is that a matter once judicially decided is finally decided. The plea of *"res judicata"* is an *"estoppel"* against the losing party from again litigating matters involved in previous action, but does not have that effect in matters which occurred later and which were not at issue in the prior action. See ESTOPPEL and STARE DECISIS.

RESOURCE AREA (BLM) – The primary subdivision of a BLM District. It is composed of at least two (typically five to eight) planning units and intermingled and adjoining lands such as National Parks, National Forests, Indian Reservations, Military Reservations and private lands. It is under the administration of an Area Manager.

RESPONDENT – See APPELLEE.

RESTORATION – 1) The purpose of a resurvey; the recovery of one or more lines or corner positions, or both, of a prior approved survey; or the replacement of one or more lost corners or obliterated monuments by approved methods, including the substantial renewal of one or more monuments, as required for the purpose of a survey. 2) A revocation of a withdrawal which also effects the opening of the public lands in the withdrawal. Also, an action which returns ceded Indian lands to tribal ownership. See RESURVEY, DEPENDENT RESURVEY and INDEPENDENT RESURVEY.

RESTORATION OF MEANDERS – The reestablishment of original meanders. See REMANDER.

RESTRICTED DEED, ALASKA – A deed which is issued to an Alaska Indian or Eskimo for land claimed by him in an Alaskan trustee town site and which contains a proviso that the land is inalienable except with the approval of the Secretary of the Interior.

RESURVEY – A term applied to the reestablishment or restoration of land boundaries and subdivisions by the rerunning and remaking of the lines that were represented in the field note record and on the plat of the previous official survey. This includes, as in the original survey, a field note record of the retracement data, observations, measurements and monuments descriptive of the work performed, and a plat that represents such resurvey, all subject to the approval of the directing authority. The above definition is intended or implied unless modified as in an Independent Resurvey or in some other appropriate manner. The adjective *"dependent"* applied to the term *"resurvey"* is for emphasis, and specifically to suggest the recovery and restoration of the prior official survey. See DEPENDENT RESURVEY, INDEPENDENT RESURVEY, RETRACEMENT, RESTORATION REMEASUREMENT and RESURVEY*.

RETRACEMENT – A survey made to ascertain the direction and length of lines and to identify monuments and marks of an established prior survey. Recovered corners are rehabilitated, but lost corners are not restored and lines through timber are not reblazed. See RESURVEY and REMEASUREMENT.

RETURNED – Areas and/or boundaries of the public lands which are described in the approved field notes and appear on the accepted plat of an official survey are said to be *"returned."*

RETURNS – Official reports. In cadastral survey parlance, the *"returns"* are the field notes, report and approved plat of a survey. See FIELD RETURNS and FINAL RETURNS.

REVERSION CLAUSE – A clause in an order of withdrawal providing that the lands shall revert to their former status after they have served the purpose for which they are withdrawn; also, a clause in a patent providing that title to the lands shall revert to the United States upon failure of the patentee to use the lands for the purposes stated in the patent.

REVESTED LANDS – Lands once granted and later forfeited and returned to Federal ownership by Congressional revestment of title. See O & C LANDS.

REVISED STATUTES – A body of statutes which have been reviewed, re-examined, rearranged or otherwise improved, and have been collected, arranged in order and re-enacted as a whole. In 1873, all of the general and permanent laws of the United States then in force were arranged by subject under 74 headings and enacted into law by Congress. This compilation was corrected and superceded by another codification of the laws in 1878. The 1878

EXHIBIT 8
PAGE 1 OF 1

120084

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION

RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

RELEASED

B-209962

NOVEMBER 24, 1982

The Honorable Howard M. Metzenbaum
United States Senate

120089

Dear Senator Metzenbaum:

Subject: Valuation of the Alaska Railroad (GAO/RCED-83-61)

On July 29, 1982, you asked us to prepare a report on the market value of Alaska Railroad assets proposed to be transferred at no cost to the State of Alaska under provisions of S. 1500, 97th Congress, first session. In subsequent discussions with your office, we narrowed the request to (1) determining the land value, especially the value of timber and mineral rights, on the Railroad's 38,000 acres and (2) identifying existing contracts, and contracts under negotiation, that might affect the Railroad's future profitability. We agreed that (1) we would rely on existing land valuations and information on timber and mineral rights that were readily available from Federal, State, and private sources and (2) the report would contain no conclusions or recommendations. Also, your office requested that we not obtain comments on this report from the Federal Railroad Administration, Department of Transportation.

On November 15, 1982, we briefed your office on our review results. We explained that although we could not find a well-documented estimate of the value of Railroad lands, three valuations of Railroad lands exist. These range between $180 million and $307 million, but each is highly qualified. The three valuations and the results of our other inquiries are summarized below.

--On October 8, 1982, the Railroad valued its 38,000 acres at about $232 million based on liquidation value--the highest price the property may bring in the market under certain criteria--and the assumption that the Railroad holds a clear title to all its lands. However, because rail use may not bring the highest price for the land, this value has little relationship to market values for an ongoing concern. Also, the Railroad does not appear to hold clear title to all its lands.

--In February 1981 the Railroad calculated the estimated market value of its lands at $180 million based on the 1979 value of private lands at each location along the

(343769)

524059

9

rail belt. However, the value was developed by Railroad staff without any appraisals or calculations of the Railroad as an ongoing concern.

--In June 1980 the Secretary of Transportation reported to the Chairman, Senate Committee on Commerce, Science, and Transportation, that as of the end of February 1980, the estimated market value of the Railroad, consisting of land and investment in buildings, facilities, and equipment at depreciated value, was $427 million. The Railroad's September 30, 1980, balance sheet showed that the depreciated value of its buildings, facilities, and equipment was about $120 million. The remaining $307 million was land value.

--Appraisals by commercial appraisers of about 1,000 acres of Railroad land leased to private concerns indicated a market value for this land of about $49 million. However, land leased by the Railroad is appraised on a 5-year staggered cycle, so some of the appraised market values are over 4 years old.

--According to officials of the Department of the Interior's Bureau of Land Management and the Department of Agriculture's Chugach National Forest and data prepared by the University of Alaska's Arctic Environmental Information and Data Center, the Railroad's lands contain no appreciable volume of merchantable timber.

--The value of mineral rights on Railroad lands can not be determined without further exploration. However, officials of several Federal and State organizations told us that Railroad lands have (1) prospects for oil, gas, and coal deposits, (2) gravel and rock reserves valued at about $111 million dollars in 1979 dollars, and (3) no significantly valuable hardrock (metallic) mineral deposits.

Regarding contracts affecting future profitability, the Railroad has five annual contracts primarily to ship between 150 and 300 freight cars of building materials. As of early October 1982, an additional contract was being negotiated with a Korean shipping company which would increase the Railroad's annual coal shipments.

The following sections discuss in more detail the information we gathered.

2 9 11

ALASKA RAILROAD

The Alaska Railroad is an operating element of the Federal Railroad Administration. The Railroad was authorized by the Alaska Railroad Act of March 12, 1914, as amended (43 U.S.C. 975 et seq.).

The Railroad operates 654 miles of track. Freight and passenger service use 478 miles of single mainline track extending from the deepwater ports of Seward and Whittier through Anchorage to Fairbanks. Branch lines use about 48 miles of track, while the balance is used for sidings, spurs, passing, and yard track.

The Railroad holds about 38,000 acres of land. It uses about 12,000 acres for main line and branch line rights-of-way. The estimated 26,000 acres of non-right-of-way lands are located at 27 locations adjacent to the rights-of-way and 3 smaller locations off the rail belt. Land parcels range from 0.4 acres to 5,830 acres. These lands are used for the following purposes:

--About 1,000 acres are leased to businesses which provide lease revenue and generate some freight business.

--About 9,000 acres are used as active gravel pits or rock quarries or are held for future gravel and rock needs.

--About 300 acres are used for operating a barge line and 570 acres are part of the Seward and Whittier port and terminal facilities.

--About 15,000 acres of mostly vacant land are held for controlling watershed and for providing gravel resources and room for future Railroad development or expansion.

VALUATIONS OF RAILROAD LAND HOLDINGS

We found two pre-1982 valuations of Railroad lands--$180 million and $307 million. These amounts do not include the value of the buildings, facilities, and equipment located on the land. We could neither confirm nor refute these estimates, but we noted their preparers heavily qualified the estimates. As of October 8, 1982, the Railroad valued its lands at about $232 million, but this value was also qualified.

9
3 11

October 1982 valuation

As of October 8, 1982, the Railroad valued its 12,000 acres of right-of-way lands at about $29 million while the 26,000 acres of non-right-of-way lands were valued at about $203 million, or a total of $232 million. Average per-acre values varied significantly by location. For example, non-right-of-way land values ranged between $500 and $108,900 per acre.

According to a Federal Railroad Administration representative, these values were derived by comparing Railroad lands with adjoining State or privately held lands that had been appraised. Also, the Railroad valued the land based on (1) liquidation value--the highest price the property may bring in a competitive and open market under all conditions--and (2) assumption of clear title. However, this value has little relationship to market value of an ongoing railroad because rail use for the property may not bring the highest price.

Also, the Railroad's land titles are questionable because of the Alaska Native Claims Settlement Act of 1971, as amended (43 U.S.C. 1601 et seq.). Any assumption about the Railroad's land title must consider the potential impact of this act. Claims made under this act, if upheld, could result in the Railroad's losing a considerable amount of land, including extensive gravel reserves, rights-of-way, and leased lands.

The act set up private regional and village corporations and authorized them to select certain Federal and State lands which fall within their selection areas. In a February 1981 report, the Federal Railroad Administration reported that about 30 percent of the Railroad's right-of-way and 18 percent of its other lands lie within these selection areas. Claims have been filed for nearly all these lands. The Secretary of the Interior will decide the extent to which these lands will be conveyed. Section 3(e) of the act sets narrow standards for determining which lands are actually used by the Railroad and thus exempt from selection. According to a July 1981 study done for the Alaska Department of Transportation and Public Facilities, the Railroad, under these standards, would not retain any leased land, gravel reserves, or rights-of-way claimed by the Natives. 1/ The Railroad's rights-of-way would be converted to a limited easement.

1/"An Assessment of the Alaska Railroad: Ownership and Operational Alternatives," Bivers and Associates, Inc., July 1981, p. 31.

The first claim for Railroad lands was filed by the Eklutna Village Corporation. Indications are that the Corporation may get a favorable ruling. The Federal-State Land Use Planning Commission, an advisory body established by the act, recommended that 90 percent of the lands claimed by the Corporation should be conveyed. The conveyed lands would include all leased lands and rights-of-way as well as nearly all gravel reserves in the Corporation's selection area.

The Federal Railroad Administration reported that Department of the Interior officials in Alaska and Washington, D.C., have shown a willingness to accept most Commission recommendations. Decisions on other Native claims, including those selecting Railroad lands, are expected to follow the Eklutna decision.

If all Native claims were upheld, the Railroad could lose about 7,600 acres, including 19 million cubic yards of gravel and rock reserves and about $230,000 per year in leased land revenues based on 1979 rental values.

Previous evaluations

In February 1981 the Railroad prepared a document "Profile of Alaska Railroad Lands" which included the following estimated value of all Railroad landholdings based on the average 1979 market values of private land at each location along the rail belt.

Landholdings	Acres	Value (000 omitted)
Rights-of-way	12,003	$ 28,996
Other lands	26,220	151,314
Total	38,223	$180,310

This document was furnished to the Chairman, Subcommittee on Public Lands and National Parks, House Committee on Interior and Insular Affairs, at his request in early June 1982. In the transmittal letter, the Administrator, Federal Railroad Administration, cautioned that the value estimates provided were not an accurate valuation of the Railroad's land because they (1) were based on values of nonrailroad land near the right-of-way, (2) were developed by Railroad staff without any appraisals or calculations of the Railroad as a ongoing concern, and (3) did not consider discounts for cost of sales or for defects in title. The Administrator concluded that these figures were not reliable.

In June 1980, pursuant to a request from the Chairman, Senate Committee on Commerce, Science, and Transportation, the Secretary reported that the Railroad's estimated market value as of February 29, 1980, was $427 million. This value consisted of land at fair market value and investment in buildings, facilities, and equipment at depreciated value. The Railroad's balance sheet showed that as of September 30, 1980, buildings, facilities, and equipment had a depreciated value of about $120 million. Thus, the value attributed to the land was about $307 million.

The Secretary added that a study of the Railroad's value showed it could not be sold to a private buyer as a continuing railroad operation unless financial or tax benefits were provided. The Secretary concluded that for a sale to realize anything close to the present value of the Federal investment, it would require discontinuing rail operations. 1/

Leased land valuations

The Railroad's real estate officer told us that the Railroad's leased lands are appraised by commercial licensed appraisers on a 5-year cycle and that the first appraisals were made in 1978. The real estate officer said that the Railroad did not have a summary listing of leased lands and their appraised value, but he did provide us with books of appraisals purportedly containing all Railroad leased lands.

According to these books, most leased parcels are in Anchorage and Fairbanks. The parcels generally are less than 1 acre, but several are over 30 acres each. Lessees use these lands for warehouses and storage yards, buildings and facilities, and cold storage buildings.

The following is a summary of the appraisals. The appraised value of $48,676,176 is understated because, as shown, most of the appraisals are from 1 to 4 years old.

1/The Secretary of Transportation reported that as of February 29, 1980, the Federal Government's investment in the Railroad was $148,317,400.

Place and year appraised	Number of parcels	Appraised market value	Appraisers' suggested annual rental value
Anchorage			
1982	51	$12,497,500	$1,223,274
1981	24	5,295,400	370,678
1980	10	4,939,077	424,552
1979	17	6,077,329	425,412
1978	44	10,239,350	705,661
Total	146	39,048,656	3,149,577
Fairbanks			
1982	40	1,639,000	153,102
1981	23	1,319,800	118,827
1980	3	236,820	16,580
1979	5	369,250	29,540
1978	25	1,358,240	117,000
Total	96	4,923,110	435,049
Other (note a)	17	4,704,410	347,495
Total	259	$48,676,176	$3,932,121

a/Includes leased parcels at Eagle River, Nenana, Seward, Valdez, and Whittier.

In fiscal year 1982 these leased lands produced about $2.9 million in rental income for the Railroad.

MINERALS AND TIMBER

The value of minerals on Railroad lands can not be determined without further exploration. Federal and State officials we talked with generally agreed that Railroad lands do not have any significantly valuable hardrock mineral deposits or merchantable timber. However, prospects for oil, gas, and coal do exist, but without further exploration it can not be determined if they are present in commercial quantities. The only proven resource is gravel and rock, which the Railroad values at about $111 million. The gravel and rock is used by the Railroad for roadbed maintenance and construction; it is not sold commercially.

Oil, gas, and coal

An official of the Minerals Management Service, Department of the Interior, told us that the amounts of oil, gas, and coal that may be on Railroad lands are not quantifiable and a dollar value can not be placed on them. The Service examined Railroad lands and reported that

--prospectively valuable oil and gas lands underlie 7,256 acres of Railroad land and

--prospectively valuable coal lands underlie 12,749 acres of Railroad land.

The official described "prospectively valuable" lands as those that have known potential and should be explored to determine if commercial quantities are present.

Gravel and rock reserves

The Railroad reports that it owns about 82 million cubic yards of gravel and rock valued at about $111 million in 1979 dollars. The gravel and rock reserves are located at 13 sites scattered along nearly the full length of the right-of-way. The reserves are used according to the Railroad's current needs and budget.

The following table shows the location and estimated volume and value of these reserves.

Location	Material	Volume in cubic yards	Dollar value
		---(000 omitted)---	
Whittier	rock	150	$ 300
Eagle River	gravel	9,000	9,900
Birchwood	gravel	1,800	1,980
Eklutna	gravel	2,950	3,245
"	rock	1,000	3,000
Pittman	gravel	2,100	2,310
Gravel Pit	gravel	2,200	2,420
Curry	rock	10,000	30,000
Chulitna	gravel	1,500	1,650
Midway	gravel	3,900	4,290
Colorado	gravel	650	715
Broad Pass	gravel	1,600	1,760
Healey	gravel	5,200	5,720
Clear	gravel	40,000	44,000
Total		82,050	$111,290

The Railroad uses these reserves for railbed maintenance and construction. The Railroad reported that in fiscal year 1981, it used about 137,400 cubic yards of gravel and 3,800 cubic yards of rock. At this rate, if the Railroad keeps its reserves, it should have enough gravel and rock for years.

Hardrock minerals

According to Federal and State officials, there is little likelihood that Railroad lands contain significantly valuable hardrock mineral deposits.

--Minerals Management Service officials said that the Railroad does not appear to occupy land containing any prospectively valuable minerals.

--Alaska State Division of Geological and Geophysical Survey officials told us that an examination of mineral assessments of Railroad lands indicated little chance for any significantly valuable hardrock mineral deposits.

--The Department of the Interior's U.S. Geological Survey's Alaska Mineral Research Assessment Program officials said that, based on their general knowledge of Railroad lands, there is very little likelihood that significantly valuable hardrock mineral deposits exist on Railroad lands.

Timber

Our discussions with Federal officials and University of Alaska data indicated that no appreciable volume of merchantable timber exists on Railroad lands.

--Bureau of Land Management, Division of Natural Resources, officials do not believe Railroad lands contain any commercial timber.

--Chugach National Forest officials said there is no timber on Railroad lands between Portage and Whittier, and although the Railroad goes through heavy timber country between Moose Pass and Seward, the Railroad does not own the land; it has only an easement for its right-of-way.

--The University of Alaska's Arctic Environmental Information and Data Center reported that no timber exists on Railroad lands.

9
9 11

RAILROAD'S SHIPPING CONTRACTS AND FUTURE FREIGHT PROSPECTS

As of early October 1982, the Railroad had five shipping contracts and prospects for a sixth. The Railroad has contracted with four companies for minimum shipments of 150, 150, and 300 freight cars of building materials and 250 freight cars of beer a year. The Railroad has another contract to move trailers and containers on flat cars between Anchorage and Fairbanks at volume discount rates established in the contract.

The Railroad has prospects for a 5-year contract with a Korean shipping company to move coal from the Susitna mine area to Seward. The proposed contract calls for moving 220,000 metric tons the first year, increasing to 880,000 metric tons by the fifth year. A Railroad official told us that everything was at a standstill waiting for the shipping company to contract with Korea for the coal.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine the land value, especially the value of timber and mineral rights, on the Railroad's 38,000 acres and to identify contracts that might affect the Railroad's future profitability. We relied on existing land valuations and information on timber and mineral rights that were readily available from Federal, State, and private sources. We obtained information on the Railroad's contracts from Railroad officials.

We met with officials from the Federal Railroad Administration in Washington, D.C., and Anchorage, Alaska. We also met in Anchorage with officials from the Alaska Railroad, U.S. Geological Survey, Bureau of Land Management, Bureau of Mines, Minerals Management Service, Chugach National Forest, and the State of Alaska's Department of Transportation and Public Facilities and Division of Geological and Geophysical Survey.

We met with the Anchorage Borough property tax assessor and examined borough tax records and contacted tax assessors from the Boroughs of Fairbanks, Matanuska-Susitna, and Kenai to try to determine if these sources had information on Railroad land values. Although some of the boroughs had appraised some of the Railroad's land, the data was incomplete and fragmented. We also reviewed data prepared by the University of Alaska's Arctic Environmental Information and Data Center.

9
10 11

We reviewed Alaska Railroad land description records and, where available, the assessed valuation of those lands. We matched railroad land inventories to Federal agency assessments of potential mineral and petroleum deposits and discussed with Federal and State officials the value of any estimated minerals; oil, gas, and coal; or timber on Railroad lands.

We found that neither the Federal Railroad Administration nor the Alaska Railroad had a complete and accurate inventory of all Railroad lands. However, the Railroad's estimate of 38,000 acres appears to be the only available information on Railroad land holdings.

- - - -

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. We will then send copies to the Department of Transportation and other interested parties and make copies available to others upon request.

Sincerely yours,

J. Dexter Peach
Director

117593

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Alaska Railroad: Federal Role Should End; Some Management Problems Remain

Factors leading to the Federal Government's ownership and operation of the Alaska Railroad have changed considerably, making the Federal role no longer justified. Moreover, Federal ownership inhibits actions needed to improve the Railroad's profitability and raises questions about the appropriateness of the Federal Government competing with private industry.

The Railroad should be sold or otherwise transferred to the State or a private entity, but several issues must be resolved before such a transfer can be effected.

Although substantial improvements have been made, some management weaknesses continue. Regular, thorough audits would provide a basic management control mechanism and will be needed regardless of who runs the Railroad.

CED-82-9
FEBRUARY 25, 1982

Request for copies of GAO reports should be sent to:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are $3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are $1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-206225

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Federal Government's role in owning and operating the Alaska Railroad and improvements that have been made or are still needed in the Railroad's management. We conducted our review because of congressional interest in the Railroad and because of widespread management weaknesses we reported in 1978.

We are sending copies of this report to the Secretaries of Transportation and Defense; the Director, Office of Management and Budget; and the Governor of Alaska.

Charles A. Bowsher

Comptroller General
of the United States

10
J 40

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ALASKA RAILROAD: FEDERAL ROLE SHOULD END; SOME MANAGEMENT PROBLEMS REMAIN

D I G E S T

In July 1978, GAO reported on widespread management weaknesses in the Alaska Railroad and on the need to decide whether the Federal Government should continue to own and operate it. Because of management weaknesses' pervasiveness and recent congressional interest in the Railroad, GAO followed up on its 1978 recommendations and re-examined the question of the Railroad's ownership. (See p. 3.)

FACTORS JUSTIFYING THE FEDERAL GOVERNMENT'S ROLE HAVE CHANGED

The major factors supporting the Federal Government's role in the Alaska Railroad--national defense needs, Alaska's territorial status, extensive Federal land ownership, and Federal responsibility for economic development--have all changed considerably. Federal ownership of the Railroad now conflicts with or inhibits actions needed to improve its profitability.

For many years after its completion, the Railroad had an irreplaceable role in transporting military personnel and material. Development of other transportation modes such as highways and airplanes has made the Railroad one of several acceptable alternatives rather than the only practical source of transportation. Military officials said that, if attacked, some sections of the Railroad, as well as nearby highways, would be impossible to defend adequately. (See p. 7.)

During the early period of the Railroad's operation, Alaska was a territory rather than a State, and the Federal Government was responsible for its government and owned almost all of its land. The situation has changed. With statehood, Alaska now has a State government which has responsibilities and resources for the State's development. Also, the Federal Government no longer owns as much of the land in Alaska. (See p. 8.)

CED-82-9
FEBRUARY 25, 1982

Tear Sheet

10
Jul 40

Some of the Railroad's transportation services are also provided by alternate modes that are privately owned and operated, resulting in direct competition between Government and private industry. The Railroad's expanding marketing and other efforts to compete aggressively have been questioned because of the Government's policy of avoiding direct competition with privately operated carriers. However, such aggressive marketing is needed to improve the Railroad's profitability. (See p. 8.)

Other problems associated with the Railroad's continued Federal ownership include uncertain control over Railroad land because of possible claims against it under the Alaska Native Claims Settlement Act. If the land was transferred from Federal ownership, it would not be subject to Native claims. Also, the Railroad is a Government agency, and as such, personnel ceilings and reductions and difficulty in obtaining capital for expansion have limited its ability to respond to or fully exploit business opportunities. (See p. 9.)

The Railroad may be on the verge of long-term profitability because of developing export markets for Alaskan coal and barley. (See p. 10.)

GAO believes the Congress should end the Federal Government's role in the Railroad. The Congress will also have to decide whether to give the Railroad away or to sell it, how the price is to be established if the Railroad is to be sold, whether private or State ownership should be emphasized, and how such emphasis is to be effected. Legislation has been introduced that proposes solutions to all of these issues, but the Congress will have to decide whether the proposed solutions are the best ones. (See p. 11.)

Recommendation to the Congress

The Congress should enact legislation leading to termination of the Federal role in owning and operating the Alaska Railroad. (See p. 13.)

RAILROAD'S MANAGEMENT CAN BE FURTHER IMPROVED

GAO's 1978 report described numerous serious problems in the Alaska Railroad's management, including many financial and control weaknesses, inadequate marketing efforts and cost information

10
GAO 40

on which to base marketing decisions, and unreasonably low rental rates for Railroad property leased to other parties. (See p. 14.)

The Railroad has improved its rental rate policy--resulting in higher rent income--(see p. 21) and its marketing activities, although it is just now implementing GAO's recommendation to produce complete cost and profitability information on which to base marketing decisions (See p. 20.)

Railroad management has also attempted to correct most of the financial and control weaknesses GAO and the Department of Transportation's Office of Inspector General brought to its attention and has had some success. However, management's efforts have not been completely effective. For example, GAO's current review showed some continuing weaknesses in accounting for and collecting accounts receivable and a 1980 Office of Inspector General report showed several weaknesses in the Railroad's management of supplies and materials. (See p. 14.)

Despite GAO's earlier recommendation to do so, the Department has not instituted an effective internal audit and review function for the Railroad. The Department's Office of Inspector General has occasionally reviewed specific aspects of the Railroad's operations, but has not conducted the in-depth reviews and regular complete audits envisioned by GAO's recommendation. GAO continues to believe that an effective internal audit and review function would provide a basic management control mechanism and will be needed regardless of whether the Federal Government's role is continued. (See p. 17.)

Recommendation to the Secretary of Transportation

The Secretary should institute a plan for periodic independent financial audits as well as other comprehensive audits necessary to identify and follow up on management problems. (See p. 22.)

AGENCY COMMENTS

The Department of Transportation agreed that the Federal Government's role in the Alaska Railroad should end and noted its support for the proposed legislation. (See p. 13.) The Department of Defense noted the possibility

10
7 40

of rail service abandonments over low density branch lines to Defense installations and the need to provide for such lines' reversion to the Federal Government in the event of abandonment. GAO agrees. (See p. 13.)

The State of Alaska noted possible objections to limitations on the State in moving the Railroad into the private sector. GAO did not specifically suggest such limitations, but does note the need for provisions ensuring continued rail service and preventing unreasonable economic windfalls at Federal expense. (See p. 13.)

The Department of Transportation said that GAO's conclusion regarding audits is overstated. Although the Department recognized that greater audit attention would probably be helpful, it believed that past efforts had been adequate. GAO recognizes that other factors might affect Railroad management, but continues to believe that past audit efforts have not provided the needed management tool. (See p. 22.)

10
8 40

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Objectives, scope, and methodology	3
2	SHOULD THE FEDERAL GOVERNMENT BE RUNNING THE RAILROAD?	7
	The Railroad's changing defense role	7
	The Railroad's changed settlement and development role	8
	Should the Railroad compete with private businesses?	8
	Problems associated with Federal ownership of the Railroad	9
	Lack of flexibility could inhibit profitability	9
	Native claims cloud future ownership of Railroad real estate	10
	Issues that need to be resolved before the Railroad is transferred	11
	Conclusions	12
	Recommendation to the Congress	13
	Agency comments and our evaluation	13
3	SOME MANAGEMENT PROBLEMS HAVE BEEN CORRECTED BUT OTHERS REMAIN	14
	Improvements in financial management and controls have been attempted, but a basic problem remains	14
	Some weaknesses continue despite management efforts	16
	Audits could help correct weaknesses	17
	The Railroad's marketing activities have improved	18
	Marketing has improved, but planning is not formalized	18
	Improved cost information being planned	20
	Improvements in the management of Railroad real estate	21
	Conclusions	21
	Recommendation to the Secretary of Transportation	22
	Agency comments and our evaluation	22

		Page
APPENDIX		
I	Letter dated December 1, 1981, from the Assistant Secretary for Administration, Department of Transportation	23
II	Letter dated December 7, 1981, from the Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)	25
III	Letter dated December 10, 1981, from the Governor of Alaska	26

ABBREVIATIONS

FRA	Federal Railroad Administration
GAO	General Accounting Office

CHAPTER 1

INTRODUCTION

On March 12, 1914, the Congress provided for construction of the Alaska Railroad authorizing

> "* * * a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property * * *." (43 U.S.C. 975-975g)

The Railroad's initial construction took 8 years to complete and cost about $65 million, exceeding the original estimate by some $30 million. The Railroad was completed in 1923, and responsibility for its operation was delegated to the Secretary of the Interior. The Railroad provided main line service from Seward to Fairbanks, carrying both passengers and freight a distance of 470.3 miles. Several branch lines and additional track along the Railroad have since been added to serve specific industries, gravel pits, public delivery tracks, sidings, and yards. The Railroad now has a total of 653.8 track-miles. (See map on p. 6.)

During World War II, the Railroad carried construction materials, supplies, and soldiers to Army bases at Anchorage and Fairbanks and kept the military storage tanks replenished with fuel for the air ferry to Russia.

At the end of World War II, the military decided that Alaska should remain a major outpost and that the Railroad's facilities should be available to the military on a daily basis as well as in the event of a national emergency. Accordingly, a rehabilitation program was initiated. Most of the Railroad was rehabilitated during the 1948-1952 period. The Seward line, which was not included in this rehabilitation plan, was rehabilitated in 1959 after a Department of Defense decision to maintain port facilities there.

After more than 50 years under the Department of the Interior's control, the Alaska Railroad was transferred in 1966 to the Department of Transportation and subsequently became the

11 10 40

responsibility of the Department's Federal Railroad Administration (FRA). Although the Secretary of Transportation is responsible for the Railroad's operations, his authority has been delegated to the Railroad's General Manager in Anchorage. However, decisions regarding general rate changes, extensions and abandonments, large sole-source procurements, and final approval of collective bargaining agreements remain with the Secretary. FRA's monitoring of Railroad management and operations is done primarily by the Alaska Railroad Management Committee. This Committee consists of a chairman and four members from FRA and the Railroad's General Manager. The Committee meets quarterly to discuss various phases of the Railroad's operations and provide advice to the Railroad on matters affecting its efficiency.

The Railroad transports hundreds of products in widely differing quantities from innumerable origins. During construction of the trans-Alaska oil pipeline (1974-77), the Railroad played a vital and profitable role in transporting construction equipment, supplies, and minerals. Railroad-reported financial results from 1974 to 1981 are summarized below.

Fiscal year	Federal appropriations	Total revenues	Net profit or (loss)
	(millions)		
1974	$ -	$21.5	$(1.1)
1975	6.0	42.3	5.8
1976	9.0	63.7	3.0
1977	6.0	34.8	(1.0)
1978	3.0	29.1	(4.5)
1979	9.3	25.2	(6.6)
1980	a/6.5	28.9	(5.8)
1981	12.6	43.9	3.3

a/Includes a one-time passenger train subsidy of $1.5 million.

The increase in cash flow due to increased traffic from the pipeline's construction permitted substantial capital improvements and major maintenance to the Railroad's facilities. During the 3-year period, fiscal years 1975-77, a total of $33.5 million in improvements was accomplished, of which $21 million came from congressional appropriations and $12.5 million from Railroad earnings.

Just as quickly as revenues increased, traffic decreased and profits disappeared. The pipeline was completed by the summer of 1977, and the Railroad showed a nearly $1 million loss for fiscal year 1977. For fiscal year 1978, the only commodities that had traffic increases were sand, gravel, and coal.

The Railroad has reported a deficit from passenger operations of about $1.4 million in 1980 even though passenger traffic has

12 10 40

been increasing since 1975. Passenger service is provided with old equipment, largely built in the 1950's for the Union Pacific Railroad, which is expensive to maintain. The cars are in need of substantial modernization, including the installation of electric heat and air-conditioning and interior refurbishing. The State of Alaska, in recent years, has subsidized the passenger service between Anchorage and Whittier in the winter months to maintain more frequent service than the Railroad could economically provide. In addition, the Congress provided a one-time subsidy of $1.5 million in fiscal year 1980 to support passenger train operations.

For fiscal year 1981, the Railroad made a profit of over $3 million. As discussed later in the report, the Railroad has improved its marketing efforts and may acquire additional business that would lead to its long-term profitability.

OBJECTIVES, SCOPE, AND METHODOLOGY

In our July 1978 report 1/ to the Congress, we discussed several problems needing management attention, including

- --lack of an effective marketing plan for maximizing revenues;
- --lack of specific guidelines for leasing and managing real estate;
- --an inadequate system of internal controls for protecting Railroad assets, ensuring collection of amounts due, and preventing improper transactions;
- --an incomplete cost data base being used for rate-setting; and
- --inadequate financial management procedures and practices in several other areas.

In addition, we discussed the need to decide whether the Federal Government should continue to own and operate the Railroad.

Because of these problems and congressional interest in the Railroad, we initiated a followup review in October 1980. Our review was performed in accordance with our "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Our objectives were to

---

1/"The Alaska Railroad: Its Management Is Being Improved; Its Future Needs To Be Decided" (CED-78-137, July 27, 1978).

10
17 40

--evaluate the corrective actions taken to resolve the problems we previously reported,

--examine the Federal Government's future relationship with the Railroad, and

--review the Railroad's ratesetting practices.

We eliminated the final objective because of subsequent legislation requiring the Interstate Commerce Commission to review the Railroad's rates.

Most of our information was obtained through interviews with

--the General Manager and numerous other officials and personnel at the Alaska Railroad;

--members of FRA's Alaska Railroad Management Committee, its special project staff, and its Director, Office of Management Systems;

--the Interstate Commerce Commission's Anchorage district supervisor and its headquarters cost development section personnel;

--the Air Force's Alaskan Air Command Comptroller, Director of Plans and Requirements, Director of Logistics, and other transportation specialists at Elmendorf Air Force Base, Alaska;

--the Army's Director of Plans, Training, and Security; Director of Industrial Operations; and others in the 172d Infantry Brigade at Fort Richardson, Alaska;

--personnel in Alaska's Departments of Commerce and Economic Development (Division of Economic Enterprise), and Transportation and Public Facilities (Planning and Programming Division);

--the land manager and other members of Cook Inlet Region, Incorporated, an Alaska Native corporation; and

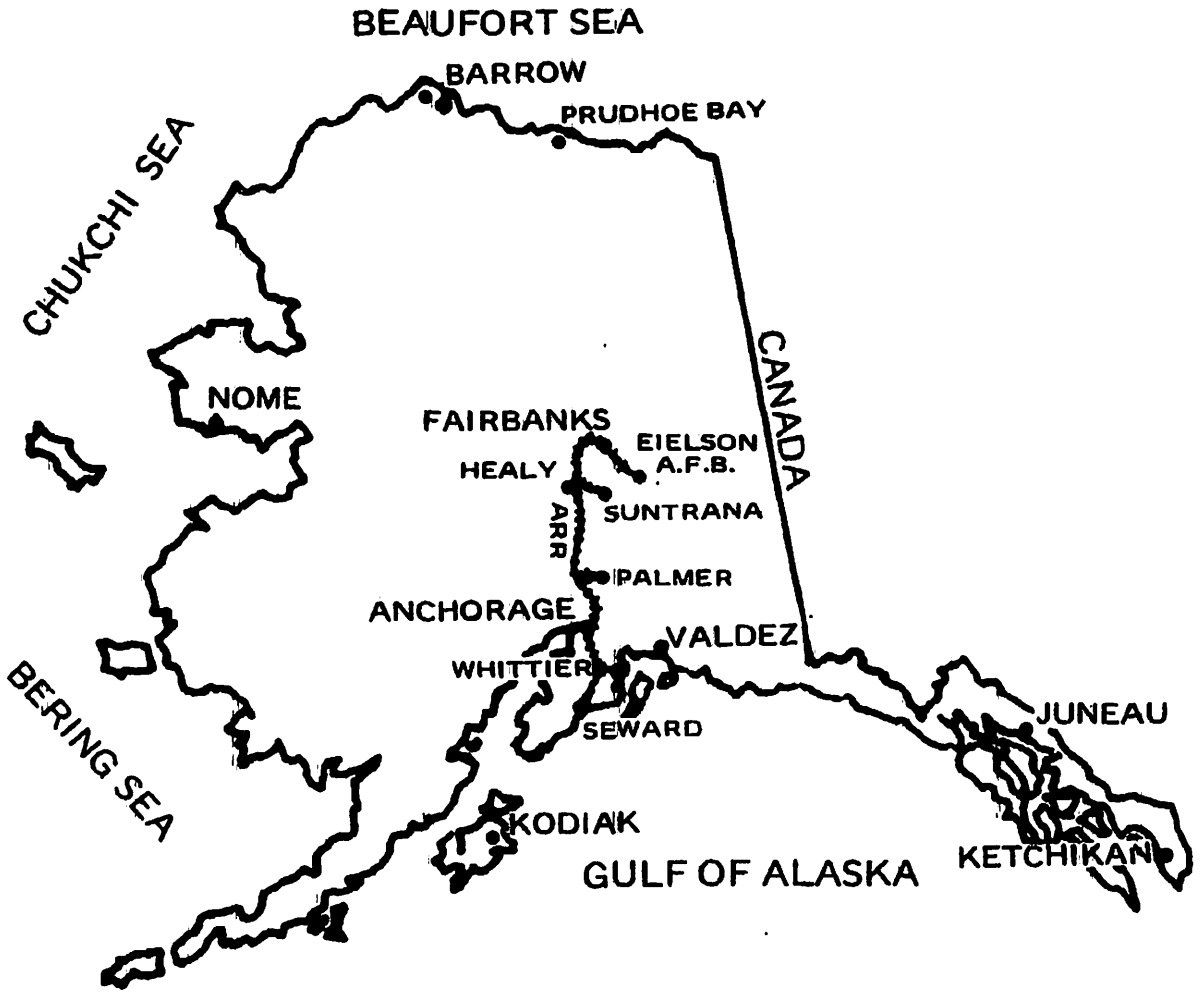
--the office of a State senator who has introduced legislation that would authorize the State to take over the Railroad.

We did not believe it was cost effective to conduct in-depth examinations of records and observations of Railroad operations to test the various corrective actions in response to our numerous earlier findings and recommendations. Instead, we conducted extensive interviews, as indicated above, to obtain information about corrective actions taken and their effectiveness, and we examined pertinent documents in some cases. We also obtained information from the Department of Transportation's Office of Inspector General reports. We then used this information to

evaluate the corrective actions' likely effectiveness in resolving the problems discussed in our earlier report.

Regarding the Railroad's future, we researched the Railroad's authorizing legislation and history and available literature. We also interviewed interested parties as indicated on page 4 and reviewed corroborating documents.

15 10 40


BEAUFORT SEA
BARROW
PRUDHOE BAY
CHUKCHI SEA
CANADA
NOME
FAIRBANKS
EIELSON A.F.B.
HEALY
SUNTRANA
ARR
PALMER
ANCHORAGE
VALDEZ
WHITTIER
SEWARD
JUNEAU
BERING SEA
KODIAK
GULF OF ALASKA
KETCHIKAN

CHAPTER 2

SHOULD THE FEDERAL GOVERNMENT BE RUNNING THE RAILROAD?

Most of the factors originally leading to the Federal Government's role in building and operating the Alaska Railroad have changed. The Railroad's role in national defense has changed substantially with improved air and highway transportation and different military needs and capabilities. Alaska is now a State, consequently, the State government has a role in and responsibility for determining its future development, including its transportation system. Some transportation needs can now be met by private businesses which are in direct competition with the Railroad.

The Railroad's profitability has varied considerably and its need for subsidies continues, but some of the steps needed for the Railroad to improve its profitability are inhibited by its Federal ownership. Moreover, the appropriateness of a Government-owned and financed organization competing with private businesses has been questioned.

In our 1978 report, we recommended that the Congress decide whether the Federal Government should continue to own and operate the Railroad. The Congress has not acted on this recommendation, although legislation has been introduced that would authorize transferring the Railroad to the State.

THE RAILROAD'S CHANGING DEFENSE ROLE

When the Congress authorized the construction of the Alaska Railroad, it determined that having a railroad was critical to the Alaskan defense strategy. Because a private railroad was not a viable alternative at the time, the Government built the Alaska Railroad. A 1976 Department of Transportation report indicated that

> "* * * the railroad provided a relatively high level of transport services into Alaska in comparison to the existing modes of the time--foot, horseback, dog sled, and riverboat."

The Railroad, therefore, had an important and almost irreplaceable defense role during its early years.

Today, this strategy has been changed because the Railroad is only one of several ways personnel and materials can be transported. Alaska's present road system and the reliability of aircraft provide alternatives that were not available when the Railroad was built. All-weather roads now parallel the Railroad's main line between Seward and Fairbanks. The Railroad's defense role now is one of a peacetime carrier and wartime alternative as opposed to the military's only means of transportation. This

10
17 40

role would be the same regardless of who owned the Railroad because national defense needs can preempt other uses in emergencies.

According to several military officials in Alaska, military vulnerability is also a factor in the Railroad's altered defense role. For example, Ft. Richardson's Director of Plans, Training, and Security told us that one railroad bridge, with estimated reconstruction time in excess of 1 year, is almost impossible to defend; furthermore, if the structure were destroyed, the Railroad would lose most of its defense role, probably for the duration of the emergency. Some highway sections near the Railroad would be equally difficult to defend.

THE RAILROAD'S CHANGED SETTLEMENT AND DEVELOPMENT ROLE

During the early period of the Railroad's operation, almost all of Alaska's land was owned by the Federal Government. Also, because Alaska was a territory and not a State, the Federal Government was responsible for its government and development; the Railroad, through its congressional mandate, helped encourage such development.

The Railroad has led to substantial settlement and development along its Seward to Fairbanks route, commonly known as the railbelt. (See map on p. 6.) About 70 percent of the State's population lives near this route. Anchorage, the largest city in the State, actually began as a construction site for the Railroad.

The Railroad's role in future development and settlement is now less clear because of two factors. First, the Federal Government no longer owns as much of the land in Alaska and second, Alaska is now a State; consequently, the State government is responsible and has resources for development.

Land ownership has changed with the passage of the Alaska statehood law in 1958 and the Alaska Native Claims Settlement Act in 1971. These laws provided for millions of acres of Alaskan land to be transferred from Federal ownership to the State and to Native corporations. With these land transfers went the responsibility to develop, or not develop, the land. The Federal Government's responsibility is therefore no longer as great as before these laws were enacted.

SHOULD THE RAILROAD COMPETE WITH PRIVATE BUSINESSES?

Some of the transportation service the Railroad provides is also provided by other transportation modes operated by private businesses, resulting in direct competition. Determining the extent of this competition was beyond the scope of our review, but such competition could increase as Alaska's economy develops.

18 10 40

For example, the Railroad, in conjunction with a barge carrier, moves freight from Seattle, Washington, to Anchorage by loading railcars onto barges for the Seattle to Whittier, Alaska, segment, then moving the cars over Railroad tracks to Anchorage. At least two private businesses provide similar service by moving containers or trailers by water directly to Anchorage. Generally, using the Railroad is cheaper for shipments north of Anchorage, but highways are also used for some of these shipments. These competing transportation services are offered throughout the year, despite some weather delays in winter.

Private businesses have complained of unfair competition by the Railroad, especially for the Seattle to Anchorage shipments. We did not investigate the specific complaints, but the Federal Government's policy is to avoid direct competition with private industry. As discussed in chapter 3, however, the Railroad will have to compete aggressively if it is to break even or become profitable (see p. 18).

PROBLEMS ASSOCIATED WITH FEDERAL OWNERSHIP OF THE RAILROAD

Because it is a Federal agency subject to most Government policies and regulations, the Railroad has limited flexibility in taking full advantage of business opportunities and changing its operations to improve its profitability. Also, its future ownership of and full control over its real estate is uncertain because of the Alaska Native Claims Settlement Act.

Lack of flexibility could inhibit profitability

As a Federal agency, the Railroad lacks the flexibility needed to take maximum advantage of business opportunities, especially when additional expenditures are involved. Federal policies such as personnel reductions and ceilings and hiring freezes have inhibited the Railroad's efforts to provide new and improved services that would improve its profitability. The Railroad has not had enough money to even seriously consider major expansions, even though they might be profitable, and has had to defer routine maintenance that is needed to provide reliable, efficient service. The Railroad's primary sources of funds are its generated revenues, income from leased properties, and Federal appropriations. Its authorizing legislation did not authorize it to borrow money, from either the U.S. Treasury or private sources.

As discussed in chapter 3 (see p. 18), the Railroad has adopted a much more aggressive approach in its marketing since our July 1978 report. However, this effort to increase its business creates a conflict with Federal requirements to reduce employment levels. To adequately serve the traffic increases resulting from better marketing, the Railroad needs to hire additional employees but is restricted from doing so because of the Government's effort to reduce the employment level.

10
19 40

Federal requirements for freezing and/or reducing personnel levels have been a continuing problem for the Railroad but could become critical in the near future because of developing export markets for Alaskan coal and grain. Railroad employees are subject to most of the requirements on Federal employees, including hiring freezes.

Coal has been mined near Healy, Alaska, (see map on p. 6) for some time, and an agreement is being negotiated to begin exporting substantial amounts of this coal to the Far East. The coal would have to move over the Railroad to a port for loading onto ships. Also, barley is now being grown near Fairbanks and an export market for it is developing. This new business could turn the Railroad into a profitable operation for a long time, but for the Railroad to take maximum advantage of these opportunities, it will need the flexibility to hire additional employees and make the necessary improvements.

Other opportunities for increased revenues and profits may be possible if the Railroad could extend its tracks beyond their present termini. Alaska has enormous potential for economic development, especially in minerals that require rail transportation. There are many obstacles to such development, including high costs and risks, environmental considerations, and lack of transportation. The Railroad's continued Federal ownership inhibits its even seriously exploring the feasibility of development projects because the needed capital would have to come from Federal appropriations, a long and uncertain process.

As is common with railroads that are short of money, the Alaska Railroad has frequently deferred needed maintenance and rehabilitation work. This practice eases short-term financial difficulties but creates its own set of problems. Sooner or later, the deferred maintenance affects the quality of the railroad's services and increases its day-to-day operating costs. For example, track that deteriorates because of deferred maintenance is subject to "slow orders," severely limiting trains' speed over the track. Slow orders obviously result in less timely service, but they also increase the railroad's costs because employees must be paid for longer hours and expensive equipment is not used efficiently. Other types of deferred maintenance have similar effects. Eventually, deferred maintenance must be performed for the railroad to continue operating. Although the Alaska Railroad has had several major rehabilitation projects over the years to correct problems caused by deferred maintenance, Railroad officials estimate that at the beginning of fiscal year 1981 at least $63 million in deferred maintenance needed to be performed.

Native claims cloud future ownership of Railroad real estate

The Alaska Native Claims Settlement Act authorized Native corporations to claim Federal lands not being directly used for

specifically authorized Federal purposes. This legislation's exact effect on lands owned by the Alaska Railroad is unclear, but, as discussed below, Railroad land might be claimed by Native corporations under the act because of its Federal ownership.

Department of the Interior regulations implementing the act contain several policies that might have adverse effects on the Railroad. For example, the regulations provide that lands being used primarily to derive revenues, rather than directly for authorized purposes, may be claimed. This raises a question concerning whether Native corporations can claim Railroad land leased to other parties. The Railroad's Chief Counsel and other Railroad and Interior officials are also concerned that, under other provisions of the regulations, the Railroad might lose land from which it obtains gravel used under the track and might even lose title to the Railroad right-of-way, retaining only an easement. FRA's Office of the Chief Counsel has noted that retaining only an easement could adversely affect Railroad operations. For example, the Railroad's ability to cut trees, cut and fill for track maintenance, and bar trespassers from the right-of-way would be limited.

ISSUES THAT NEED TO BE RESOLVED BEFORE THE RAILROAD IS TRANSFERRED

In the past, both the Federal and Alaska governments have considered transferring the Railroad to the State, and the Congress is now considering legislation authorizing such a transfer. However, several issues must be resolved before such a transfer is effected, including whether the State is the most appropriate transferee and whether the Railroad should be sold or given away.

The State had a study performed to evaluate its existing rail network and refine its statewide rail planning process. The study results, issued in December 1980, discussed the advantages and disadvantages of State ownership but made no recommendations in this regard.

A bill has been introduced in the Congress (S. 1500) that would authorize the Secretary of Transportation to transfer the Railroad's rail properties to Alaska if the State agreed to operate it. The State would not be required to pay the Federal Government for the Railroad. If the State did not agree, within 1 year, to operate the Railroad and comply with the bill's other requirements, the Secretary would be authorized to transfer or sell the Railroad to other entities. In such a sale or transfer, the Secretary would be required to give preference to a buyer or transferee that would continue to operate rail service, but no other conditions would be required.

With Alaska's economic development and population growth, the State government seems capable--both economically and politically--of operating the Railroad if it is to remain in the public sector. Also, if the grain- and coal-hauling business materializes as some expect, the Railroad may even become profitable enough to attract private ownership.

Private ownership of the Railroad might have some advantages over State ownership, but it might also have some disadvantages. For example, the issue of a public organization competing with private industry would disappear if the Railroad were privately owned. Also, private ownership could make it easier to decide whether to give the Railroad away or to sell it; a sale would seem appropriate to a private entity, while either a sale or a gift to the State might be justified. Private ownership, however, might inhibit efforts to encourage economic or resource development by extending Railroad lines. Private owners might not want to take the risks involved. Also, private entities might not be interested in buying the Railroad, although such interest would be more likely if the Railroad becomes profitable.

Of course, any transfer or sale would have to include conditions to assure continuation of basic rail services and to prevent unreasonable economic windfalls at Federal expense. A private buyer or transferee, for example, should not be permitted to abandon rail service and sell the associated right-of-way soon after obtaining it.

CONCLUSIONS

The major factors supporting the Federal Government's role in the Railroad--Alaska's territorial status, extensive Federal land ownership, national defense needs, and Federal responsibilities for economic development--have changed so much that continued Federal ownership and operation of the Railroad are no longer justified. Also, Federal ownership conflicts with actions needed to make the Railroad profitable and to expand it as a means of encouraging economic development.

Extending the Railroad beyond its present termini could spur development of the State's abundant natural resources. Such extensions would be expensive and economically risky and might be subject to environmental objections, but all of these issues seem to be within the State's and/or private owners' purview.

Issues that the Congress will have to decide, in addition to determining whether to end the Federal Government's role in the Railroad, include whether to give the Railroad away as provided in proposed legislation or to sell it; how a selling price will be determined if it is to be sold; whether to emphasize State or private ownership and/or operation; and how such emphasis is to be effected. Senate bill 1500 proposes solutions to all of these issues, but the Congress will have to decide whether the proposed solutions are the best ones.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact legislation leading to termination of the Federal Government's ownership and operation of the Alaska Railroad.

AGENCY COMMENTS AND OUR EVALUATION

We requested comments on a draft of this chapter, including the conclusions and recommendations, from the Departments of Transportation and Defense and the State of Alaska. Their comments are summarized below and are reproduced in appendixes I, II, and III, respectively.

The Department of Transportation said that the report was balanced and generally accurate. It concurred fully that Federal operation of the Railroad should end and expressed support for Senate bill 1500 to accomplish it.

The Department of Defense noted that service over low-density branch lines to defense installations could prove not to be economically viable and might be abandoned. Under such circumstances, the Federal Government might have to purchase such lines to prevent their abandonment. The Department suggested that we recommend that a reversion clause be included in any legislation transferring the Railroad, whereby property would revert to the Federal Government if it were converted to a use adversely affecting Railroad operations within 10 years of the transfer. Senate bill 1500 includes such a provision.

We agree that such a reversion clause should be included. As discussed previously, ensuring continuation of rail service and preventing unreasonable economic windfalls at Federal expense are issues that would need to be resolved before the Railroad is transferred (see p. 12).

Alaska suggested several areas of possible improvement in the report and noted possible objections to limitations on the State in moving the Railroad into the private sector. Although we did not specifically suggest such limitations, we noted the need for provisions to ensure continuation of basic rail services and to prevent unreasonable economic windfalls at Federal expense. We continue to believe that such provisions are needed.

CHAPTER 3

SOME MANAGEMENT PROBLEMS HAVE BEEN CORRECTED BUT OTHERS REMAIN

Our 1978 report described numerous serious problems in the Railroad's management, including many financial management and control weaknesses, inadequate marketing efforts and cost information on which to base marketing decisions, and unreasonably low rental rates for Railroad property leased to others. Some improvements have been made in each of these areas, but the recurrence of some of the same financial management and control weaknesses we discussed in our 1978 report indicates that management actions to correct reported deficiencies in these areas have not been completely effective.

As we recommended in 1978, the Railroad needs an internal review function to help management evaluate its corrective actions' effectiveness and to promptly detect and urge correction of other weaknesses. The Railroad also receives no independent audits except for occasional audits of specific areas by us and the Department of Transportation's Office of Inspector General. Reviews and audits provide a basic management control mechanism and will be needed regardless of whether the Federal Government's role is continued.

IMPROVEMENTS IN FINANCIAL MANAGEMENT AND CONTROLS HAVE BEEN ATTEMPTED, BUT A BASIC PROBLEM REMAINS

Our 1978 report described numerous weaknesses in the Railroad's financial management procedures and controls. These procedures and controls are intended to protect Railroad assets, ensure collection of appropriate fees and charges, and prevent improper transactions. Railroad officials attempted to correct these weaknesses, but several important ones continued, indicating a basic management problem. The weaknesses discussed in our 1978 report included:

--Inadequate separation of duties between individuals, resulting in inadequate checks and controls to prevent improper and/or inaccurate transactions.

--Absence of a proper system to authorize, record, and document receipts and disbursements.

--Lack of systematic verification of shipment weights.

--Infrequent revisions to charges for and failure to recover all costs of reimbursable work.

--Failure to validate and properly authorize reductions in billings.

10
24 40

--Allowing customers to exceed their credit limits and failing to assess service charges on delinquent accounts.

--Unaccounted for equipment and supplies.

--Lack of an accounting for Railroad property in the custody of employees leaving the Railroad.

--Allowing employees to pick up other employees' paychecks without accountability.

--Lack of a formal capital planning system and financial analysis of proposed capital spending projects.

--Inaccurate and unreliable accounting data.

--Irregular billings and weak and untimely efforts to collect overdue accounts receivable, caused by a decentralized billing and control system.

--Poor authorization and control procedures over restoration of employees' forfeited annual leave.

--Questionable justification of certain aspects of employees' official, Government-paid travel expenses.

--Unaccounted for Government transportation requests.

--Unreasonably high pay levels.

--Poor position management resulting in inefficient organizational arrangements and retention of unneeded positions.

--Improper use of temporary positions.

--Inadequately documented and noncompetitive procurements.

In addition, the Railroad had no internal audit or review function and no regular independent outside audits. Regular audits probably would have detected many of the weaknesses disclosed by our earlier review.

To correct these weaknesses, we recommended that the Secretary of Transportation direct the Railroad's General Manager to implement effective procedures and controls designed to ensure reliable accounting data, adequate control over expenditures, and compliance with Federal regulations. The internal controls needed to include:

--A plan of organization that segregates duties and responsibilities to properly control transactions.

10
25 40

--A system of authorization and recording procedures to provide accounting control over assets, liabilities, revenues, and expenses.

--An established system of practices to be followed in the performance of duties.

--Provisions for effective internal review.

We also recommended that FRA monitor the Railroad's actions and work closely with the Railroad in making the needed improvements.

Some weaknesses continue despite management efforts

Generally, FRA and Railroad officials have attempted to correct the management deficiencies brought to their attention. In most cases, their efforts were effective but, as discussed below, some weaknesses continue despite management's efforts.

During our recent followup, we examined a small number of transactions in the accounts receivable area to determine if the Railroad's corrective actions, based on our earlier findings and recommendations, were effective in correcting weaknesses. As a result of our re-examination, we found several deficiencies. For example, interest on past due accounts was being billed to customers but was not being recorded. Thus, when Railroad employees failed to collect the interest--as sometimes happened--the financial records and statements did not show the failure. Also, the Railroad's collection of overdue accounts was still weak and some accounts continued to be shown as receivables even after the statute of limitations on their collection had expired.

A November 1980 Office of Inspector General report showed several weaknesses in the Railroad's management of supplies and materials. For example, it noted poor controls over diesel fuel and shortages disclosed by the Railroad's physical inventories. Although the Railroad was not taking physical inventories as often as its policy requires--about once every 2 years instead of twice a year as required--the last inventory showed a 1 million-gallon shortage at two locations. A Railroad employee later discovered an additional 18,000-gallon shortage. Weaknesses in control would permit diesel fuel thefts, leaks, misuses, or unrecorded usages to go undetected for extended periods.

The Inspector General's report also showed weaknesses in controls over (1) small purchases at one location, (2) passenger revenues, (3) conductor's blank tickets, and (4) passenger ticket stock. These weaknesses would also permit abuses and errors to remain undetected. The report also noted that required spot checks and inspections were not being conducted on certain shipments to assure that appropriate revenues were being collected.

Railroad officials were generally very cooperative in initiating action to correct the deficiencies we and the Office of Inspector General brought to their attention, as they were during our earlier review and after our 1978 report. They seemed genuinely concerned about such deficiencies and anxious to operate the Railroad as efficiently as possible. Nevertheless, recurring similar deficiencies over such an extended period indicated that management actions to correct reported deficiencies have not been completely effective.

Audits could help correct weaknesses

Although we recommended in 1978 that the Department of Transportation institute an effective internal review function for the Railroad, the Railroad has received only occasional reviews of specific aspects of its operations. An effective internal review function could help the Railroad's management by following up on corrective actions taken and by reviewing the Railroad's financial controls and other operations to identify weaknesses and urge correction. Such reviews could advise management if corrective actions had not been properly implemented or if they were not proving effective and needed revision. Regular, independent outside audits could also help management in this regard, but on a broad rather than a specific, day-to-day basis. Independent audits would also evaluate the reliability of the Railroad's reported financial data.

Although the Department's Office of Inspector General has reviewed specific aspects of the Railroad's operations occasionally, it has not conducted the indepth reviews and regular complete audits envisioned by our 1978 recommendation. The Inspector General's reviews that were conducted and our recent followup review showed enough recurring and/or continuing weaknesses and breakdowns--despite management action to prevent them--to reinforce our earlier conclusion that regular, thorough reviews and audits are important to the Railroad's efficient management.

The Railroad's Administration Department Chief and other officials pointed to personnel limitations and reductions as important factors contributing to the continuing deficiencies. We did not specifically evaluate the Railroad's personnel needs but, as discussed earlier (see p. 9), it lacks the flexibility to hire personnel to fully exploit business opportunities. Although personnel shortages may have contributed to the Railroad's financial control and other weaknesses, we believe that the lack of regular audits is clearly a major shortcoming in its management.

We did not obtain information on the specific cost and benefits of audits for the Alaska Railroad, but audits are generally believed to result in savings exceeding their costs. We saw nothing indicating that the Railroad would be an exception to this belief.

THE RAILROAD'S MARKETING ACTIVITIES HAVE IMPROVED

Before our 1978 report, the Alaska Railroad had no specific overall marketing plan for reducing or eliminating operating losses by increasing revenues. Opportunities for increasing revenues existed, but the Railroad needed to improve its timeliness, services, and tariffs to compete more effectively and become financially self-sufficient. For example, the Railroad had not analyzed existing markets to assess whether changes in services were needed and generally had not performed marketing studies evaluating its competitive position. The Railroad lacked a comprehensive marketing approach that recognized where business opportunities existed and developed ways to provide marketable services. The Railroad's marketing policy to meet competitive challenges for its customers seemed to be established on a case-by-case basis.

Furthermore, the Railroad did not have information on the cost of transporting specific commodities to use in setting rates and making other marketing decisions.

In our 1978 report, we recommended that the Secretary of Transportation direct the General Manager of the Railroad to:

--Periodically make a systematic assessment of transportation needs in its service area.

--Develop an effective plan for actively marketing its services.

--Determine the actual cost of providing service on specific commodities so that its tariffs could be set fairly.

--Evaluate the effect of the Railroad's marketing and rate policies on consumers and competitors in light of Alaska's changing transportation system.

Market assessment, planning, and evaluation improvements have been implemented, and an improved cost information system was being designed and partially implemented at the time of our followup.

Marketing has improved, but planning is not formalized

The Railroad has not developed a formal marketing plan, as we recommended. However, as noted in the minutes of the Alaska Railroad Management Committee's quarterly meetings, Railroad management points to aggressive marketing practices and techniques as achieving the results intended by our recommendations. One major area of review by the Committee has been the Railroad's assessment of transportation needs and marketing plans to meet these needs.

Railroad management is actively pursuing contacts with interested parties, especially on intermediate and long-range development of natural resources and related traffic. For example, the Railroad continues to participate in package proposals for moving gas pipeline freight (pipe, drilling equipment, and supplies), anticipating the construction of a natural gas pipeline from Alaska's North Slope. The Railroad's marketing efforts have expanded to cover new markets and/or increase revenue in existing markets through such activities as advertising, contacts with tourism and industrial groups, better train scheduling, and special contract rates.

In 1979, the Railroad initiated a marketing program to develop additional traffic. Intermodal operations were expanded, rail-barge and trailer-container services were offered, and innovative full-service tariffs were initiated. Through innovative ratesetting--annual volume rates, multiple carload rates, and shipper pick-up and delivery allowances--the Railroad can be more competitive with other modes and attract increased traffic.

The Railroad is trying to obtain large volume coal shipments for the export market. The General Manager believes that, if successful in developing the coal export business, the Railroad could reverse its financial losses and become profitable for a long time.

The Railroad's Administration Department Chief said that the Railroad's future economic viability depends on attracting more business, and that the General Manager is committed to continued aggressive marketing. As discussed in chapter 2, however, these efforts have been or might be inhibited by the Railroad's uncertain future funding and status, constraints on its ability to respond to changing market conditions and business opportunities, and potential policy conflicts with a Government organization competing aggressively with private businesses.

The Railroad has evaluated its marketing and rate policies' effects on consumers and competitors to some extent. Efforts are being made to implement a new accounting system (see p. 20) which will permit the Railroad to better analyze its costs so that tariffs can be set fairly. Since the completion of the oil pipeline, business has decreased and most transportation companies in Alaska have excess capacity. To increase business, some of the carriers have cut prices and are operating at a deficit. Because these rates have been so low, the Railroad has found it difficult to price its services lower than its competitors. The General Manager and other Railroad officials believe their rates are fair to their competitors because all of their rates equal or exceed their variable costs. An accepted standard in railroad rate regulations is that individual rates are presumed to be high enough to be fair to competitors if variable costs are covered.

Improved cost information being planned

In a March 1956 report (B-114886), we said that Railroad rates did not cover its costs for all commodities transported. In our 1978 report, we noted that the Railroad did not have adequate information on total costs on which to base rate decisions. We noted that total cost information could improve the Railroad's marketing efforts because it would identify profitable commodities. Also, good cost information is needed for realistic budgeting and identifies areas for potential cost reduction.

The Railroad has made special cost and rate studies occasionally, but even these studies were sometimes not used to change the Railroad's rates. A 1976 study showed that the Railroad was losing money on some commodities.

Problems identified with costing in our 1978 report continued to hamper the Railroad's ability to make sound financial decisions, although improved cost information began being produced as of December 1981. For example, officials involved in the ratesetting process at the Railroad (the Traffic Officer and the Assistant to the General Manager) told us that it is almost impossible to identify total costs associated with some rail shipments, but they generally believe the present rate system covers most direct variable (incremental) costs.

Efforts to improve cost information delayed

In response to our 1978 recommendation that better cost information be used in setting rates and a 1975 Department of Transportation management review, FRA and the Railroad initiated a project in March 1979 to review and improve the Railroad's accounting system. This special project was to develop and implement a new integrated accounting and information system which would serve as a model for the railroad industry. The project cost was originally estimated at $1 million, to be provided by FRA over a 3-year period. The new system was to permit management to trace the elements of costs to their related function or location and provide management an ability to estimate how costs would vary because of changes in the level of activity. It was also supposed to automate the Railroad's billing and revenue accounting and provide detailed information on the costs and profitability of shipping each commodity. The project's three phases were to cover general accounting, revenue accounting, and measurement of cost and profitability.

According to the Railroad's Administration Department Chief, this project was later limited to designing a new computerized revenue accounting system because of the time and expense associated with the original project. This revenue accounting system will also include commodity costing which, combined with certain revenue information, will identify those markets and commodities contributing the most toward profits so that marketing can be directed toward that business.

10
30 40

In March 1981, the Assistant Chief of the Railroad's Administration Department told us that after approximately 2 years and expenses of $750,000, FRA had withdrawn its support of this project, even though the system design had not been completed. The Railroad's General Manager recognized the inadequacy of the old accounting system and is determined that the new system will be implemented. The Railroad began collecting data for a new revenue accounting system on October 1, 1981, and began producing its first series of reports, including manually produced commodity cost reports, as of December 31, 1981.

The Railroad also hopes to be able to eventually computerize its accounts receivable, including automated billing.

We have not evaluated the benefits that will be derived from the specific system the Railroad is developing, but we continue to believe that complete cost information is crucial to an effective marketing program. An FRA rate consultant stated that rates are determined by the market conditions, not by costs. Our previous reports stated that Alaska Railroad's rates should be based primarily on costs, but even if they are based on market conditions, as the consultant suggests, complete cost and revenue information is needed to determine which business is the most profitable and should therefore be emphasized and encouraged through marketing efforts.

IMPROVEMENTS IN THE MANAGEMENT OF RAILROAD REAL ESTATE

In our 1978 report, we said that the Railroad could substantially increase its revenues by charging full fair market value for Railroad-owned land leased to other parties. During our previous review, the Railroad announced a new policy under which it would charge fair market value for use of its land. We recommended that FRA monitor implementation of the new policy to make sure the policy was consistent with Government-wide policies and maximized the property's revenue-generating potential.

FRA has monitored the new policy's implementation through its Alaska Railroad Management Committee. Our followup review showed that rental rates are now based on appraisals of the properties' fair rental value and that rental revenues have increased far beyond what would have otherwise taken place.

CONCLUSIONS

The major management problem remaining unresolved is the Railroad's lack of regular, comprehensive audits, both by an internal review staff and by independent, outside auditors. Audits could evaluate corrective actions' implementation and effectiveness and promptly detect other deficiencies and suggest actions to correct them. Such audits will be needed regardless of whether the present Federal role is continued.

10
31 40

Either internal or outside audits would help in finding and urging correction of financial management and control weaknesses, but the most effective approach would be to have both. Having two types of audits would not necessarily be duplicative or inordinately costly because independent, outside auditors customarily consider work done by internal audit and review groups in determining the amount of audit work they need to perform. An overall audit plan for the Railroad could provide direction on who should perform the different audits and exactly when they should be conducted.

Although the Railroad management's efforts to improve financial management and control have not been completely effective, its actions to improve marketing and real estate leasing seem to have been more successful. Marketing efforts should become still more profitable as the Railroad further improves its cost information.

RECOMMENDATION TO THE SECRETARY OF TRANSPORTATION

We recommend that the Secretary institute a plan for periodic independent financial audits of the Railroad's operations as well as other comprehensive audits necessary to identify and follow up on management problems.

AGENCY COMMENTS AND OUR EVALUATION

In its comments (see app. I), the Department of Transportation said our conclusion that the lack of regular audits is a major shortcoming in the Railroad's management is somewhat overstated. The Department noted the Office of Inspector General reviews and stated that an independent audit firm had recently been retained to determine the reliability of the Railroad's financial data. It said further that the Railroad would have to compete with other Department activities for available audit resources and that, although greater audit attention would probably be helpful, it believed past efforts had been adequate.

We believe that past audit efforts have not provided Railroad management all the tools needed to manage effectively. The Department's actions to retain an independent audit firm to determine the reliability of the Railroad's financial data is a step in the right direction. However, we firmly believe that the Department needs an audit plan for the Railroad under which financial audits and other reviews would be performed as necessary to ensure that the Railroad's operations are performed economically, efficiently, and effectively.

We recognize that other factors might affect Railroad management and did not intend to imply that increased audit efforts would automatically resolve all the Railroad's management problems. We continue to believe, however, that audits and/or internal reviews are important management tools that are needed for the Alaska Railroad.

APPENDIX I

U.S. Department of Transportation

Assistant Secretary for Administration

400 Seventh St., S.W.
Washington, D.C. 20590

DEC 1 1981

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is our reply to the General Accounting Office (GAO) draft report, "The Alaska Railroad: Federal Role Should End; Management Should Be Further Improved," dated October 22, 1981.

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

Factors leading to Federal ownership and operation of The Alaska Railroad have changed so much that the Federal role is no longer justified. Moreover, Federal ownership inhibits actions needed to improve the Railroad's profitability and raises questions about the appropriateness of Government competition with private industry. The GAO recommends that Congress enact legislation leading to termination of the Federal role in owning and operating The Alaska Railroad.

Railroad management has attempted to take action to correct all management deficiencies brought to their attention. In most cases their efforts were effective but some weaknesses continue despite management's effort. Railroad officials were generally very cooperative in initiating action to correct the deficiencies that the GAO and the Department of Transportation (DOT) Office of Inspector General brought to their attention, as they were during GAO's earlier review and after issuance of the GAO's 1978 report. They seem genuinely concerned about such deficiencies and anxious to run the Railroad as efficiently as possible. Nevertheless, recurring similar deficiencies over such an extended period indicated that management actions to correct reported deficiencies have not been completely effective.

The fact that some weaknesses continue despite management efforts reaffirms GAO's 1978 recommendation for regular, thorough audits to help management evaluate its corrective actions. Such audits have not been instituted, although there have been occasional audits of specific areas. Audits provide a basic management control mechanism and will be needed regardless of who runs the Railroad. GAO recommends that the Secretary institute an internal audit and review function for The Alaska Railroad and that he have independent outside financial audits performed regularly.

APPENDIX I

DEPARTMENT OF TRANSPORTATION POSITION STATEMENT

The report is balanced and generally accurate. While there are some minor inaccuracies, they do not affect the thrust of the report; that Congress should enact legislation leading to termination of the Federal role; and that, while some weaknesses remain, railroad management has made effective efforts to correct weaknesses and deficiencies revealed in earlier reports.

We fully concur that the Federal operation of The Alaska Railroad should come to an end and we support Senate bill S. 1500 which would accomplish this.

We are pleased that the GAO has recognized the efforts made by railroad management to eliminate deficiencies. We must point out that when the GAO report was being prepared in 1978, The Alaska Railroad had total authorized permanent positions of 786. The authorized full-time permanent positions at the end of FY 1981 totaled 490. Thus in the three years since 1978, The Alaska Railroad has reduced its full-time employment by more than 1/3, has corrected most of the management deficiencies noted in earlier reports and has turned a profit for the first time since 1976. Railroad management is working on the remaining weaknesses and while no organization will ever be perfect, the known weaknesses will be corrected in the very near future.

As to the conclusion that the lack of regular audits is a major shortcoming in its management, we feel that this is somewhat over-stated. There have been reviews of selected railroad activities by the DOT Office of Inspector General. In addition, the Inspector General has recently retained an independent audit firm to determine the reliability of the railroad's financial data. The Alaska Railroad must compete with other DOT activities for Office of Inspector General reviews. Internal audits will be planned and carried out within available resources and other workload priorities. Overall, while greater audit attention would probably be helpful, we feel that the reviews of The Alaska Railroad have been adequate and we believe that the findings in this Report support this conclusion.

Sincerely,

Karen D. Lee

for Robert L. Fairman

APPENDIX II

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

7 DEC 1981

Mr. Walton H. Sheley, Jr.
Director, Mission Analysis and
Systems Acquisition Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Sheley:

This is in reply to your letter dated October 22, 1981, to the Secretary of Defense forwarding your draft report, "The Alaska Railroad: Federal Role Should End; Management Should Be Further Improved," OSD Case #5809.

In the report, you state that the Alaska Railroad is not economically viable under Federal ownership and operation. You also suggest state or private ownership as a means to reduce Federal costs, to generate regional development, and to develop a self-sustaining railroad. In our opinion, regardless of the transfer of ownership and operation, rail service provided to defense installations over low-traffic density branch lines could prove not to be economically viable. Consequently, the Federal Government (Department of Defense) could find itself in the position of having to re-purchase such a line in order to preclude its abandonment. To avoid this possibility, past legislation has included a reversion clause whereby, if within 10 years the property transferred is converted to a use which would adversely affect railroad operation (e.g., abandonment), that property and improvements would revert to the United States Government. We, therefore, suggest that your recommendation to Congress be revised to incorporate the 10-year reversion clause.

Sincerely,

James N. Juliana

Principal Deputy Assistant Secretary of Defense
(Manpower, Reserve Affairs & Logistics)

10
35 40

APPENDIX III

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 10, 1981

Mr. Henry Eschwege, Director
Community and Economic
Development Division
United States General
Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Eschwege:

I would like to thank your agency for providing the State of Alaska an opportunity to review your draft report regarding the future of the Alaska Railroad. The timing of this effort is most opportune given the pending federal legislation to transfer the railroad to the State.

The two enclosed chapters of your report appear to provide an accurate representation of the general status of the Alaska Railroad. The following comments reflect specific reactions to certain portions of the report:

(1) Chapter 1, Introduction, page 3: The discussion relative to cost of passenger service does not incorporate an assessment of the "real" or "total" costs of such service. I would direct your attention to Chapter 3.5 of the enclosed report on the Alaska Railroad.

(2) Chapter 2, Government Role, page 7: It is not entirely clear which elements of the private sector are in direct competition with the Alaska Railroad. This section could be revised to more carefully reflect the competitive conditions in Alaska.

(3) Chapter 3, Alaska Railroad's Development Role, page 8: The statement relative to attaining the Alaska Railroad's settlement and development goals is hard to document conclusively. An argument could be raised to the contrary with respect to the development of hard-

rock mineral activities within the Railbelt. Moreover, even with the conveyance of the State's land entitlement, the federal government will continue to own the majority of land in Alaska.

(4) Chapter 2, Alaska Railroad's Competition, page 9: It is not totally correct that the rail/car barges represent a similar service to the containerized traffic via Anchorage. Additionally, if the issue of unfair competition is to be mentioned, then it is only appropriate to include a brief summary of the two recent ICC studies on this matter.

(5) Chapter 2, Federal Ownership, page 10: The discussion on expansion leaves the impression that continued federal ownership has been one of the major deterrents to expansion of the Alaska Railroad. It ought to be included that mineral extraction costs and high transportation costs relative to the world market conditions of supply and demand are more realistic explanations of this condition.

(6) Chapter 2, Federal Ownership, page 10: It might be useful to review Chapter 3.3 of the enclosed report with respect to the question of deferred maintenance versus delayed capital expenditures.

It is also fair to say that the State might take issue with the assessment on page 12 of the private ownership option particularly with respect to the suggested limitations on the State in moving the railroad into the private sector. If the federal government intends to divest itself of responsibilities for the Alaska Railroad, and the State is willing to assume the general responsibilities of ensuring some ongoing operation, then it would not be appropriate to include a series of more specific conditions unless there is an exhibited willingness to pay for them.

I hope these comments are useful to you. Once again, I would like to thank your agency for the opportunity to comment on this document.

Sincerely,

Jay S. Hammond
Governor

Enclosure

(343751)

10
37 40

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE,$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE

THIRD CLASS

10
40 40

[page 53]

The transfer shall not affect the application of any other law to the properties or operation of the transferred railroad, including any rights or claims under the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. Thus, to the extent of any conflict between this transfer requirement and other laws, the other laws would control.

Section 508—Authorization of appropriation

This section authorizes $15.6 million for the Office of the Administrator of the Federal Railroad Administration for fiscal year 1983. Up to $9.2 million may be used for executive direction and administration and up to $6.4 million may be used for policy support.

* * * * *

[page 122]

ADDITIONAL VIEWS ON H.R. 6308, RAIL SAFETY AND SERVICE IMPROVEMENT ACT OF 1982

We would like to take this opportunity to express our general support of H.R. 6308 as ordered reported by the Full Committee. By the adoption of several amendments which eliminated certain troublesome provisions relating to the Northeast Corridor Improvement Project and the Office of the Federal Railroad Administrator, we believe that the product is markedly improved. We would note in this regard that these modifications addressed several of the major problems noted by the Administration in its comments on the bill. Nonetheless, we feel the bill still contains a few provisions that, although well intentioned, could possibly frustrate the basic purpose behind them.

Specifically, with respect to the Transportation Test Center operated by the Department of Transportation, the Department has proposed that the Test Center be transferred to private control by the end of this fiscal year and is in the process of finalizing negotiations. One factor that has helped those negotiations was the knowledge that all arrangements and the transfer must take place no later than October 1. Legislation requiring the Secretary to continue the Test Center in operation after this fiscal year could cause delay in the negotiations and serves no useful purpose.

Section 507 of H.R. 6308, as ordered reported, provides for the conveyance of the Alaska Raiload from the Federal Government to the State of Alaska.

We agree with this overall purpose and are unaware of any opposition to effectuating this conveyance. The Alaska Railroad was built by the Federal government when Alaska was a Territory. Now that Alaska is a thriving State, continued Federal operation and support are no longer necessary or appropriate.

We are concerned, however, that several provisions in section 507 may prevent a smooth transfer to the State or unduly complicate this process. For example, the provision which requires the State to pay 75 percent of net liquidation value of a railroad that does not

EXHIBIT 11
PAGE 1 OF 12

operate profitably conflicts with legislation introduced by the Congressman from Alaska, H.R. 4278, that has been painstakingly negotiated among all affected parties in that State. While this provision may be applicable in the lower 48 States, it does not seem appropriate that it be imposed on this transfer. Section 507 also requires that the transfer take place by October 1, 1982. All those who are directly involved in the negotiations for this transfer feel that this date is unrealistic.

We would hope that as H.R. 6308 proceeds to consideration in the House, these two provisons are modified to assure that the policy goals underlying these two sections can be implemented.

NORMAN F. LENT.
ED. R. MADIGAN.
GARY A. LEE.

HOUSE REPORT NO. 97-571, Part 2

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6308) to insure rail safety, provide for the preservation of rail service, transfer responsibility for the Northeast corridor improvement project to Amtrak, and for other purposes, having considered the same, report favorably thereon with an amendment to the amendment of the Committee on Energy and Commerce, and recommend that the bill as amended do pass.

* * * * *

[page 7]

PURPOSE

While H.R. 6308 as a whole deals with a variety of railroad matters, the purpose of section 507 (the portion reviewed by this Committee in accordance with the terms of the bill's referral) is to provide for the transfer of the Alaska Railroad to the State of Alaska by October 1, 1982.

BACKGROUND AND NEED

The Alaska Railroad was authorized to be built by an Act of Congress in 1914, and has been in operation since 1923. It is currently administered by the Department of Transportation. The relevant provi-

[page 8]

sions of law concerning establishment and operation of the railroad are codified in 43 U.S.C. 975 et seq.

The Railroad extends from the port town of Seward, at the southern end of the Kenai Peninsula, to Fairbanks. Between Anchorage and Fairbanks, its route passes through a portion of the Denali National Park and Preserve. Between Anchorage and Seward, the route crosses the Chugach National Forest.

Legislation which would transfer the railroad to the State apparently is prompted by the fact that the Administration, in its budget requests for fiscal 1983, proposes to end all federal funding of the railroad. However, according to recent reports, the Railroad's general manager has stated that the railroad expects to earn some $8 million

(on gross revenues of $51 million) during fiscal 1982, an amount which it is expected will cover the railroad's fiscal 1983 program; therefore, termination of federal funding at the end of the current fiscal year would not result in halting railroad operations.

A number of Native corporations have asserted claims to land held by the railroad, under the provisions of the Alaska Native Claims Settlement Act. Generally, these claims are premised on section 3(e) of that Act, which defines "public lands" for purposes of that Act. (Only "public lands" were to be made available for Native selections under the Act.) That section (in pertinent part) defines "public lands" as "all Federal lands and interests therein *except:* (1) *the smallest practicable tract,* as determined by the Secretary (of the Interior) *enclosing land actually used* in connection with the administration of any Federal installations . . .". (emphasis added). To date, there has been no final determination of what is the smallest practicable tract of land actually used by the Alaska Railroad; thus there has been no final determination of the validity of the several selections of railroad-held properties by the Native Corporations.

The 1914 Act providing for establishment of the Alaska Railroad requires (43 U.S.C. 975d) that "all patents for lands taken up, entered, or located in Alaska after March 12, 1914" must include a reservation for rights of way for the construction of railroads, telegraph and telephone lines. The significance of this requirement and its relationship to subsequent provisions of laws such as the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act (which includes a title, Title XI, dealing with rights-of-way across certain federal lands) is unclear. It is also unclear whether such a reserved right would be held to be transferred to the State in the event of transfer to the State of the Alaska Railroad, without clear provisions in any transfer legislation.

THE COMMITTEE AMENDMENT

The Committee adopted an amendment which struck subsection (c) of section 507 as reported by the Committee on Energy and Commerce, and in lieu thereof inserted six new subsections, which would become subsections (c) through (h) of section 507. These new subsections are described in detail in the section-by-section analysis of this Report.

[page 9]

SECTION-BY-SECTION ANALYSIS

Only one section (section 507) of the bill was reviewed by the Committee, in accordance with the terms of the referral of the bill.

Subsection (a) requires the Secretary of Transportation, before October 1, 1982, to transfer to the State of Alaska all the rail properties of the Alaska Railroad and the authority and responsibility for operating the railroad. The subsection also specifies that the consideration paid for this transfer shall equal 75 percent of the net liquidation value of the rail properties. The Committee did not review this subsection, in accordance with the terms of the sequential referral of the bill.

Subsection (b) provides that after the transfer the railroad shall be deemed to be a carrier by railroad subject to relevant provisions of law, including the antitrust laws of the United States. The Committee did not review this subsection, in accordance with the terms of the referral of the bill.

The new subsection (c) recommended by this Committee sets forth a series of definitions of terms. Many of these are either standard definitions of terms customarily used in bills considered by this Committee—such as "lands"—or are definitions which make it clear that when certain terms are used which are also used in the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act, the terms have the same meanings as they do when used in those related laws.

The definition of the term "rail properties of the Alaska Railroad" is particularly important, because that is the term for the properties which are to be transferred to the State of Alaska. The definition proposed has the effect of making it clear that while the State is to receive all of the personal property (such as rolling stock, accounts, and so forth) of the railroad, not all of the real estate presently under railroad control will be included in the transfer. The definition of "rail properties" also makes it clear that the State is not to receive the so-called "floating easement" (actually a reservation required to be included in patents) for railroad purposes set forth in the 1914 Act which established the railroad, nor would any federal right of eminent domain be transferred to the State. (Of course, the State, under its own laws, will have a State power of eminent domain).

The new subsection (d) concerns those portions of the railroad which traverse conservation system units and national forests—i.e., the portions of the railroad within the Denali National Park and Preserve and the Chugach National Forest. In each case, effective on the date of enactment, all the lands and interests therein held by the railroad are transferred to the Secretary of the Interior or Secretary of Agriculture, as appropriate, for inclusion in the conservation system unit or national forest and for appropriate administration as part thereof. At the same time, the Alaska Railroad is granted the right to use for railroad and related purposes the surface of the lands within these areas presently used for such purposes; and on the date of transfer, these rights are to be transferred to the State, subject to appropriate conditions and also with the restriction that if the State subsequently abandons any of these transferred rights, or discontinues use of the

[page 10]

lands involved for railroad purposes, the rights terminate and cannot be renewed except with the approval of the Congress. In fashioning these provisions, the Committee has recognized that the railroad presently is operating in a manner compatible with the purposes of the Denali National Park and Preserve and the Chugach National Forest, and intends that this operation continue. The same new subsection also transfers to the Secretary of the Interior the right to use and occupy, without compensation, certain specified railroad lands at Talkeetna for National Park Service administrative activities.

In adopting these provisions of new subsection (d), the Committee has decided that the exact status of the railroad's present inholdings within the Denali National Park and Preserve and the Chugach

National Forest is not to be viewed as determinative of the question of to what extent those holdings should be transferred to the State. Rather, it is the determination of the Committee that creation of new non-federal inholdings within these areas is not in the national interest. The Committee has also noted that, at the Subcommittee hearings on this bill, the State's representatives testified that the State recognized the national importance of the National Park System and National Forest System, and that the State was prepared to have the State-owned railroad's rights in those areas limited to an adequate railroad easement. Such a limitation is what the Committee intends in adopting new subsection (d), which also is intended to protect the interests of the United States in these areas and to allow the United States to make use of the right-of-way in these areas in ways compatible with railroad uses and without payment to the State or the railroad.

The new subsection (e) addresses the various claims of valid existing rights which apply to the lands now held by the railroad. The most important of these are the claims by several village corporations that, under section 3(e) of the Alaska Native Claims Settlement Act, they have validly selected some railroad lands. As was vividly brought out at the Subcommittee's hearings, this is a matter which has been allowed to drag on for nearly a decade without resolution, but the Committee believes that the new subsection (e) would resolve the question of the validity of those selections and the other claims in a way that protects all parties while affording proper recognition of any valid rights which may exist. In brief, the subsection would establish a form of escrow for the railroad lands subject to the unadjudicated village selections. These lands would be held by the Secretary of the Interior pending adjudication of the selections. During this escrow period, the railroad would, of course, continue to operate, and the Secretary of the Interior would manage the lands involved in a way that would protect the interests of both the State and the Native Corporations.

Meanwhile, adjudication of the native selections of railroad lands would go forward. The subsection includes provisions (applicable only with regard to unadjudicated village selections involving railroad lands) by which the Secretary would be required to complete such adjudications within one year after the enactment of the bill; absent a Secretarial decision, the selections would be deemed valid (but any

[page 11]

judicial review would toll this deadline). In the event that some or all selections were found invalid, the lands involved would be transferred to the State as rail properties of the Alaska Railroad. In the event that some or all of the selections are found valid, the result would depend on the location of the lands involved. To the extent that the lands were outside the right-of-way (that is, outside an area 100 feet on each side of the centerline of the tracks), the valid selection would result in the lands being transferred to the Native Corporations entitled to receive them under the settlement act. If any such lands were inside the right-of-way, a Native Corporation would have a 90-day option to relinquish a valid selection of right-of-way lands, and if they did so, the relinquished lands (both surface and subsurface) would be transferred to the State, subject to the conditions that the lands could not

be used to locate any public road or highway not in existence on the date of enactment, and that if the State should use them for other than railroad, transportation, or communications purposes or should discontinue railroad use of that part of the right-of-way, the lands would revert to the Native Corporations which relinquished the selections. If the Natives choose not to exercise this option to relinquish a valid selection of right-of-way lands, the present regulations would apply, but it would be deemed that an easement is not adequate to protect the railroad. Therefore, the lands would be transferred to the State free and clear of any further Native rights.

In incorporating these provisions into the bill, the Committee makes no judgment as to the validity or invalidity of any particular claim or class of claims to railroad lands under the Alaska Native Claims Settlement Act. Rather, it is the intent of the Committee that the village selections covered by the provisions of new subsection (e) be adjudicated without further delay, in accordance with the purposes of the settlement act and under the standards established in section 3(e) of that Act. This position reflects the longstanding policy of the Committee that valid Native selections under that Act are solemn commitments of the United States.

The Committee notes that the Department of the Interior in 1980 promulgated final regulations which would apply to such adjudications and that according to witnesses at Subcommittee hearings the factual information relevant to such adjudications has been submitted to the Department. The Committee therefore is of the option that there is no reason why the village corporations (which have seen their selections languish unadjudicated for more than a decade since the passage of the settlement act) should be exposed to further risk of interminable delays in resolving the question of the validity of these selections, and accordingly has included language which will have the effect of ensuring that such delays beyond the specified period do not have any additional deleterious impact on the village corporations' land interests.

At the same time, the Committee recognizes the need of th Alaska Railroad for certainty and security insofar as regards the status of the lands within immediate proximity to its tracks. Therefore, the Committee has included in the new subsection (e) provisions which will assure that railroad operations can continue during the adjucation period, regardless of the outcome of the adjudications. Even a finding

[page 12]

that lands immediately adjoining the railroad's tracks are valid selections of a village corporation will not prevent continued use of the railroad right-of-way for railroad purposes.

The new subsection (e) also addresses any other claims of valid existing rights in railroad lands (other than claims based on village selections under the Alaska Native Claims Settlement Act). Subsection (e)(1) provides that the transfer of the rail properties of the railroad to the State shall be subject to valid existing rights and that within one year after the date of transfer the Secretary of the Interior shall determine the validity of such claims. The value of any such rights as are determined valid shall be deducted from the value of the land affected by such rights, for purposes of computing the consideration which the State is to pay for the transfer of the railroad. Obvi-

ously, to the extent that such claimed rights are valid, they will be excluded from the transfer of the railroad's properties.

In the opinion of the Committee, the provisions of the new subsection (e), taken together, should assure an equitable settlement of the problems arising from the various claims of valid existing rights, under the Alaska Native Claims Settlement Act and other laws, which have been asserted against properties controlled by the Alaska Railroad, and thus are in the best interests of the claimants, the railroad, the State, and the federal government as well.

The New Subsection (f) is the "State Option" subsection. Its effect is to give the State an explicit option of paying for the railroad either in cash or land or some combination. The Committee recognizes that perhaps the State has this option in any event, but this language is intended to make it clear and also to provide a procedure for acceptance by the federal government of inholdings within conservation system units or areas required by law to be studied for possible identification and designation as conservation system units (such as the Chugach or Bristol Bay regions mandated for such study by Sections 1430 and 1203 of the Alaska National Interest Lands Conservation Act) as part of the consideration for the railroad.

The Committee has not addressed the question of whether or not the State should pay for the railroad. That was dealt with, so far as Committee action is concerned, by the Committee on Energy and Commerce. New subsection (f) merely provides additional flexibility to both the State and the federal government over the way that the price is to be paid. The language is entirely permissive, so far as the State is concerned, and the choice is left entirely to the State, as to whether it may decide to pay any part (or all) of the railroad's price in the form of either land or money.

The new subsection (g) specifies that after the transfer of the railroad to the State, the State may extend the railroad across federal lands through grants of rights-of-way in accordance with applicable existing law, including the Federal Land Policy and Management Act of 1976 and the Alaska National Interest Lands Conservation Act. According to testimony by the State's representatives at Subcommittee hearings, this meets the State's requirements.

The new subsection (h) merely authorizes appropriate legal proceedings to enforce the provisions added to the bill by the Committee amendment.

[page 13]

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of this portion of the bill after its enactment. No reports or recommendations were received by the committee pursuant to rule X, clause 2(b)(2) of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee finds that enactment of section 507 of H.R. 6308 (the only section of the bill reviewed by the Committee, in

11
7 12

accordance with the terms of the referral of the bill) will have no inflationary impact on the national economy.

COST AND BUDGET ACT COMPLIANCE

Section 507 of H.R. 6308 (the only section of the bill reviewed by the Committee, in accordance with the terms of referral of the bill) authorizes no appropriations and should require few if any outlays of federal funds. Section 507 requires that the United States receive consideration equal to 75 percent of the net liquidation value of the rail properties of the Alaska Railroad, in return for the transfer of the railroad to the State of Alaska. The Committee did not review the considerations which led the Committee on Energy and Commerce to determine that this consideration is appropriate, since the sequential referral did not cover this provision nor is it able to estimate what the net liquidation value of the railroad might be. However, the Committee has noted that the General Manager of the railroad, in testimony to the Senate's Committee on Commerce, Science, and Transportation at an August 10, 1981, hearing in Anchorage, stated (1) that the book value of the railroad as of July 31, 1981, was approximately $28 million, exclusive of the railroad's land holdings; (2) that value of the railroad's fixed assets including provisions for retirements of nondepreciable property and depreciation was approximately $168 million; and (3) that the fair market value of the railroad's land holdings was then approximately $180 million, while the railroad's gravel reserves were worth $80 million. Thus, the overall value of the railroad's assets was approximately $456 million one year ago.

The Committee also notes that, through inclusion of the new subsection (e), it has attempted to minimize the possible financial exposure of the United States to successful claims that transfer of the railroad was a taking of valid existing rights of Native Corporations or other parties claiming such rights in lands held by the railroad. While no completely reliable estimates are available, the Committee has been informed by knowledgeable persons familiar with land values in Alaska that omission of provisions such as those in new subsection (e) could have the potential for exposing the Federal treasury to claims in the amount of $150 million or more.

The analysis of the Congressional Budget Office follows:

[page 14]

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 24, 1982.

Hon. MORRIS UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed Section 507 of H.R. 6308, the Rail Safety and Service Improvement Act of 1982, as ordered reported by the House Committee on Interior and Insular Affairs, June 23, 1982.

Section 507, as amended, transfers railroad lands covered by Section 3(e) of the Alaska Native Claims Settlement Act to the Secretary of the Interior, as of the date of enactment, and requires claims of valid

existing rights to be adjudicated by the Secretary within one year after the date of transfer. It is expected that no significant additional cost to the government would be incurred as a result of enactment of this amendment.

Sincerely,

ALICE M. RIVLIN, *Director.*

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

H.R. 6308 was introduced on May 6, 1982, and was referred to the Committee on Energy and Commerce. On May 18, 1982, the Committee on Energy and Commerce favorably reported the bill with amendments, and the bill was referred to the Committee on Interior and Insular Affairs for consideration of such provisions of section 507 of the *amendment as fall within the jurisdiction of the* Committee on Interior and Insular Affairs under the Rules of the House. Under the terms of the referral, the Committee was required to report no later than June 24. The Subcommittee on Public Lands and National Parks held a formal briefing on the bill on June 7, a hearing on June 8, and on June 17, 1982 recommended a revised text of section 507 to the full Committee. On June 23, the Committee on Interior and Insular Affairs adopted amendments to the bill and by voice vote ordered the bill, as so amended, favorably reported to the House.

[page 15]

ADDITIONAL VIEWS TO SECTION 507 OF H.R. 6308, RAIL SAFETY AND IMPROVEMENT ACT OF 1982

I would like to take this opportunity to express some concern over H.R. 6308 as ordered reported by the Full Committee. Specifically, I am troubled by the changes made to Section 507, which is the provision dealing with the proposed disposition of the Alaska Railroad to the State of Alaska. While I fully support the notion of transfer as outlined by the Reagan Administration in their proposal last year, several new provisions in Section 507 unnecessarily confuse the transfer and may actually work to prevent it.

Of primary importance are those provisions which address the type of interest in railroad lands, particularly over rights-of-way, which will be made available to the State upon transfer. It is unclear whether this language will afford the State adequate protection to ensure maintenance of a viable rail system. For example, the concept embodied in Section 507(d)(2) which implies that ongoing railroad operations *within Denali National Park will* have to withstand a compatibility test determinaton represents a confusing and troublesome approach to the issue. It should be noted that this requirement structures conditions more restrictive than those which have governed over sixty years of Federal operation in this area. Moreover, other aspects of this subsection already provide adequate protection of park values. It is imperative that Congress recognize and clearly state that any such consistency determination include consideration of the economic realities necessary to maintaining viable railroad operations.

I am also concerned about those provisions dealing with the issue of potential claims outstanding against railroad holdings and whether

11
9 12

the language provides for a fair or equitable process for resolution. It appears that certain aspects of Section 507(e) attempt to alter substantively relevant provisions of the Alaska Native Claims Settlement Act of 1971, as amended. For example, Section 507(e)(3)(A) mandates that any contested tracts of lands not adjudicated by the Secretary of the Interior within one year after the date of transfer shall be deemed public land and available for conveyance to Native corporations. While I recognize a need to expedite these determinations, I question whether this approach represents good public policy, particularly in light of recent testimony from the Department of the Interior that they would be unable to complete these determinations within such a time period.

A final area of concern relates to the notion embodied in Section 507(f) that suggests as an alternative to the cash settlement specified in subsection (a), the State of Alaska will have the option of offering its own lands from within various conservation systems units or designated study areas for similar classification. Although I recognize that the specific question of compensation is not within the juris-

[page 16]

diction of this Committee, I am compelled to reiterate that this notion is inconsistent with the transfer discussions to date and does not seem to be appropriate given the other obligations being assumed by the State. Furthermore, I question whether this legislation providing for the railroad transfer represents an appropriate vehicle for addressing matters unresolved under the Alaska National Interest Lands Conservation Act of 1980.

I do applaud the Committee for its willingness to discuss freely these matters and its promptness to act on the over-all proposal itself. It is important that this matter move forth in the legislative process to avoid any long-term deterioration of railroad operations during this transition period. I am also appreciative of the Committee's willingness to allow further discussion and consideration of these matters prior to full House consideration. I remain hopeful that appropriate modifications can be reached to allow attainment of this important policy goal.

A copy of a letter from Governor Hammond representing the views of the State on this matter is attached.

DON YOUNG.

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, May 28, 1982.

HON. DAVID MICHAEL STATON,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE STATON: As you know, the Public Lands and National Parks Subcommittee will hold a hearing June 8 on H.R. 6308 which provides, in relevant part, for the transfer of the Alaska Railroad to the State of Alaska. Although the State did not seek to acquire the railroad, we accept the conclusion that continued federal operation is no longer appropriate. The importance of the railroad to the State presently and in the future is undeniable. Ac-

cordingly, the leadership of the State Legislature and I have been working with the federal Administration and our Congressional Delegation to provide for the transfer on mutually acceptable terms.

The transfer, as originally proposed to us, did not involve payment by the State for the railroad. Quite simply, the "cost free" transfer is, and always has been, a misnomer. In fact, the proposed transfer involves very real and calculable costs to the State. In addition to assuming certain federal liabilities, the State inherits a railroad badly in need of substantial capital investment (well in excess of $100 million) to recover deferred maintenance and other capital expenditures and to achieve full compliance with rail safety and related statutes. The State-owned railroad, in contrast to the current situation, would be fully subject to Interstate Commission regulations and the federal antitrust laws. The transfer is subject to costly employee protection conditions. It also seems likely to be made subject to valid, existing claims to railroad lands which, upon final adjudication, could diminish the rail properties received. These substantial obligations, when considered along with the losses associated with mere operation of the railroad, currently should be sufficient to dissuade anyone of the notion that the State would receive the railroad "cost free."

[page 17]

I am advised that three other issues are of particular concern to members of your Subcommittee. These include the railroad presence within the Denali National Park, future extension of railroad right-of-way, and Native claims against railroad lands. Although the testimony the State will provide will address these issues in greater detail, I thought it would be useful to speak to them in this correspondence as well.

With respect to Denali National Park, the State is content to retain only railroad right-of-way and rail-related improvements and to subject such holdings to regulation by the Secretary of the Interior, with State concurrence that it would not impair railroad operation.

Although the railroad presently serves the majority of Alaska's citizens and its large communities, extension of the railroad will be necessary and desirable in the future. Because the federal government remains the largest landowner in the state, future rights-of-way almost inevitably will traverse federal holdings. The 1914 enabling legislation established the standards for Alaska Railroad rights-of-way. Assuming these basic characteristics are received for consistency with existing rights-of-way, the State currently feels that existing law (specifically, the Alaska National Interest Land Conservation Act and the Federal Land Policy and Management Act) provides adequate processes for securing future rights-of-way.

One of the more controversial aspects of the transfer legislation involves the question of outstanding claims to railroad land. With respect to the Alaska Native Claims Settlement Act (ANCSA), I would point out that the U.S. Justice Department has determined twice in the last year that there are no valid existing claims. We hold this is an appropriate interpretation; nevertheless, the State suggests that, if such claims are made, Congress should provide for the U.S. Court of Claims to hear those petitions, and for the federal government to provide what the Court may determine to be just compensa-

tion. I would also point out that, if the opinions of Justice are correct, the federal government will be incurring no additional monetary liability by this approach.

While the State disputes the assertion of some that ANCSA vested valid existing rights to some railroad lands, if Congress concludes to the contrary, the State urges that the following conditions prevail:

(a) The State strongly opposes any loss of land which will impair the economic viability or operating authority of the railroad.

(b) We define economic viability to include, but not to be limited to, lands needed both for current operations and anticipated development.

(c) The State should be given full administrative standing within any conflict resolution process regarding specific disputes.

I hope these comments will be helpful to you in your review of the transfer legislation. The State very much appreciates your timely consideration of the legislation and stands ready to provide you with whatever information you may require about the State's position regarding transfer of the Alaska Railroad.

Thank you for your interest in the Alaska Railroad.

Sincerely,

JAY S. HAMMOND, *Governor.*

11
12 12

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
4230 University Drive
Suite 300
Anchorage, Alaska 99508-4626
(907) 271-4131

BLM.AK.4458
(LLAK944200)

December 20, 2012

Memorandum

To: Margaret McDaniel, Land Law Examiner,
Bureau of Land Management, Alaska State Office

From: Dennis J. Hopewell, Senior Attorney

Subject: Alaska Railroad Transfer – Potter Hill

Introduction

You requested my opinion on the conveyance of seven[1] lots in the Potter Hill area of Anchorage to the Alaska Railroad Corporation (ARRC) under the Alaska Railroad Transfer Act (ARTA), Pub. Law 97-468, 45 U.S.C. §§ 1201-1214. The United States still holds legal title to the railroad easements for these seven lots and you want advice on how to proceed. Three main issues are implicated: 1) what level of title should be conveyed; 2) what process should be used for the conveyance; and 3) what legal description should be used.

Short Answer

The short answer to your questions is ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive-use easement. The Bureau of Land Management (BLM) should use its normal process for conveying property to ARRC, namely a decision to do so with copies served on all appropriate parties. Following issuance of the decision, the property can be conveyed by patent using the same legal description used in the acquisition of the land by the United States.

[1] Initially the inquiry included eight lots. However, it was determined that one of the lots, Lot 19 of Block 3, Sunset Hills West Subdivision, was included in a prior interim conveyance to the ARRC. Therefore, no legal advice is needed on for that particular piece of property and it is not addressed in this memorandum.

Background

The seven lots in question were acquired from private parties in two separate transactions by the Alaska Railroad in 1965. At that time the Alaska Railroad was still owned and operated by the United States. The acquisitions were part of a realignment of the Alaska Railroad necessitated by the 1964 earthquake.

Portions of Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision[2] were acquired from Edwin and Yula Jarvi by a warranty deed dated July 2, 1965. Portions of Lots 15-18 and 20 were acquired from William Hancock by a warranty deed for perpetual easement of November 4, 1965.

The Jarvi deed included Lots 4, 13 and 14 as Parcel 4 of the legal description. The interest conveyed in Parcel 4 was described as:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described ... [Parcel 4].

The Hancock deed lumped Lots 15-18 and 20 together as Parcel 3. By its express terms the deed conveyed:

> ... the right privilege, and easement of using for railroad purposes authorized under the Act of March 12, 1914, 38 Stat. 304, as amended, 48 USC 301-308, exclusive of any other person or persons, as parties of the second part [United States of America] shall solely determine, in perpetuity, without hindrance, over and on those certain strips of parcels of land situate, lying and being in the Anchorage Recording Precinct, Third Judicial District, State of Alaska, and more particularly described as ... [Parcel 3].

Applicable Law

Several provisions of ARTA control this matter. Where private property is involved, the federal interest in the property must be determined even though ARTA requires the federal government to convey at least an exclusive-use easement to the Alaska Railroad Corporation. Section 606(b)(4)(B) of ARTA, 45 U.S.C.A. § 1205(b)(4)(B) (2011), sets out the requirement for conveyance of at least an exclusive-use easement as follows:

> (B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to

[2] All references to lots and blocks in this memorandum are to Block 3 of the Sunset Hills West Subdivision. The portions of the lots acquired in 1965 which will be conveyed under ARTA can be more particularly described as: those portions of Lots 3, 13-18 and 20 of Block 3 of Sunset Hills West Subdivision, according to the recorded plat thereof, lying southwesterly of the line designated as the "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, Alaska.

EXHIBIT 12
PAGE 2 OF 5

> a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. (Emphasis added.)

The minimum conveyance required by ARTA is defined in section 603(6), 45 U.S.C.A. § 1202(6) (2011), as:

> (6) "exclusive-use easement" means an easement which affords to the easement holder the following:
>
> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
>
> (B) the right to use so much of the subsurface estate of the lands subject to this easement as necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
>
> (C) subjacent and lateral support of the lands subject to the easement; and
>
> (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

Finally, section 604(b)(2), 45 U.S.C.A. § 1203(b)(2) (2011), requires:

> (2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 1205 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

Analysis

Since ARTA requires the conveyance of all federal interest in rail properties and at least an exclusive-use easement, the starting point of our analysis is to determine and identify the federal interests in each of the parcels under consideration.

By its terms, as well as its title, the Hancock deed conveyed a perpetual railroad easement. The terms of that deed, quoted above, are essentially equivalent to the ARTA definition of exclusive-use easement, also quoted above. The perpetual easement is for railroad purposes. It is also exclusive of non-railroad parties and it is the United States and its assigns that have the authority to determine how others can use land within the easement.

The Jarvi deed also granted a perpetual easement for railroad purposes. The wording of that easement, quoted above, contains terms and provisions very similar to the requirements of an exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C.A. § 1202(6), quoted above. Both the deed and the statute provide the right to use the land to operate and maintain a railroad line, to lay (construct) more tracks and to use the easement for communication purposes such as telephone lines. But the terms of the Jarvi deed are not as detailed as the ARTA definition and the deed does not specify that the easement is exclusive of all other uses. Still, there is no doubt the property is physically and legally subject to an easement for an existing railroad easement. Railroad easements are by their nature both broad and exclusive. 74 C.J.S. *Railroads* § 225 (2002).[3] Exclusive control is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be construed to match the specific terms of the exclusive-use definition in ARTA. Even if the Jarvi deed were construed to grant less interest than the exclusive-use easement of ARTA, conveyance of at least an exclusive-use easement is still required by that Act. 45 U.S.C.A. § 1205(b)(4)(B) (2011).

Conclusion

Based on the above background, referenced law and analysis, the BLM should proceed with a decision to convey to the ARRC the following lots in Block 3 of the Sunset Hills West Subdivision:

1. Exclusive-use easement to portions of lots 4, 13 and 14 (Jarvis deed); and
2. Exclusive-use easement to a portions of Lots 15-18 and 20 (Hancock deed).

The process for conveyance is the normal one. The BLM should issue a decision approving conveyance to the ARRC pursuant to ARTA. Copies of the approval decision must be served on interested parties including the successors in interest to the Jarvi and Hancock deeds. The actual conveyance must wait until the appeal period plus applicable grace period has run. If there is an appeal, the appeal must be resolved before the lots can be conveyed to the ARRC.

The legal descriptions used to acquire the land in 1965 are sufficient for conveyance under ARTA. Those legal descriptions were based on a proper state survey and are shown on an accepted and recorded state subdivision plat. Carefully matching the legal descriptions is the

[3] Since it may help in understanding the comparison to a general railroad right-of-way, in 74 C.J.S. *Railroads* § 225, it is explained: "Generally, after a railroad company's right of way has been located and constructed, it has the right to the uninterrupted and exclusive possession, use, and control of the surface of the land constituting its right of way and necessary for conducting its business, ... As long as the railroad company occupies any portion of its right of way, it has the exclusive use and right of control coextensive with its boundaries. [footnotes omitted]."

EXHIBIT 12
PAGE 4 OF 5

best way to ensure BLM is conveying all of the federal interests in those parcels. It also creates the best title record because it makes clear that the property previously acquired by the United States is the land being conveyed to the ARRC. Moreover, use of the existing survey description is consistent with section 604(b)(2) of ARTA which provides for issuance of a patent when the land is surveyed. 45 U.S.C.A. § 1203(b)(2) (2011). Accordingly, when the time for conveyance arrives, BLM should prepare and issue a patent for the lots at issue using the same descriptions under which title was acquired by the United States.

While this opinion memorandum is covered by the attorney-client privilege and can be kept confidential, BLM may decide to release copies to nonfederal parties, such as the ARRC and the interested landowners.

If you have any questions, please do not hesitate to contact me or, in my absence, Steve Scordino, Attorney-Advisor, or Joe Darnell, Acting Regional Solicitor, at 907 271-4131.

U.S. Department of the Interior
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
http://www.blm.gov/ak/st/en/fo/gdo.html

Categorical Exclusion
Assignment of existing Right-of-Way

Applicant: Bureau of Land Management
Case File Number: see list attached
DOI-BLM-AK-A020-2011-0001-CX

Location:
T. 12 N., R. 1 W., Section 18, Copper River Meridian, Alaska
Driveway and land lease for Meiers Lake Roadhouse along the Richardson Highway

Prepared By:
Joseph Hart
Realty Specialist
October 26, 2010

13
1 29

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Glennallen Field Office
CATEGORICAL EXCLUSION (CX) FORM

CX No.: DOI-BLM-AK-A020-2011-0001-CX Lease/Serial/Case File No.: AA-085293 and AA-073233

Proposed Action Title/Types: Assignment of an existing right-of-way and land lease for commercial operations at Meiers Lake Roadhouse.

Location of Proposed Action: T. 12 N., R. 1 W., section 18, Copper River Meridian, Alaska. The right-of-way provides for safe access onto private property for which a majority of travelers utilize.

Description of Proposed Action: The land lease was intended for and authorized the construction, maintenance and operation of tourism related facilities including camping areas, recreational vehicle parking pads, shower and laundry facilities, motel rooms and a maintenance garage. The BLM proposes to assign the right-of-way for 0.25 acre and the 7.1 acre commercial land lease from the existing grant and lease holder to the newly formed Hunters Retreat, LLC., a limited liability company whose owners have purchased and are operating the Meiers Lake Roadhouse. The newly-formed LLC has submitted all required documents and is currently in good standing with the State of Alaska as an operating business.

Applicant (if any): Harvel Young, Secretary of Hunters Retreat, LLC.

PART I - PLAN CONFORMANCE REVIEW

This Proposed Action is subject to the following land use plan: East Alaska Resource Management Plan

Date Plan Approved: September 7, 2007

The Proposed Action has been reviewed for conformance with this plan (43 CFR 1610.5-3(a)).

Remarks:

East Alaska Resource Management plan, page 19, Section I, Lands and Realty.

I-1: Goals – second bullet; "Provide a balance between land use (rights-of-ways, land use permits, leases and sales) and resource protection that best serves the public at large.

I-2: Land Use Authorizations – "Land use authorizations include various authorizations and agreements to use BLM lands such as right-of-way grants, road, temporary use permits under several different authorities; leases, permits, and easements under section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA); airport leases under the Act of May 24, 1928; and Recreation and Public Purposes (R&PP) leases."

43 CFR § 2807.21 May I assign my grant?

(a) With the BLM's approval, you may assign, in whole or in part, any right or interest in a grant.

43 CFR § 2920.7 Terms and conditions

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) The transferee shall comply with the provisions of §2920.2–3 of this title;

(2) The authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) Transfers shall not take effect until approved by the authorized officer.

PART II - NEPA REVIEW

A. Categorical Exclusion Review.
This Proposed Action qualifies as a categorical exclusion under 516 DM 2, Appendix 4. or 516 DM 11.5: .

H (9). Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

B. Departmental List of Extraordinary Circumstances Review.
The following Departmental List of Extraordinary Circumstances applies to individual actions. Departmental instructions mandate that environmental documents MUST BE PREPARED for actions which may: (Mark applicable answer for each item. If "yes", prepare an EA/EIS and append this form to it.)

The following Departmental List of Extraordinary Circumstances applies to individual actions. Departmental instructions mandate that environmental documents must be prepared for actions which may:

1. Have significant adverse impacts on public health or safety.

   Yes_____ No__X__

2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

   Yes_____ No__X__

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

   Yes_____ No__X__

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

   Yes_____ No__X__

5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

   Yes_____ No__X__

6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

   Yes_____ No__X__

7. Have significant impacts on properties listed, or eligible for listing on the National Register of Historic Places as determined by either the bureau or office.

Yes_____ No__X__

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

   Yes_____ No__X__

9. Violate Federal law or a State, local or Tribal law or requirement imposed for the protection of the environment.

   Yes_____ No__X__

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

    Yes_____ No__X__

11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred site (Executive Order 13007).

    Yes_____ No__X__

12. Contribute to the introduction, continued existence, or spread of weeds or non-native invasive species known to occur in the actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

    Yes_____ No__X__

I certify that none of the Departmental Extraordinary Circumstances listed in the above Part B (516 DM 2, Appendix 2) apply to this action.

Remarks: None.

Preparer(s):s/s Jospeh Hart Date: 11/18/2010

PART III – DECISION

The proposed action is in conformance with a management framework plan or a resource management plan, 43 C.F.R. § 1610.8(a)(3) (2006). The Department of the Interior has determined and found that the proposed action is within a category of actions that do not individually or cumulatively have a significant effect on the human environment and that neither an environmental assessment nor an environmental impact statement is required, 40 C.F.R. §1508.4 (2006).

It is therefore my decision to implement the action, as described, with appropriate mitigation measures or stipulations.

Mitigation Measures/Other Remarks: See attached Grant with stipulations and Lease agreement with stipulations.

Authorized Official: s/s Elizabeth Maclean Date: 11/22/10

Form 2800-14
(August 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Issuing Office
Glennallen Field Office (012)

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Serial Number
AA-085293

1. A (right-of-way) (permit) is hereby granted pursuant to:

a. _X_ Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

b. ___ Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);

c. ___ Other (describe) _____

2. Nature of Interest:

a. By this instrument, the holder ____Hunters Retreat, LLC receives a right to construct, operate, maintain and terminate a Non-exclusive use access road/driveway right-of-way on public lands (or Federal land for MLA Rights-of Way) described as follows:

A non-exclusive right-of-way Sec. 18, T. 12 N., R. 1 W., Copper River Meridian, beginning at approximately Lat 60° 49' 02.41141" N., Long 145° 29' 45.03411" W., approximately 546 feet to cor #1 the true Point of Beginning (POB);located on the centerline of the Richardson Hwy R/W; being a common cor with the SE cor of AA-73233; thence approximately N 77° 120' W., along a common boundary with AA-73233, approximately 92 feet to cor #2; thence southeasterly approximately 250 feet to cor #3, located on the centerline of the Richardson Highway; thence Northerly approximately 235 feet along said centerline to cor #1, the true POB, located on the centerline of the Richardson Highway R/W.

b. The right-of-way permit area granted herein is ___ feet wide, ___ feet long and contains ___ acres, more or less. If a site type facility, the facility contains __25_____acres.

c. This instrument shall terminate on ___June 10, _____, 2024 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument _X_ may ___ may not be renewed. If renewed, the right-of-way or permits shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be no binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing hereini before or on account of the expiration, or prior termination, of the grant.

3. Rental: The annual rental rate of $104.00.

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with the comparable commercial practices.

4. Terms and Conditions:

a. This grant or permit is issued subject to the holders' compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.

b. Upon grant termination by the authorized officer, all improvements thall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4) (d) or as directed by the authorized officer.

c. Each grant issued pursuant to the authority of paragraph (1) (a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter that do not exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.

d. The stipulations, plans, maps, or designs set forth in the Exhibit(s) __A__, dated 10-20-2010 attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.

e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.

13
7 29

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

g. Pursuant to 43 CFR2800.1-2(b)(1)(iii), no rental shall be collected provided all use is strictly related to rural utility services. Commercial use by other non-rural related services requires rental. The sale or lease of any excess capacity for commercial purposes to other telecommunications service providers that are not exempt from rent by statute, or regulations, shall result in the loss of the rental exemption for that portion of the fiber optic capacity being sold or leased for the commercial purposes. The rental for this portion shall be assessed based on the fair market value as determined by the authorized officer.

IN WITNESS WHEREOF. The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

(Signature of Holder)	(Signature of Authorized Officer)
(Title)	(Date)
(Date)	(Effective Date of Grant)

Exhibit A
10-20-2010

1.0 Definitions

1.1 The Glennallen Field Office Manager or its designees is the Authorized Officer (AO), as defined by 43 CFR 2920.0-5(c).

1.2 "Grantee" means Hunters Retreat, LLC., and any and all assignees that may be of record, including all agents, contractors, subcontractors, and employees.

1.3 "Grant" means the license, lease, permit, or other permissions granted by the United States to the grantee for the use of public lands and resources.

2.0 General

2.1 This grant is subject to all prior valid and existing rights, and the United States makes no representations or warranties whatever, neither expressed nor implied, as to the existence, or nature of such valid existing rights.

2.2 Any modifications to the proposed activities must be approved in writing by the AO.

2.3 It is the responsibility of the grantee to ensure that association members are familiar with and adhere to these stipulations.

2.4 These provisions do not relieve the grantee of any responsibilities or provisions required by any applicable State or Federal law and regulations.

2.5 The grantee may be required by the AO to furnish transportation and quarters for designated field representatives or observers while inspecting field operations.

2.6 In the advent of a disagreement of the interpretation or implementation of these stipulations the grantee agrees that the AO shall have the final say in how these stipulations are interpreted and implemented.

2.7 Grantee shall defend, indemnify and hold the United States, its assigns, agents, employees, representatives and successors in interest harmless from and against any and all actions, fees, for injury to or death of any person, persons, or property arising in connection with and as a direct result of grantee's activities, included but not limited to United States negligence, if any in failing to recognize or remedy a hazardous condition existing on public lands.

2.8 Grantee shall comply with Title VI of the Civil Rights act of 1964 (42 U.S.C. 2000 et seq) and the regulations of the Secretary of the Interior issued pursuant thereto.

2.9 This grant may not be encumbered, hypothecated, assigned, subleased, or transferred without prior written approval by the AO.

2.10 The AO may revoke or terminate this grant in whole, or in part, upon a determination by the AO that the terms, conditions, or stipulations of the grant have been violated, or by determination by the AO that the grantee's actions pose a threat to human health or safety, or irreparable harm to the surrounding environment.

2.11 The grantee shall not enclose in any manner, or erect or maintain any signs or structures on roads or trails commonly used for public travel or access to public lands surrounding the grant unless directed to do so by the AO.

2.12 This grant does not authorize the grantee to take from the public lands any mineral or vegetative material, including timber, without securing authorization under 30 USC 601 et seq.

2.13 This grant does not authorize any other use of the public lands or improvements belonging to the U.S. Government.

2.14 Fire suppression or protection shall not be provided by the government. The grantee shall be responsible for taking reasonable precautions to prevent and suppress brush, grass and other fire hazards within the authorized area, extinguishing all fires before departing the premises.

3.0 Environmental

3.1 All operations will be conducted in such a manner as not to cause damage or disturbance to any fish wildlife, or to impede rural residents from pursuing their traditional subsistence activities (ANILCA, PL 96-487).

3.2 All activities shall be conducted so as to avoid or minimize disturbance to vegetation. If it becomes necessary to remove vegetation, prior approval by the AO is required.

3.3 All operations shall be conducted with due regard for good resource management and in such a manner as not to block any stream, or drainage system, or cause the pollution of siltation of any stream or lake.

3.4 Use of pesticides or herbicides shall comply with the applicable Federal and State laws. Pesticides or herbicides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides or herbicides, the grantee shall obtain from the AO written approval of a plan showing the type and quantity of materials to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides or herbicides shall be approved in writing by the AO prior to such use.

4.0 Operational

4.1 There shall be no disturbance of any archaeological or historical sites, including graves and remains of cabins, and no collection of any artifacts whatsoever. Also, collection of vertebrate fossils, including mammoth and mastodon bones, tusks, etc, is strictly prohibited. Any cultural or Paleontological resources discovered by the holder, or any person working on behalf of the holder, shall be immediately reported to the AO. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the AO. The grantee shall not occupy or otherwise

4.2 disturb any cultural sites including historical cabins. The grant holder will be responsible for the cost of any evaluation and mitigating measures determined necessary by the AO.

4.3 All solid wastes shall be removed from the public lands to an Alaska State DEC approved solid waste disposal facility.

4.4 Areas of operation shall be left clean of all unauthorized foreign objects. This shall include, but is not limited to; wires, pins, flags and reflectors.

4.5 All fuel or lubricant spills will be cleaned up immediately, taking precedence over all other matters, except the health and safety of personnel. Spills will be cleaned up utilizing absorbent pads or other Alaska State DEC approved methods. Any such spill sites will be documented so that they can be located during the compliance check.

4.6 Recovered spill fluids will be removed and incinerated in approved receptacles.

4.7 As soon as possible, but not later than 24 hours, notice of any such discharge as defined in Alaska Statute Title 18, Chapter 75, Article 2 will be given to the AO and any other Federal and State Officials as are required by law.

4.8 All State and Federal safety standards and regulations for fuel transportation and handling will be followed. Only fuel products and amounts specifically authorized shall be stored on site, and shall be located a minimum 100 feet away from any source of water. All fuel containers, including barrels and propane tanks, shall be marked with the grantee's name, product type and year filled.

4.9 The grantee shall protect all Survey Monuments. In the advent of obliteration or disturbance of a survey monument, the grantee shall immediately notify the AO. The grantee will be financially responsible to re-establish the survey monuments to the Bureau standards.

4.10 No hazardous materials shall be transported or disposed within the area of authorized use.

4.11 The grantee shall ensure that a copy of the permit and stipulations is present on site at all times.

4.12 The grantee shall notify the AO 7 (seven) days prior to removal of personal property and abandonment of the area, and shall be responsible for any rehabilitation of the site deemed necessary by the AO. At minimum all disturbed areas shall be re-contoured and re-vegetated using native species.

4.13 The holder shall have a representative available to accompany the Bureau's field representative during any compliance inspection, and shall provide the AO with documentation of all work performed. This shall include a description of the work, photographs and maps or charts depicting the specific sites where operations were conducted.

Grantee Signature

Date

13
11. 29

AA-073233
2920.20
(012)

LEASE AGREEMENT

:
:
:
:

Commercial Tourism and Public Recreation Facilities
located at
Meiers Lake
Alaska

:
:
:
:

By this instrument lease agreement AA-073233, entered into by the United States of America, the Lessor, through the authorized officer of the Bureau of Land Management, and Hunters Retreat, LLC., Owner/Operator, the Lessee, becomes effective as of _____. The lease agreement AA-081894 is entered in, pursuant and subject to the terms and provisions of Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 USC 1732), the regulations contained in 43 Code of Federal Regulations 2920 and to all reasonable regulations of the Secretary of the Interior now in force or hereafter in force when not inconsistent with any express and specific provisions herein, or which are made a part hereof.

WITNESSETH:

Section 1: Definitions

A. The Glennallen Management Team, its designees. or successor's in interest are the Authorized Officer (AO). as defined by 43 CFR 2920.0-5(c).

B. "Lessee" means Hunters Retreat, LLC. Harvel Young, Owner/Operator, P.O. Box 293. Gakona. Alaska 99586, including any and all agents. contractors, subcontractors. and employees of record.

C. "Lease" means the license, lease, permit, or other permission granted by the United States to the grantee for the use of public lands and resources.

D. Commercial use means the occupancy and use of the premises by the lessee for business operations of an RV Park, parking area, fuel station. rental rooms, and those activities allowed under the law for the Meiers Lake Roadhouse.

Section 2: Rights Granted

A. The Lessor, in consideration for rents to be paid and the conditions to be observed as set forth below. does hereby grant and lease to the Lessee the right and privilege of using for the purposes hereinafter set forth. the following lands as described within case file AA-73233.

Section 3: General Conditions

A. This lease is being issued for a period of 5 years, and may be renewed at the discretion of the AO. Written request for renewal must be submitted to the AO no later than six (6) months prior to the expiration date to allow for processing of the renewal.

B. This lease may not be encumbered, assigned, transferred, or subleased without the written consent of the AO.

C. Hypothecation of the leasehold interest created by this lease is expressly prohibited and any attempted hypothecation shall be null and void.

D. The lessee shall not enclose, obstruct, or in any manner discourage the general publics' use of the airstrip adjacent to the subject lease.

E. During the term of the lease the lessee shall have the exclusive use right of possession of all improvements to the leased land and all property so attached or affixed to said land or to real property on the lands for the purpose of commercial use only: Provided that the right to such use shall be contingent upon adherence to the terms and conditions of this lease.

F. The lessee agrees that no improvements shall be erected, placed upon, operated, nor maintained within the premises, nor any activity or business conducted or carried on therein and there from, in violation of the terms of this lease, or of any regulation. order of law. statute, or ordinance of a governmental agency having jurisdiction over lessees' use of the premises.

G. The lessee shall not enclose or obstruct in any manner, or erect or maintain any signs or buildings on roads or trails commonly used for public travel, or access to public lands surrounding the lease, without written approval by the Authorized Officer.

H. No new construction, reconstruction or alteration of improvements, development plans, and layouts must be approved in advance and in writing by the Authorized Officer. Development plans and management guidelines may be amended or supplemented by written agreement of both parties to the lease.

I. Prior to any new construction, reconstruction or alteration of improvements, development plans, and layouts must be approved in advance and in writing by the Authorized Officer. Development plans and management guidelines may be amended or supplemented by written agreement of both parties to the lease.

J. The Authorized Officer may at any time require a performance bond to assure compliance with the terms of the lease and removal of any improvements on the subject land after the effective date of this lease, with or without the lessees approval, to ensure compliance or removal in a timely manner as specified in Section 13. Stipulations. If the lessee fails to comply with the terms of the lease, remove the improvements, or to leave the site in a condition satisfactory to the Authorized Officer, the bond may be forfeited, and title to the improvements and facilities shall vest in the United States.

K. The Lessee shall maintain the improvements specified in section 2 in accordance with standards satisfactory to the Authorized Officer, including but not limited to those set forth in any Development Plan, Management Guidelines, the Federal Land Policy and Management Act of 1976 and the regulation contained in 43 CFR 2920.

L. Upon termination of the lease, the Lessee, heirs, or devisee's shall, within sixty (60) days following the date of expiration or a longer period approved in writing by the Authorized Officer, remove improvements he/she has placed upon the lands after the effective date of this lease, with the exception of any fill, embankment, and surfacing material. After removal of the improvements, the lessee shall shape and grade the disturbed areas to ensure soil stability and proper drainage.

M. Title to property placed on or acquired on the leased land by the Lessee which does not, under State law, acquire the character of real property by reason of not being affixed to the real property, shall not vest in the United States by reason of this lease or its use on the leased lands. Said property may be removed by the person or persons entitled to possession of it at any time during the term of the lease or upon termination. Any such property not so removed prior to the termination of this lease or the expiration of an additional period agreed upon, in writing, by the Authorized Officer for the purposes of such removal, shall become property of the United States. The United States, at its option, may cause said property to be removed from the lands at the expense of the lessee or owner.

N. The Lessee in exercising the privileges granted by this lease agrees to comply with the regulations of the Department of the Interior and all Federal, State, Borough and municipal laws, ordinance or regulations which are applicable to the area of operation covered by this lease.

Section 4: Fee Payments

A. The Lessee shall pay an annual rental based upon the Bureau's fair market value appraisal of the lands involved. It has been determined that the fair market rental for the subject land is

$1,560.00/year. The rental fees required are payable on or before the 1st day of January of each year during the term of this lease. A late charge of one percent (1%) per month of the unpaid amount or twenty-five dollars ($25), whichever is greater, shall be assessed if not paid by the due date.

B. The rental fees may be reviewed at anytime, as determined by the Authorized Officer, to reflect the current fair market value for the land. Such new rental fee, if any, shall take effect on the corresponding day of the month following the expiration of a ninety (90) day period after receipt of written notice of the new rental rate.

C. Dispute of Rental Fee

(1) Rentals will be adjusted only after a fair market rental appraisal has done by a BLM appraiser.

(2) The Lessee has the right of appeal in accordance with the regulations contained in 43 CFR Part 4, Subpart E.

(3) While the rental rate may be adjusted as a result of dispute hearings, or appeal, the effective date of such rate change shall not be subject to appeal.

(4) Decreases in rental rates shall be credited to the following year's annual rental unless the Lessee requests a refund in writing.

Section 5: Termination

A. This lease shall terminate 5 years from the effective date of issuance except when section 3 A is utilized for renewal.

B. This lease may terminate upon mutual agreement in writing by both the Lessee and the Authorized Officer and satisfaction of the requirements contained in Section 13: Exhibit A, or Exhibit B, per item 11 of the Stipulations from the State of Alaska dated January 10, 2008.

C. This lease may be terminated for noncompliance with the regulations in 43 CFR 2920 or for noncompliance with the provisions of this lease, including but not limited to adherence to any approved Development Plan. The Authorized Officer shall serve written notice of the breach upon the Lessee. If the Lessee fails to correct the breach within a reasonable time as determined by the Authorized Officer, notice of termination shall be served thirty (30) days in advance of termination and the lease shall be terminated: Provided that before the notice is given, the Lessee shall be given a reasonable opportunity, by hearing before the Authorized Officer to present evidence that such breach had not occurred or that such breach was not caused by any act or failure to act by the Lessee or any of his/her agents, employees, sub lessee's, contractors or assigns: Provided further that at the discretion of the Authorized Officer the term of this lease or the area encompassed by it may be reduced in lieu of termination under this section. In such case fees shall be adjusted accordingly.

D. This lease may be canceled for failure to pay rent within 60 days from the date due each year, or March 4 of each year.

E. This lease shall terminate after failure of the Lessee to use the land for the purpose for which the use was authorized. Non use or failure to maintain the improvements for any continuous three (3) year period shall constitute a presumption of abandonment and termination.

F. All terminations of the lease under this section shall result in the deduction of all amounts due and owed to the United States by reason of any breach of the condition of this lease. Termination shall not absolve the Lessee from meeting requirements set forth in Section 13 (Exhibit A), including but not limited to leaving the lease area in a reasonably sightly and non-hazardous conditions and removing all refuse from the area.

Section 6: Liability and Damages

A. The Lessee shall defend, indemnify and hold the United States, it assigns, agents, employees, representatives and successors in interest harmless from and against all actions, fees, for injury to or death of any person or persons arising in connection with and as a direct result of lessee's activities, including but not limited to United States negligence, if any, in failing to recognize or remedy a hazardous condition existing on public lands. Including but not limited to the operation, maintenance, and repair of any structures occupied by the lessee.

B. The lessee shall at all times indemnify the United States, its assigns, agents, employees, representatives and successors in interest and save harmless from all claims of loss or liability for labor or materials supplied in connection with the operation, construction, repair, alteration or installation of structures, improvements, equipment, or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

C. The Lessee agrees to indemnify and hold harmless the United States against claims of third parties based upon an assertion of title or right of possession under State law.

D. The Lessee shall pay the United States the full value for damage to the Public Lands or property of the United States caused by its employees, agents, contractors or subcontractors. The Lessee shall be held to standards of strict liability where the Authorized Officer determines that the activities taking place on the area covered by this lease present a foreseeable hazard or risk of damage to public lands or other property of the United States. Strict liability shall not be applied where such damage or injuries result from acts of God, acts of war or negligence of the United States.

E. Lessee shall indemnify and hold harmless the United States from loss of property and damages due to fire, whether natural or man caused, and shall assume responsibility for all cost associated with fire suppression efforts.

F. Lessee shall maintain liability insurance in the amount of a) $100,000 for any one person, b) $300,000 for any one occurrence, and c) $10,000 property damage for any one occurrence. The policy must list the Bureau of Land Management as an additional insured, and indicate on the policy that if it is canceled before the expiration date, the insuring company will endeavor to mail 30 days written notice to the Bureau of Land Management.

G. Upon conveyance of the subject land to the State of Alaska, the Department of Natural Resources, Division of Land may at any time establish additional insurance and bonding requirements.

Section 7: Reservations

A. This lease is subject to all prior valid and existing rights, and the United States makes no representation or warranties whatever, either expressed or implied, as to the existence, or nature of such valid existing rights.

B. This lease is subject to the exclusive right of the United States to grant rights-of-way for roads or public utilities to or across said lands, and for other compatible use authorizations.

C. All mineral interest in said lands are reserved to the United States along with the right to mine and remove the same under applicable laws and regulations as established under the Secretary of the Interior.

D. The Authorized Officer or his duly delegated representative shall have the right at any time to enter upon any lands described in Exhibit A for any purpose he/she may deem necessary for the administration of the lands, but not so as to destroy or unreasonably interfere with the Lessee's use of such lands or the improvements thereon.

Section 8: Notices

A. Any notice, demand or request required or authorized by this lease to be given or made to or upon the United States shall be deemed properly given or made if delivered or mailed postage prepaid to the Field Manager, Glennallen Field Office, P.O. Box 147, Glennallen, Alaska 99588.

B. Any notice, demand or request required or authorized by this lease to be given or made upon the Lessee shall be deemed properly given or made if delivered or mailed postage prepaid to Hunters Retreat, LLC, Harvel Young Owner/operator, P.O. Box 93, Gakona, Alaska 99586 or to the designated agent.

C. The designation of the person to or upon any notice, demand or request is to be given or made or the address of such person may be changed at any time in the same manner as provided for in this section.

Section 9: Nondiscrimination and Equal Employment Opportunity

A. The lessee shall comply with Title VI of the Civil Rights Act of 1964 and by all requirements imposed by or pursuant to the regulations issued there under by the Department of Interior and in effect on the date of this document to the end that no person in the United States shall, on the ground of age, race, color, religion, sex or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any programs or activities provided thereon, and that the United States shall have the right to judicial enforcement of these covenants.

B. This lease is subject to the provisions of Executive Order 11246 of September 24, 1965, as amended, which sets forth the applicable non discrimination clause.

Section 10: Covenant Against Contingent Fees

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee to pay, in addition to the lease price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

Section 11: Officials Not to Benefit

No member of or Delegate to Congress or Resident Commissioner, and no officer, agent or employee of

the Department of the Interior shall be admitted to any share of this lease or to any benefit that may arise from it, but its restriction shall not be construed to extend to this lease if made with a corporation or company for its general benefit, nor shall it limit the use by the aforementioned persons for accommodations, facilities, services or privileges offered to or enjoyed by the general public.

Section 12: Other Warranty by the Government

A. The various headings and numbers herein, the grouping of provisions of this lease into apparent separate clauses and paragraphs, and the organization of this lease are for the purposes of connivance only and shall not be considered otherwise.

B. Neither the execution and delivery of this lease nor anything herein contained shall be construed as a representation, warranty or covenant by the United States as to the condition of the premises, the suitability for use or enjoyment or the future maintenance, development, improvement or protection of the premises.

C. The failure of the lessor or lessee to insist upon strict performance of any of the terms, covenants, or conditions of this lease shall not be deemed a waiver of any right or remedy that the lessor or lessee may have, and shall not be deemed a waiver of the right to require strict performance of all terms, covenants and conditions of the lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term covenant, or condition of the lease.

D. If any term, covenant, condition, or provision of this lease is determined to be invalid, void, or unenforceable, by law, regulation or court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

Section 13: Stipulations

The Lessee further agrees to comply with and be bound by those additional terms and conditions identified as Exhibit A, Special Stipulations, and further by Exhibit B, State Stipulations.

FOR EXECUTION BY LESSEE
IN WITNESS WHEREOF

_____

(Signature of Lessee' Authorized Officer)

_____

(Signature of Witness)

_____

(Date)

FOR EXECUTION BY THE
UNITED STATES OF AMERICA

_____

(Authorized Officer)

_____

(Glennallen Field Manager)

_____

(Date)

Case File No.: AA-085293 and AA-073233
DOI-BLM-AK-A020-2011-0001-CX

BUREAU OF LAND MANAGEMENT STANDARD STIPULATIONS:
EXHIBIT A
October 28, 2010

1.0 Definitions

1.1 The Glennallen Field Office Manager or its designee is the Authorized Officer (AO), as defined by 43 CFR 2800.0-5(c).

1.2 "Leaser" means Hunters Retreat, LLC., Harvel Young, Owner/operator, and any and all assignees that may be of record, including all agents, contractors, subcontractors, and employees.

1.3 "Lease" means the license, lease, permit or other permission granted by the United States to the leaser for the use of public lands and resources.

2.0 General

2.1 The leaser will address all matters to Glennallen Field Office, P.O. Box 147, Glennallen, Alaska 99588.

2.2 In case of change of address, the leaser shall immediately notify the AO.

2.3 This lease is subject to all prior valid and existing rights, and the United States makes no representations or warranties whatever, either expressed or implied, as to the existence, or nature of such valid existing rights.

2.4 The right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant is reserved to the AO.

2.5 Any modifications to the proposed activities must be approved in writing by the AO.

2.6 It is the responsibility of the leaser to ensure that field party members are familiar with and adhere to these stipulations.

2.7 The holder in exercising the privileges granted under this lease shall comply with the regulations of the Department of Interior and all Federal, State. Borough and Municipal laws, ordinances, or regulations, which are applicable to the area or operations covered by this lease.

2.8 The leaser may be requested by the AO to furnish transportation and quarters for designated field representatives or observers while inspecting operations.

2.9 In the advent of a disagreement of the interpretation or implementation of these stipulations the leaser agrees that the AO shall have the final say in how these stipulations are interpreted and implemented.

2.10 Leaser shall defend, indemnify and hold the United States, its assigns, agents, employees, representatives and successors in interest harmless from and against any and all actions, fees, for injury to or death of any person, persons, or property arising in connection with and as a direct result of grantee's activities, included but not limited to United States negligence, if any, in failing to recognize or remedy a hazardous condition existing on public lands.

2.11 This lease may not be encumbered, hypothecated, assigned, subleased, or transferred without prior written approval by the AO.

2.12 The AO may revoke or terminate this lease in whole, or in part, upon a determination by the AO that the terms, conditions, or stipulations of the lease have been violated, or by determination by the AO that the leaser's actions pose a threat to human health or safety, or irreparable harm to the surrounding environment.

2.13 The leaser shall not enclose or obstruct in any manner, or erect or maintain any signs or building on roads or trails commonly used for public travel or access to public lands.

2.14 This lease does not authorize the leaser to take from the public lands any mineral or vegetative material, including timber without securing authorization under 30 USC 601 et seq. Common varieties of stone and soil necessarily removed during construction, however, may be used elsewhere along the same lease area.

2.15 This lease does not authorize any other use of the public lands or improvements belonging to the US government.

2.16 **CIVIL RIGHTS ACT OF 1964:**

a. The leaser covenants and agrees that it will comply with the provision of Title VI of the Civil Rights Act of 1964, and that it will not, for the period during which the property conveyed by this instrument is used for the purposes designated in this lease, or for another purpose involving the provisions of similar services or benefits, engage in any discriminatory action prohibited by 43 CFR 17.3, to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under this program for which the grantee received Federal financial assistance by this lease. This assurance shall obligate the leaser, or in the case of transfer of the property granted herein, any transferee for the period of this lease.

b. The leaser further agrees that it will not transfer the property conveyed by this instrument for the purpose designated in the lease or for another purpose involving the provision of similar services or benefits, unless and until the transferee gives similar written assurance to the Authorized Officer, Bureau of Land Management, that it will comply with the provisions of paragraph a hereof.

c. The leaser agrees that the right is reserved to the Department of the Interior to declare the terms of this lease terminated in whole or in part and to revest in the United States full title to the property conveyed herein, in the event of the nondiscrimination provisions contained in paragraph a hereof during the term of this land lease.

d. The leaser agrees that as long as the property conveyed hereby is used for the purpose designated in this lease or for another purpose involving the provisions of Title VI of the Civil Rights Act of 1964 shall constitute a covenant running with the land for the term of this lease.

e. The leaser agrees that in the event of a violation or failure to comply with the requirements imposed by paragraph a. the United States may seek judicial enforcement of such requirements.

f. The leaser agrees that it will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property conveyed by this document, signs and posters bearing a legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the area or facility leased.

3.0 Environmental

3.1 All operations will be conducted in such a manner as not to cause damage or disturbance to any fish or wildlife, or to impede rural residents from pursuing their traditional subsistence activities (ANILCA, PL 96-487).

3.2 Active bald eagle nests within the immediate vicinity of or within ¼ mile of the project area will be identified and measures taken in consultation with the U.S. Fish and Wildlife Service and BLM to avoid disturbance of nesting activities.

3.3 Leaser will not intentionally harass or harm migratory birds or interfere with their nesting and brood rearing activities.

3.4 All activities shall be conducted so as to avoid or minimize disturbance of vegetation. If it becomes necessary to remove vegetation, prior approval by the AO is required.

3.5 All operations shall be conducted with due regard for good resource management and in such a manner as not to block any stream, or drainage system, or cause the pollution or siltation of any stream or lake.

3.6 Use of pesticide or herbicides shall comply with the applicable Federal and State laws. Pesticides or herbicides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of Interior. Prior to the use of pesticides or herbicides, the leaser shall obtain from the AO written approval of a plan showing the type and quantity of materials to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides or herbicides shall be approved in writing by the AO prior to such use.

3.7 The leaser shall conduct all activities associated with the construction, operation, and termination of the lease within the authorized limits of the lease. If any scarring or damage occurs outside of approved areas as a result of the holder's operations, the areas shall be repaired and reseeded, or otherwise corrected as necessary to the satisfaction of the Authorized Officer.

3.8 The leaser will do everything reasonable, both independently and/or upon request of the Authorized Officer to prevent and suppress fires on or near the lands occupied under the lease.

3.9 Petroleum products or by-products shall not be used for dust suppression.

4.0 Operational

4.1 Any cultural and/or pale ontological resource (historic or prehistoric site or object) discovered by the leaser, or any person working on his behalf, on public or Federal land shall be immediately reported to the Authorized Officer. Leaser shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Leaser will be responsible for the cost of evaluation and the Authorized Officer will make any decision as to proper mitigation measures after consulting with the leaser.

4.2 All waste generated during operation, maintenance, and termination activities under authorization shall be removed or otherwise disposed of as required by State and Federal law. In this case the waste must be dumped in a DEC approved landfill site. Waste in this sub-paragraph means all discarded matter, including but not limited to, human waste, trash, garbage, refuse, and oil drums, petroleum products, ashes and discarded equipment.

4.3 Areas of operation shall be left clean of all unauthorized foreign objects. This shall include, but is not limited to, wires, pins, flags and reflectors.

4.4 All fuel or lubricant spills will be cleaned up immediately, taking precedence over all other matters, except the health and safety of personnel. Spills will be cleaned up utilizing absorbent pads or other Alaska State DEC approved methods. Any such spill sites will be documented so that they can be located during the compliance check.

4.5 Recovered spill fluids will be removed and incinerated in approved receptacles.

4.6 As soon as possible, but not later than 24 hours, notice of any such discharge as defined in Alaska Statute Title 18, Chapter 75, Article 2, will be given to the AO and any other Federal and State Officials as are required by law.

4.7 All State and Federal safety standards and regulations for fuel transportation and handling will be followed. Only fuel products and amounts specifically authorized shall be stored on site, and shall be located away from any source of water. All fuel containers, including barrels and propane tanks, shall be marked with the leaser's name, product type and year filled.

4.8 The leaser shall mark and protect all survey monuments within or near the permit area against destruction, obliteration, or damage during the life of this grant. If any public land monuments, or corners, or accessories, including but not limited to U.S. Coast and Geodetic, U.S. Geological Survey, and/or Bureau of Land Management survey monuments, are destroyed, obliterated, or damaged, the grantee, by utilization of a registered land surveyor shall reestablish or restore at the time location the monuments, corners, or accessories using surveying procedures in accordance with the "Manual of Instructions for the Survey of Public Lands of the United States, 1973 Ed," and shall record such survey in the appropriate records. The authorized representative may prescribe additional requirements for the protection of monuments, corners, and bearing trees. Written permission from the authorized representative must be obtained before a monument may be moved or buried. A copy of the survey record shall be furnished to the Bureau of Land Management fully describing monuments and corner accessories found at the corner point and any new monuments, or accessories established, to perpetuate the corner position.

4.9 No hazardous materials shall be transported or disposed of within the lease.

4.10 Prior to abandonment of any portion of the facilities authorized by this lease, the leaser shall contact the Authorized Officer, and if the situation warrants, to arrange a joint inspection of the lease. The inspection will be held to agree on an acceptable rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the leaser commencing any abandonment and/or rehabilitation activities

4.11 There shall be no disturbance of any archaeological or historical sites, including graves and remains of cabins, and no collection of any artifacts whatsoever. Also, collection of vertebrate fossils, including mammoths and mastodon bones, tusks etc., is strictly prohibited. If historic resources are encountered then all artifacts will be respectfully left in place and the Glennallen Field Office's cultural resources staff will be notified immediately.

Lease Holder Signature _____ Date _____

I suggest incorporating the following stipulation for non-native invasive plants.

Thanks,

Ben Seifert

STIPULATIONS

3.0 Environmental

Add to standard stipulation list

3.8 The holder will do everything reasonable, both independently and/or upon request of the authorized officer to prevent the introduction and/or spread of invasive non-native plants ("weeds") on BLM managed lands. Revegetation shall occur through seeding of native seed or by providing for soil conditions that allow the site to revegetate naturally, whichever provides the most effective means of reestablishing natural ground cover and minimizing erosion. Leasee will prevent and control noxious weed infestations. Noxious weeds in Alaska are listed under Alaska Statute 11 AAC 43.020.

Compliance with ANILCA Section 810

E.A No.: DOI-BLM-AK-A020-2011-0001-CX

Applicant(s): *Harvel Young, Secretary of Hunters Retreat. LLC dba Meiers Lake Roadhouse*

Proposed Action: The BLM proposes to assign the 0.25 acre right-of-way access and the 7.1 acre commercial land lease at the Meiers Lake Roadhouse from the existing grant and lease holder to the applicant.

Location: Meiers Lake Roadhouse is located at approximately milepost 170 on the Richardson Highway.

Township/Range: Copper River Meridian, T. 12N, R. 1W, Sec. 18.

Map: *please see application*

Evaluation by: Merben R. Cebrian

Discretionary Action?: Yes

Categorical Exclusion?: Yes

Type of Assessment / Sources: Review of application materials, subsistence database, local knowledge, and interviews with staff knowledgeable of the area and the proposed action.

Effect of the proposal on subsistence uses and needs:

Fisheries: Meiers Lake is in the Glennallen Subdistrict of the Prince William Sound Area subsistence fishery in Southcentral Alaska. There is no regulated federal subsistence fishery on Meiers Lake. However, a permit is required under state subsistence fishery rules. Assignment of the 0.25 acre right-of-way and the 7.1 acre commercial land lease to Meiers Lake Roadhouse does not impede access to Meiers Lake. Therefore, the proposed action does not have a significant effect on subsistence uses and needs.

Wildlife: The proposed action is to occur in the vicinity of Meiers Lake in Game Management Unit 13. Big game such as moose and caribou are taken in the vicinity of Meiers Lake. Small game and upland birds are also available for harvest. However, the proposed action is administrative in nature because of a change in ownership of Meiers Lake Lodge and does not impede access to subsistence resources. Therefore, the proposed action does not have a significant effect on subsistence uses and needs.

Other resources: The proposed action will not significantly affect other harvestable resources such as berries, willows, and spruce roots. The proposed action is administrative in nature and

26 13 29

does not impede access to subsistence resources. Therefore, the proposed action does not have a significant effect on subsistence uses and needs.

Expected reduction, if any, in the availability of resources due to alteration in resource distribution, migration, or location: The proposed action would not significantly alter the distribution, migration, or location of subsistence resources. Moose and caribou are highly mobile and may use other lands in the vicinity. Big game density will not be affected by the proposed action as there is no change occurring on the ground. The proposed action is administrative in nature and does not affect distribution, migration, or location of subsistence resources.

Expected limitation, if any, in the access of subsistence users resulting from the proposal: None. Access to subsistence resources will not be hampered by the proposed action. The proposed action does not create a permanent obstruction to subsistence hunters.

Availability of other lands, if any, for the purpose sought to be achieved: None. The proposed action is specific to land surrounding Meiers Lake Lodge.

Other alternatives, if any, which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes: The only other alternative that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes is to not allow or permit any activities that conflict with subsistence uses. However, such an alternative is not viable because the BLM manages public lands for multiple uses.

Finding: The proposed action will not significantly restrict subsistence uses and needs in or near the area of the proposed action. Access to subsistence resources will not be hampered by the proposed action. There is no reasonably foreseeable significant decrease in abundance in harvestable resource and in the distribution of harvestable resources due to the proposed action.

/s/ Merben R. Cebrian — 15 November 2010

Merben R. Cebrian — Date
Wildlife Biologist
BLM, Glennallen Field Office

13
27 29

Assessment of Undertakings Not Subject to Further Section 106 Review Glennallen Field Office

GDO Document No. GFO-11-01
BLM Serial No. AA-085293, AA-073233 Environmental Assessment No. DOI-BLM-AK-9940-2011-0001-CX

Class of Inventory: No Further Review

Dates of Inspection: 11/26/2010

Inspector: John Jangala

Maps: Gulkana (D-3)

Applicant: Hunters Retreat LLC.

Location: The project will occur east of the Richardson Highway near milepost 170. Specifically, the projects will occur near the Meiers Lake Lodge in Sect. 18, T.12N., R1W, CRM..

Project Description: The Bureau of Land Management proposes to reassign an existing driveway ROW and a property lease to Hunters Retreat LLC., which purchased the lodge from the previous owners. The ROW is for a previously existing driveway across public lands within a previously disturbed area connecting the Richardson Highway with private property. The lease is for a larger tract of land where previous owners constructed rental rooms, a garage, an RV park and part of a gas station. All of the areas that are part of this proposed action have been previously disturbed by construction or vehicle travel.

Acreage: .25 Acres (ROW) & 7.9 Acre (Lease)

Recommendations: According to the Protocol for Managing Cultural Resources on Lands administered by the Bureau of Land Management in Alaska, between the Bureau of Land Management and the State Historic Preservation Officer, signed April 17, 1998, this undertaking is not subject to further Section 106 review (Appendix 2: Category Six). The project will involve a right of way and lease along a previously existing driveway or constructed areas that have been extensively disturbed by both construction as well as over a decade of vehicular travel and are therefore unlikely to contain intact heritage resources. As long as the applicant adheres to the attached stipulations, the applicant may proceed as proposed in the application. However, if heritage or paleontological resources are encountered during implementation of the project, the project will cease and the Glennallen Field Office, cultural resource staff, shall be notified.

The following stipulation should be attached to the permit: "There shall be no disturbance of any archaeological or historical sites, including graves and remains of cabins, and no collection of any artifacts whatsoever. Also, collection of vertebrate fossils, including mammoths and mastodon bones, tusks etc., is strictly prohibited. If historic resources are encountered then all artifacts will be respectfully left in place and the Glennallen Field Office's cultural resources staff will be notified immediately."

Signed:

John W. Jangala
Glennallen Field Office Archaeologist (AKA-020)

Department of the Interior
Bureau of Land Management
Glennallen Field Office

NEPA Interdisciplinary Review

Project Name: Meiers Lake Roadhouse assignments
Casefile Number: AA-85293 & AA-73233
NEPA Document Number: DOI-BLM-AKA-020-2011-0001-CX
NEPA Preparer: Joseph Hart, Realty Specialist
Please return to preparer by: November 19, 2010 COB

Staff Specialist	Resource Area	Comments Provided Yes / No	Date Reviewed
Brenda Becker	Lands and Realty	No	10/27/2010
Marcia Butorac	Recreation and Facilities	No	11/02/2010
Merben Cebrian	ANILCA, Section 810	Yes	11/15/2010
Merben Cebrian	T&E Animals	No	11/15/2010
Merben Cebrian	T&E Plants	No	11/15/2010
Merben Cebrian	Wildlife	Yes	11/15/2010
Heath Emmons	Wild and Scenic Rivers	No	10/27/2010
Marnie Graham	Public Affairs	Changed CX# for FY11	11/8/2010
Denton Hamby	Special Recreation Use	No	11/1/2010
Denton Hamby	Visual Resources	No	11/8/10
Brad Honerlaw	Law Enforcement	N/A	N/A
Alysia White	Law Enforcement	no	11/2/2010
John Jangala	Cultural Heritage	Yes	10/28/2010
John Jangala	Paleontology	No	10/28/10
Cory Larson	Travel Management	No	10/27/2010
James Whitlock	Minerals	N/A	N/A
Ben Seifert	Fire Management	No	10/29/10
Ben Seifert	Forestry	No	10/29/10
Ben Seifert	Invasive Weeds	Yes	10/29/10
Ben Seifert	Soils	No	10/29/10
Tim Sundlov	Air Quality	No-EW	11/3/10
Tim Sundlov	Riparian & Wetlands	No	11/2/10
Tim Sundlov	Water Quality	No	11/2/10
Tim Sundlov	Fish Biology	No	11/2/10
Joseph Hart	Hazardous Materials	No	10-26-2010
Elijah Waters	Branch Chief - Resources	No	11/03/10

Authorized Officer Review: /s/ Elizabeth Maclean Date: 11/22/10

Page 13 of 29

STANDARD FORM 299 (05/2009)
Prescribed by DOI/USDA/DOT
P.L. 96-487 and Federal
Register Notice 5-22-95

APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS

FORM APPROVED
OMB Control Number: 0596-0082
Expiration Date: 12/31/2013

FOR AGENCY USE ONLY

Application Number

Date Filed

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

1. Name and address of applicant *(include zip code)*

2. Name, title, and address of authorized agent if different from item 1 *(include zip code)*

3. Telephone (area code)

Applicant

Authorized Agent

4. As applicant are you? *(check one)*

a. ☐ Individual
b. ☐ Corporation*
c. ☐ Partnership/Association*
d. ☐ State Government/State Agency
e. ☐ Local Government
f. ☐ Federal Agency

* *If checked, complete supplemental page*

5. Specify what application is for: *(check one)*

a. ☐ New authorization
b. ☐ Renewing existing authorization No.
c. ☐ Amend existing authorization No.
d. ☐ Assign existing authorization No.
e. ☐ Existing use for which no authorization has been received *
f. ☐ Other*

* *If checked, provide details under item 7*

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description (describe in detail): (a) Type of system or facility, *(e.g., canal, pipeline, road);* (b) related structures and facilities; (c) physical specifications *(Length, width, grading, etc.)*; (d) term of years needed: (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction *(Attach additional sheets, if additional space is needed.)*

8. Attach a map covering area and show location of project proposal

9. State or Local government approval: ☐ Attached ☐ Applied for ☐ Not Required

10. Nonreturnable application fee: ☐ Attached ☐ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☐ No *(if "yes," indicate on map)*

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

EXHIBIT 14
PAGE 1 OF 8

13a. Describe other reasonable alternative routes and modes considered.

b. Why were these alternatives not selected?

c. Give explanation as t o why it is necessary to cross Federal Lands.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. *(Specify number, date, code, or name)*

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCIA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant	Date

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

EXHIBIT 14
PAGE 2 OF 8

GENERAL INFORMATION

ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation and utility systems and facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.

4. Systems for the transmission and distribution of electric energy.

5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.

6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.

7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture
Regional Forester, Forest Service (USFS)
Federal Office Building,
P.O. Box 21628
Juneau, Alaska 99802-1628
Telephone: (907) 586-7847 *(or a local Forest Service Office)*

Department of the Interior
Bureau of Indian Affairs (BIA)
Juneau Area Office
Federal Building Annex
9109 Mendenhall Mall Road, Suite 5
Juneau, Alaska 99802
Telephone: (907) 586-7177

Department of the Interior
Bureau of Land Management
222 West 7th Avenue
P.O. Box 13
Anchorage, Alaska 99513-7599
Telephone: (907) 271-5477 (or a local BLM Office)

U.S. Fish & Wildlife Service (FWS)
Office of the Regional Director
1011 East Tudor Road
Anchorage, Alaska 99503
Telephone: (907) 786-3440

National Park Service (NPA)
Alaska Regional Office, 2225
Gambell St., Rm. 107
Anchorage, Alaska 99502-2892
Telephone: (907) 786-3440

Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Office, P.O. Box 120, 1675 C Street, Anchorage, Alaska 9513.

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation and utility systems and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS

(Items not listed are self-explanatory)

7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.

8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.

9 , 10, and 12 The responsible agency will provide additional instructions.

13 Providing information on alternate routes and modes in as much detail as possible, discussing why certain routes or modes were rejected and why it is necessary to cross Federal lands will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate routes and modes as related to current technology and economics.

14 The responsible agency will provide instructions.

15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.

16 through 19 Providing this information is as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands. The Federal agencies use this information to evaluate the applicant's proposal. The public is obligated to submit this form if they wish to obtain permission to use Federal lands.

EXHIBIT 14
PAGE 3 OF 8

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
I - PRIVATE CORPORATIONS	ATTACHED	FILED*
a. Articles of Incorporation	☐	☐
b. Corporation Bylaws	☐	☐
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	☐	☐
d Copy of resolution authorizing filing	☐	☐
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	☐	☐
f. If application is for an oil or gas pipeline, describe any related right- of-way or temporary use permit applications, and identify previous applications.	☐	☐
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	☐	☐
II - PUBLIC CORPORATIONS		
a. Copy of law forming corporation	☐	☐
b. Proof of organization	☐	☐
c. Copy of Bylaws	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐
III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any	☐	☐
b. If one partner is authorized to sign, resolution authorizing action is	☐	☐
c. Name and address of each participant, partner, association, or other	☐	☐
d. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐

*If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information *(e.g., number, date, code, name)*. If not on file or current, attach the requested information.

EXHIBIT 14
PAGE 4 OF 8

NOTICES

Note: This applies to the Department of Agriculture/Forest Service (FS)

This information is needed by the Forest Service to evaluate the requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations or the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

BURDEN AND NONDISCRIMINATION STATEMENTS

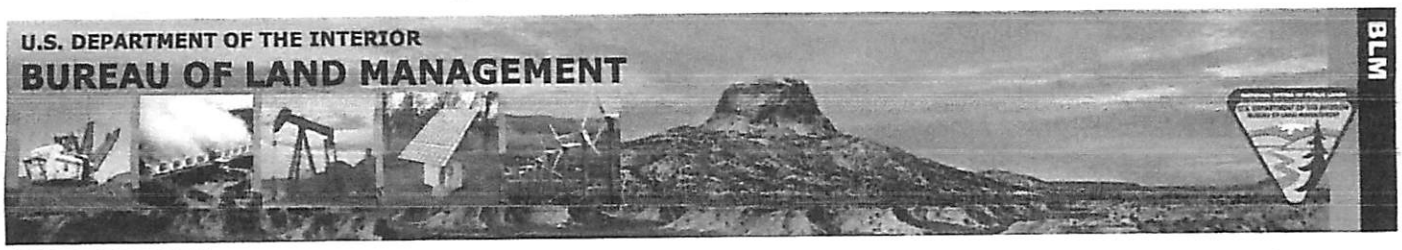
According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 8 hours hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720- 2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

EXHIBIT 14
PAGE 5 OF 8



Search

National

- What We Do
- Visit Us
- Information Center
- Get Involved
- Our Offices/Centers
- Contact Us

Grant Administration and Operation

Grant Administration and Operation provides information for right-of-way (ROW) liability, land ownership changes, assignments, renewals and amendments.

Rights-of-Way

Rights-of-Way
What's New
General Information
Applying For Grants
Rents
Grant Administration and Operation
Forms
Glossary
Links
Got a Question?
FAQ
Rights-of-Way State Contacts

Liability | Easements | Assignments | Renewals | Amendments

If I hold a grant, for what am I liable?

A ROW holder is strictly liable for any activity or facility associated with their ROW area which the Bureau of Land Management (BLM) determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant any activities or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk (42 CFR 2807.12(b)).

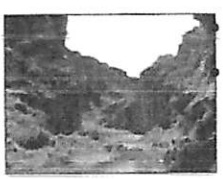
The strict liability limit for Calendar Year 2012 is $2,302,000.00.

back to top

How is grant administration affected if the land my grant encumbers is transferred from BLM?

- Final Easement Policy (6/28/07)
  - Final Easement Policy (pdf)
  - Final Easement Policy (doc)
- Easement Templates
  - FLPMA Template
  - MLA Template
- Easement Plat Guidelines

back to top



May I assign my grant?

Assignment Statement (PDF)

When a right-of-way grant holder (**Assignor**) wishes to transfer their interest in their grant to another party (**Assignee**), the transfer process is called an **assignment** .

What the Assignor and Assignee Do

The proposed Assignee must apply to BLM to assign a right-of-way grant using a form SF-299 (see the SF-299 link at the Forms page). The proposed Assignee fills out questions 1-6, 12, and 19 (hazmat statement). In addition, the holder (Assignor) must sign a document agreeing to the assignment, and the proposed assignee must sign a statement agreeing to be bound by the terms and conditions of the grant.

What BLM Does

Under the new regulations, BLM completes a Processing Category Determination form for each assignment application. Whether the application is for one or twenty assignments, BLM estimates the amount of work hours needed to process the assignment package, and uses the estimated work hours to determine the appropriate Processing Category. The authorized officer then issues the Processing Category Determination as a Decision to the applicant requesting the appropriate processing fee.

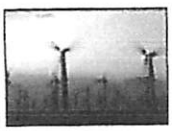
New Regulations

The new regulations clarify that the terms and conditions can be changed when a grant is assigned. Where there are changes to the terms and conditions of an assigned grant, BLM will issue a new grant to the assignee. Otherwise, BLM can assign grants with a Decision letter. In addition, the new regulations clarify that BLM can institute or modify bonding requirements on the new holder if appropriate.

EXHIBIT 14
PAGE 6 OF 8

A Monitoring Category Determination and Decision is generally not required if BLM does not change the terms and conditions of the authorization being assigned. However, due to special stipulations that may be contained in a right-of-way grant, the need for a monitoring Decision should be reviewed on a case-by-case basis.

back to top



How do I renew my grant?

For right-of-way grants issued under the Mineral Leasing Act (MLA) since November 16, 1973, and those grants under the Federal Land Policy and Management Act (FLPMA) that specify they are renewable, BLM will renew the grant if the holder is in compliance with the terms and conditions of the grant. The new regulations specify that the holder must apply to BLM to renew the grant at least 120 days prior to expiration. The holder must apply for a renewal using form SF-299 (see the Forms page).

Unspecified Renewable Grants
If a right-of-way grant does not specify that it is renewable, the holder may still request that it be renewed. However, BLM is under no obligation to do so. The application must be made at least 120 days prior to expiration in the same format described above. The applicant must show that they are in compliance with the terms and conditions of the authorization.

New Regulations
Under the new regulations, BLM completes a Processing Category Determination form for each renewal request. A renewal request may require additional environmental review, so BLM must ensure that all processing time is taken into account. BLM estimates the amount of BLM/Federal work hours needed to process the renewal request, and uses the estimated work hours to determine the appropriate Processing Category. The authorized officer then issues the Processing Category Determination as a Decision to the applicant requesting the appropriate processing fee.

The new regulations clarify that BLM has the authority to change the terms and conditions of the grant upon renewal, so BLM completes a Monitoring Category Determination for each renewal request that involves changing the terms and conditions of the grant. A Monitoring Category Determination is generally not required if BLM does not change the terms and conditions of the authorization being renewed. However, due to special stipulations that may be contained in a right-of-way grant, the need for a Monitoring Category Determination and Decision should be reviewed on a case-by-case basis.

Unrenewable Authorizations
It is important to note that BLM does not renew 1) pre-FLPMA right-of-way authorizations, or 2) MLA authorizations that were issued prior to November 16, 1973 (see note below). If the holder would like to continue a use authorized prior to that date, the holder must apply for a new MLA authorization or an authorization under FLPMA. The application for a new MLA grant, or conversion of a pre-FLPMA to a FLPMA authorization, must be made at least 120 days prior to the expiration of the existing authorization.

Special Note for MLA Renewals
Right-of-way grants issued prior to November 16, 1973 under the Mineral Leasing Act did not contain a maximum 30-year term or other current provisions for width, common carrier, cost recovery, etc. An application for the renewal of an MLA right-of-way grant issued prior to November 16, 1973, should be treated as a request for a new grant under the MLA in order to bring the grant under the terms of the law as it was revised in 1973.

back to top

When must I amend my application or grant?

An **amendment** is required any time there is a substantial deviation in use or location of a right-of-way application or grant. Substantial deviation means a change in the location or use which requires: (1) construction or use outside the proposed or authorized boundaries of the right-of-way, or (2) any change from, or modification of, the proposed or authorized use (such as adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original application or grant).

What the Applicant or Holder Must Do
The applicant/holder should contact BLM to discuss their proposed change in use or location. If BLM determines that there is a substantial deviation from the existing application or grant, the applicant/holder must amend their application or seek an amendment of their grant using an SF-299 application. The requirements to amend an application or a grant are the same as those for a new application, including paying processing and monitoring fees and rent.

What BLM Does
Under the new regulations, BLM will complete a Processing Category Determination Form based on the estimated number of work hours needed to process the amendment. BLM then issues the Processing Category Determination Decision and requests the appropriate processing fees. Note that the Customer Service Standard (43 CFR 2804.25) applies when processing amendments. If an application to amend a grant is approved, BLM completes a Monitoring Category Determination Form based on the estimated number of work hours needed to monitor construction and operation of the amendment, then issues a Monitoring Category Decision to the holder. BLM may also change the terms and conditions of the grant or require bonding of the holder.

Amendments to Pre-FLPMA Grants
If a ROW grant administered under 43 CFR 2800 was issued prior to October 21, 1976, and there is a proposed substantial deviation in the location or use or terms and conditions of the grant, the holder must apply for a new grant. If the application is approved, BLM may either 1) terminate the old grant and issue a new grant under the new regulations, or 2) keep the old grant in effect and issue a new grant for the new use or location or terms and conditions. See 43 CFR 2807.20(d) for details.

Amendments to MLA Grants
Right-of-way grants issued prior to November 16, 1973 under the Mineral Leasing Act did not contain a maximum 30-year term or other current provisions for width, common carrier, cost recovery, etc. An application to amend an MLA right-of-way grant issued prior to November 16, 1973, should be treated as a request for a new grant under the MLA in order to bring the grant under the terms of the law as it was revised in 1973 (43 CFR 2887.10(d, e).

Amendments to Railroad Grants
Under the new regulations, there are specific requirements for applications to realign rail beds and related communication

EXHIBIT 14
PAGE 7 OF 8

facilities. Refer to 43 CFR 2807.20(e) for more specific direction.

back to top

Last updated: 02-22-2012

EXHIBIT 14
PAGE 8 OF 8

ALYESKA TITLE GUARANTY AGENCY

3801 Centerpoint Drive, Suite 102
Anchorage, AK 99503
Phone: (907) 569-2842
Fax: (907) 569-2843

May 31, 2012

Peter E. Slaiby and Rejani Slaiby
14200 Jarvi Drive
Anchoage, AK 99515

Policy No.: 08.2730602-76291846
Re: 00023351 – AMENDED OWNERS POLICY

Dear Mr. & Mrs. Slaiby,

We are pleased to provide you with the enclosed ***amended*** policy of title insurance. This amended policy is a meaningful document and should be retained with important papers.

Thank-you for extending us the opportunity to assist you in this venture. Should you ever decide to finance, sell, or assign your interest, this policy will lay the foundation for a continuing relationship with Alyeska Title Guaranty Agency. This not only includes the property this policy insured, but also includes a full range of title services which you may wish to avail yourself of in connection with a purchase, sale, or finance of other property. Our title and escrow team can provide the expertise to underwrite a diversity of real estate dealings ranging from a simple land sale to the most complex multi-phased project.

We hope to assist you with your future escrow and title needs.

Yours Truly,

Sharon K. Elliott, President

EXHIBIT 15
PAGE 1 OF 9

POLICY NO.: **08.2730602-76291846**

OWNER'S POLICY OF TITLE INSURANCE

Issued by

Fidelity National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **FIDELITY NATIONAL TITLE INSURANCE COMPANY** (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   - (a) A defect in the Title caused by
     - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
     - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
     - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
     - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
     - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
     - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
     - (vii) a defective judicial or administrative proceeding.
   - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   - (a) the occupancy, use, or enjoyment of the Land;
   - (b) the character, dimensions, or location of any improvement erected on the Land;
   - (c) the subdivision of land; or
   - (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated Schedule A or being defective
   - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, **FIDELITY NATIONAL TITLE INSURANCE COMPANY** has caused this policy to be signed and sealed by its duly authorized officers.

Countersigned by:

SEAL

By: President

ATTEST Secretary

Authorized Signature

Authorized Signature

Fidelity National Title Insurance Company

SCHEDULE A

Name and Address of Title Insurance Company: **Alyeska Title Guaranty Agency**
3801 Centerpoint Dr, Suite 102,
Anchorage, AK 99503

Policy No.: **08.2730602-76291846**

Address Reference: **14200 Jarvi Drive, Anchoage, AK 99515**

Amount of Insurance: **$875,000.00**

Premium: **$2,657.00**

Date of Policy: **August 7, 2008 at 11:33 a.m.**

1. Name of Insured:

   Peter E. Slaiby and Rejani Slaiby, husband and wife as tenants by the entirety

2. The estate or interest in the Land that is insured by this policy is:

   A Fee

3. Title is vested in:

   Peter E. Slaiby and Rejani Slaiby, husband and wife as tenants by the entirety

4. The Land referred to in this policy is described as follows:

   See Exhibit A attached hereto and made a part hereof

15
4 9

LEGAL DESCRIPTION

EXHIBIT A

Lots 13 and 14, Block 3, Sunset Hills West Subdivision, according to the official plat thereof filed under Plat No. P-600, in the Anchorage Recording District, Third Judicial District, State of Alaska.

APN: 018-204-36-000

5 15 9

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Rights of the state or federal government and/or the public in and to any portion of the land for right of way as established by federal statue RS 2477 (whether or not such rights are shown by recordings of maps in the Public Records by the State of Alaska showing the general location of these rights of way).

5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims, or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

7. Reservations and exceptions as contained in the U.S. Patent, recorded November 13, 1950, Book 52 Page 228.

8. Right-of-Way Easement, including terms and provisions thereof, granted to CHUGACH ELECTRIC ASSOCIATION, INC., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system by instrument recorded July 16, 1952, Book 75 Page 190. (Blanket Easement)

   Supplemental and Confirmatory Easement allowing the City of Anchorage to attach telephone communication lines and appurtenances thereto to the utility poles of Chugach Electric Association, Inc., recorded July 2, 1959, Book E-5 Page 182.

9. EASEMENTS as shown on the plat of Sunset Hills West Subdivision, Plat No. P-600.

10. Covenants, conditions and restrictions, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as contained on the plat of Sunset Hills West Subdivision, Plat No. P-600.

11. Perpetual Right-of-Way Easement to construct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, including the terms and provisions thereof, granted to the United States of America, for the benefit of the, Alaska Railroad, Department of the Interior, recorded July 02, 1965, Book 305 Page 171. (Affects that portion of said Lots 13 and 14 lying southwesterly of the line designated as "Take Line" on that certain map title Potter Hill Relocation, Alaska Railroad; designated as document 64-105, filed October 09, 1964, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska)

6 15 9

SCHEDULE B
(Continued)

12. Reservation of "... all and the whole of the mineral, oil, and petroleum rights..." as reserved by Edwin A. Jarvi and Yula C. Jarvi, husband and wife, by recital in Warranty Deed recorded April 17, 1972, Book 441 Page 30.

13. Covenants, conditions and restrictions, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as contained in Warranty Deed recorded April 17, 1972, Book 441 Page 30.

14. Rights of the public and/or governmental agencies in and to any portion of said land included within the right-of-way of the Alaska Railroad.

15. Deed of Trust to secure a promissory note in the original amount of indebtedness stated below and any other obligations secured thereby and/or described therein,

Amount	:	$625,500.00
Trustor/Borrower	:	Peter E. Slaiby and Rejani Slaiby, husband and wife
Trustee	:	Alyeska Title
Beneficiary/Lender	:	Wells Fargo Bank, N.A.
Dated	:	July 30, 2008
Recorded	:	August 7, 2008 as Instrument No. 2008-045041-0

Dated: **August 7, 2008 at 11:33 a.m.**

Fidelity National Title Insurance Company

By:

Authorized Signature

7 9

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such

reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days. Provided, however, that those portions of a claim not in dispute shall be paid within 30 working days after receipt of a properly executed statement of claim, proof of loss, or other acceptable evidence of loss.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at ADDRESS.

Fidelity Title Agency Of Alaska
3150 C Street, Suite 220, Anchorage, AK 99503
Phone: (907) 277-6601 • Fax: (907) 277-6613

A Non-Affiliated
Independent & Locally Owned Company
Where Experience Counts

LITIGATION GUARANTEE

ORDER NO: **F-38152**
PROPERTY: **14200 Jarvi Drive, Anchorage, AK 99515-3944**

Alaska Railroad Corporation
P.O. Box 107500
Attn: James Kubitz
Anchorage AK 99510-7500
Attn: Karen Morrissey
Email: morrisseyk@arr.com

Questions regarding this Guarantee should be directed to:
Howard Hancock at (907) 277-6626 or howardh@fidelityak.com

NOTE: In anticipation of recording a Notice of Lis Pendens to impart constructive notice, the Company will perform a date down of the record, one time at no charge, and amend this Litigation Guarantee, to add any additional parties found to Schedule C.

EXHIBIT 16
PAGE 1 OF 73

Litigation Guarantee

Fidelity National Title Insurance Company
A Stock Company

Policy No. AK2007-10-F-38152-2012.27021-86538299

LITIGATION GUARANTEE

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE

FIDELITY NATIONAL TITLE INSURANCE COMPANY
a corporation, herein called the Company
GUARANTEES

the Assured named in Schedule A against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of Date of Guarantee shown in Schedule A:

1. The title to the herein described estate or interest is vested in the vestee named in Schedule A.
2. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, which matters are not necessarily shown in the order of their priority.
3. (a) The current interest holders claiming some right, title or interest by reason of the matters shown in Part II of Schedule B are shown therein. The vestee named in Schedule A and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary parties defendant in an action, the nature of which is referred to in Schedule A.

   (b) The current interest holders claiming some right, title or interest by reason of the matters shown in Part I of Schedule B may also be necessary parties defendant in an action, the nature of which is referred to in Schedule a. However, no assurance is given hereby as to those current interest holders.
4. The return address for mailing after recording, if any, as shown on each and every document referred to in Part II of schedule B by specific recording information, and as shown on the document(s) vesting title as shown in Schedule A are as shown in Schedule C.

THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION REFERRED TO IN SCHEDULE A. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this Guarantee to be signed and sealed as of the date of policy shown in Schedule A, the Guarantee to become valid when countersigned by an authorized signatory.

Fidelity National Title Insurance Company

SEAL

By: _____

Attest: _____ Secretary

Issued by:

AK2007 F-38152
Fidelity Title of Alaska, LLC
3150 C Street, Suite 220
Anchorage, AK 99503
Tel: (907) 277-6601 Fax: (907) 277-6613

Countersigned: _____
Authorized Signature
(Please Print Name Below)

16
2 77

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
   (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
   (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
   (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the validity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
   (c) The identity of any party shown or referred to in Schedule A.
   (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in the Guarantee mean:

(a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.

(b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.

(c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(e) "date": the effective date.

2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED CLAIMANT.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED CLAIMANT TO COOPERATE.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudice by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third

parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. DETERMINATION AND EXTENT OF LIABILITY.

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 or these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to an defect, lien or encumbrance assured against by this Guarantee.

8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. PAYMENT OF LOSS.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. SUBROGATON UPON PAYMENT OR SETTLEMENT.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assure claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not full cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. ARBITRATION.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the company in connection with its issuance of the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is $1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $1,000,000 shall be arbitrable only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at:

FIDELITY NATIONAL TITLE INSURANCE COMPANY
Claims Department
P.O. Box 45023
Jacksonville, FL 32232-5023

16
4.73

Fidelity Title Agency
of Alaska
3150 C Street, Suite 220
Anchorage, Alaska 99503
Phone: (907) 277-6601 Fax: (907) 277-6617

LITIGATION GUARANTEE
SCHEDULE A

Prepared on July 20, 2012

Order Number:	**F-38152**	**Litigation**	**Guarantee No.**	**27021-86538299**
Liability Amount:	**$1,000.00**		**Fee:**	**$250.00**
Effective Date:	**July 13, 2012 at 8:00 a.m.**			

1. Name of Assured:
   Alaska Railroad Corporation and Fidelity Title Agency of Alaska

2. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to:
   Determine Status of Title

3. The estate of interest in the land hereinafter described or referred to covered by this Guarantee is:
   Fee Simple

4. Title to said estate or interest at the date hereof is vested in:

   Peter E. Slaiby and Rejani Slaiby, husband and wife

5. The land referred to in this Guarantee is situated in the Third Judicial District, State of Alaska, and is described as follows:

   Lots Thirteen (13) and Fourteen (14), Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof, filed under Plat Number P-600, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

Fidelity National Title Insurance Company
By Fidelity Title Agency Of Alaska

Howard Hancock, Title Officer

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE.

LITIGATION GUARANTEE
SCHEDULE B
GENERAL EXCEPTIONS

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

b) Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

c) Easements, claims of easement or encumbrances which are not recorded in the public records.

d) Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by the public records.

e) (a) Unpatented mining claims; (b) water rights, claims or title to water, whether or not the matter excepted under (a) or (b) are shown by the public records.

f) Any lien, or right to a lien, for services, labor, or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

g) Rights of the State or federal government and/or public in and to any portion of the land for right of way as established by federal statute RS2477 (AKA 43 USC 932) whether or not such rights are shown by recordings of easements and/or maps in the public records by the State of Alaska showing the general location of these rights of way.

SPECIAL EXCEPTIONS:

1. **Reservations and exceptions** as contained in the United States Patent and/or in Acts authorizing the issuance thereof, said patent was recorded November 13, 1950 in Book 52 at Page 227 and recorded August 22, 1951 in Book 62 at Page 111.

2. **Taxes and/or assessments**, if any, due the Municipality of Anchorage.

   Taxes can be researched on the Municipality of Anchorage website at http://www.muni.org/services/departments/treasurey/property or through the Municipality of Anchorage Treasurer's Office at (907) 343-6663.

3. **Easement** for electrical transmission and/or telephone distribution and incidental purposes, including terms and provisions thereof, to the record of which reference is hereby made:
   Granted To: Chugach Electric Association, Inc.
   Recorded: July 16, 1952
   Book: 75 Page: 190
   Affects: Blanket Easement

   Supplemental and confirmatory easement, recorded July 2, 1959 in Easement Book 5 at Page 182, said instrument contains a joint pole agreement by and between Chugach Electric Association, Inc. and the City of Anchorage for the purpose of telephone communication lines.

4. **Easement** for electrical transmission and/or telephone distribution and incidental purposes, including terms and provisions thereof, to the record of which reference is hereby made:
   Granted To: Chugach Electric Association, Inc.
   Recorded: July 25, 1952
   Book: 76 Page: 98
   Affects: Blanket Easement

5. **Easement(s)** as delineated on the plat of Sunset Hills West Subdivision, Plat No. P-600, to the record of which reference is hereby made.

6. **Covenants and notes** as shown on the plat of Sunset Hills West Subdivision, Plat No. P-600, to the record of which reference is hereby made.

7. **Easement**, including terms and provisions thereof, for the purpose set out therein, to the record of which reference is hereby made:
   Granted To: United States of America,
   For: A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines
   Recorded: July 2, 1965
   Book: 305 Page: 170
   Affects: All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of SUNSET HILLS WEST SUBDIVSION, according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska

8. **Rights of the Public and/or governmental agencies**, in and to any portion of said land lying with the boundaries of Alaska Railroad right-of-way.

9. **Reservation of** "...all and the whole of mineral, oil and petroleum rights..." as set out in Warranty Deed executed by Edwin A. Jarvi and Yula C. Jarvi, husband and wife, recorded April 17, 1972 in Book 441 at Page 30, to the record of which reference is hereby made.

   NOTE: No further examination has been made as to the estate created by said reservation.

10. **Interim Extended Water Service Agreement**, including the terms and provisions thereof, executed by and between the parties indicated, to the record of which reference is hereby made, for the purposes set out therein:
    First Party: Central Alaska Utilities, Inc.
    Second Party: Neil Bergt
    Dated: June 24, 1982
    Recorded: August 2, 1982
    Book: 760 Page: 930
    Affects: Lot 13

11. **Deed of Trust**, including terms and provisions thereof, securing the amount shown, to the record of which reference is hereby made:
    Trustor: Peter E. Slaiby and Rejani M. Slaiby, Husband and Wife
    Trustee: United Title Guaranty Agency, LLC
    Beneficiary: Mortgage Electronic Registration Systems, Inc. (MERS) acting as nominee for Residential Mortgage, LLC
    MERS No.: 1000463-0010017370-5
    Amount: $625,500.00, together with any other amounts due thereunder
    Dated: April 10, 2009
    Recorded: April 15, 2009

16
7 73

NOTE: THIS GUARANTEE IS RESTRICTED TO THE USE OF THE ASSURED HEREIN AND IS NOT TO BE USED AS A BASIS FOR CLOSING ANY TRANSACTION AFFECTING TITLE TO SAID PROPERTY.

8 16 73

Fidelity Title Agency
of Alaska
3150 C Street, Suite 220
Anchorage, Alaska 99503
Phone: (907) 277-6601 Fax: (907) 277-6617

Privacy Policy

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information
We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information
We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our right arising out of any agreement, transaction or relationship with you. One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability to Correct Errors or Request Changes or Deletion
Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests. All requests must be made in writing to the above address.

9/16/73

cc

A L A S K A

2008-045040-

Recording Dist: 301 - Anchorage
8/7/2008 11:32 AM Pages: 1 of 2

ATGA 23351-001-KMK **STATUTORY WARRANTY DEED**

THE GRANTOR, THE CARLSON FAMILY TRUST DATED MAY 10, 1995, whose mailing address is 13831 Venus Way, Anchorage, Alaska 99515, for and in consideration of $10.00 and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, conveys and warrants to **GRANTEES, PETER E. SLAIBY AND REJANI SLAIBY**, husband and wife, as tenants by the entirety with the right of survivorship, whose mailing address is: 14200 Jarvi Drive, Anchorage, Alaska 99515, the following described real property:

GARY C. CARLSON AND KATHERINE CARLSON, AKA KATHERINE E. CARLSON, SCOTUSTEESE

Lots 13 and 14, Block 3, Sunset Hills West Subdivision, according to the official plat thereof, filed under Plat No. P-600, in the Anchorage Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM that portion thereof lying southwesterly of the "Take Line" shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105,

SUBJECT TO the reservations and exceptions as contained in the U.S. Patent recorded November 13, 1950, in Book 52, at Page 228, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the Right-Of-Way Easement, including the terms and provisions thereof, granted to Chugach Electric Association, Inc., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system by instrument recorded July 16, 1952, in Book 75, at Page 190, in the Anchorage Recording District, Third Judicial District, State of Alaska, which easement affects the Blanket Easement, and as supplemented by Supplemental and Confirmatory Easement allowing the City of Anchorage to attach telephone communication lines and appurtenances thereto to the utility poles of Chugach Electric Association, Inc., by instrument recorded July 2, 1959, in Book E-5, at Page 182, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the easements as shown on the plat of Sunset Hills West Subdivision,, being Plat No P-600;

FURTHER SUBJECT TO the covenants, conditions and restrictions, including the terms and provisions. thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law; as contained on the plat of Sunset Hills West Subdivision, being Plat No. P-600;

FURTHER SUBJECT TO the reservation of "... all and the whole of the mineral, oil, and petroleum rights ..." as reserved by Edwin A. Jarvi and Yula C. Jarvi, husband and wife, by recital in Warranty Deed recorded April 17, 1972, in Book 441, at Page 30, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the covenants, conditions and restrictions, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as contained in Warranty Deed recorded April 17, 1972, in Book 441, at Page 30, in the Anchorage Recording District, Third Judicial District, State of Alaska; and

FURTHER SUBJECT TO the rights of the public and/or governmental agencies in and to any portion of said land included within the right-of-way of the Alaska Railroad.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof, situated in the State of Alaska.

16
10 73

Dated this 6th day of August, 2008.

GRANTOR: THE CARLSON FAMILY TRUST DATED MAY 10, 1995

By: _____
Gary E. Carlson, Trustee of the Carlson Family Trust dated May 10, 1995

By: _____
Katherine Carlson, aka Katherine E. Carlson, Trustee of the Carlson Family Trust dated May 10, 1995

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 6th day of August, 2008, by GARY E. CARLSON AND KATHERINE CARLSON aka KATHERINE E. CARLSON, TRUSTEES OF THE CARLSON FAMILY TRUST DATED MAY 10, 1995.

JULIE NOLDE NOTARY PUBLIC STATE OF ALASKA

_____
Notary Public in and for Alaska
My Commission Expires: 9/5/09

GRANTEES: PETER E. SLAIBY AND REJANI SLAIBY

_____
Peter E. Slaiby

_____
Rejani Slaiby

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 6th day of August, 2008, by PETER E. SLAIBY AND REJANI SLAIBY.

KATHLEEN NOTARY PUBLIC STATE OF ALASKA

_____
Notary Public in and for Alaska
My Commission Expires: 9/5/09

After recordation return to:

Peter and Rejani Slaiby
14200 Jarvi Drive
Anchorage, Alaska 99515

2 of 2
2008-045040-0

16
11 73

ALASKA

2012-029197-0

Recording Dist: 301 - Anchorage
5/30/2012 11:10 AM Pages: 1 of 5

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Escrow Number: 00023351 - KMK

Filed for Record at Request of:
Alyeska Title Guaranty Agency
After Recording Mail to:
Peter E. Slaiby and Rejani Slaiby
14200 Jarvi Drive
Anchorage, AK 99515

ATGA

QUITCLAIM DEED

THE GRANTOR: Edwin D. Tucker, individually, and as Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, deceased, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai
whose address is: 2333 Branded Drive, Cottonwood, AZ 86326

for and in consideration of: Ten Dollars and Other Good and Valuable Consideration

hereby CONVEY(s) to: Peter E. Slaiby and Rejani Slaiby, husband and wife
whose address is 14200 Jarvi Drive, Anchorage, AK 99515

the following real property in the Third Judicial District, State of Alaska:

Lots 13 and 14, Block 3, Sunset Hills West Subdivision, according to the official plat thereof, filed under Plat No. P-600, in the Anchorage Recording District, Third Judicial District, State of Alaska; INCLUDING THAT PORTION, lying southwesterly of the "Take Line" shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105

This Deed is being recorded to correct the legal description of that original Warranty Deed recorded April 17, 1972 in Book 441 at Page 33.

Dated: May 24, 2012

Edwin D. Tucker
Edwin D. Tucker

Edwin D. Tucker
Edwin D. Tucker, Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai

16
12 77

State of Arizona) ss,
County of Yavapai

THIS IS TO CERTIFY that on May 24, 2012, before me the undersigned Notary Public, personally appeared Edwin D. Tucker known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and HE acknowledged to me that HE signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Maryann K. Eggert
Notary Public in and for Arizona

MARYANN K. EGGERT
Notary Public - Arizona
Yavapai County
My Commission Expires
April 27,2015

My commission expires: April 27, 2015

State of Arizona) ss,
County of Yavapai

THIS IS TO CERTIFY that on May 24, 2012, before me the undersigned Notary Public, personally appeared Edwin D. Tucker, Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, deceased, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and HE acknowledged to me that HE signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Maryann K. Eggert
Notary Public in and for Arizona

MARYANN K. EGGERT
Notary Public - Arizona
Yavapai County
My Commission Expires
April 27,2015

My commission expires: April 27, 2015

16
13 73

CERTIFICATION OF VITAL RECORD

"VERIFICATION BOX" (HOLD BETWEEN THUMB AND FOREFINGER. OR BREATHE ON IT. COLOR WILL CHANGE TO BLUE AND THEN RETURN.)

STATE OF ARIZONA

STATE OF ARIZONA
DEPARTMENT OF HEALTH SERVICES - OFFICE OF VITAL RECORDS
CERTIFICATE OF DEATH

State File NO. 102-2011-032611

1. DECEDENT'S LEGAL NAME (FIRST, MIDDLE, LAST)	2. AKA'S (IF ANY)	3. DATE OF DEATH:
WJOYCE TUCKER	JOYCE TUCKER	AUGUST 24, 2011

4. SEX	5. SOCIAL SECURITY NUMBER:	6. DATE OF BIRTH	7. AGE	UNDER 1 YEAR		UNDER 1 DAY	
				8. MONTHS	9. DAYS	10. HOURS	11. MINUTES
FEMALE		03-11-1931	80				

12. PLACE OF DEATH - HOSPITAL: ☐ INPATIENT ☐ E.R./OUTPATIENT ☐ DEAD ON ARRIVAL

13. PLACE OF DEATH - OTHER THAN HOSPITAL: ☐ NURSING HOME OR LONG TERM CARE FACILITY ☒ RESIDENCE ☐ HOSPICE FACILITY ☐ OTHER

14. FACILITY NAME (OR STREET ADDRESS IF NOT A FACILITY):	15. CITY, TOWN & ZIP CODE OR LOCATION OF DEATH:	16. COUNTY OF DEATH:
195 S WILLARD ST	COTTONWOOD 86326	YAVAPAI

17. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY)	18. MARITAL STATUS AT TIME OF DEATH:	19. NAME OF SURVIVING SPOUSE (MAIDEN NAME IF WIFE)
PHOENIX, ARIZONA	DIVORCED	

20. DECEDENT'S USUAL RESIDENCE STREET ADDRESS:	21. CITY AND COUNTY:	22. STATE	23. ZIP CODE	24. EVER IN THE ARMED FORCES
195 S WILLARD ST,	COTTONWOOD, YAVAPAI	ARIZONA	86326	NO

25. WAS DECEDENT OF HISPANIC ORIGIN?
☒ NO, NOT SPANISH, HISPANIC OR LATINO
☐ YES, MEXICAN, MEXICAN AMERICAN, CHICANO
☐ YES, PUERTO RICAN
☐ YES, CUBAN
☐ YES, OTHER (SPECIFY)
☐ UNKNOWN

26. DECEDENT'S RACE(S):
☒ WHITE
☐ BLACK, AFRICAN AMERICAN
☐ NATIVE HAWAIIAN
☐ ASIAN INDIAN
☐ CHINESE
☐ FILIPINO
☐ JAPANESE
☐ GUAMANIAN OR CHAMORRO
☐ KOREAN
☐ VIETNAMESE
☐ SAMOAN
☐ AMERICAN INDIAN OR ALASKA NATIVE
☐ OTHER ASIAN (SPECIFY)
☐ OTHER PACIFIC ISLANDER (SPECIFY)
☐ OTHER (SPECIFY)
☐ UNKNOWN

27. IF AMERICAN INDIAN OR ALASKA NATIVE, SPECIFY UP TO 4 TRIBES. PRIMARY OR ENROLLED TRIBE.
ADDITIONAL TRIBE:
ADDITIONAL TRIBE:
ADDITIONAL TRIBE:

28. OCCUPATION: CARTOGRAPHER

29. FATHER'S NAME (FIRST, MIDDLE, LAST)	30. MOTHER'S NAME (FIRST, MIDDLE, & LAST NAME PRIOR TO FIRST MARRIAGE)
HENRY CLAY NIX	DOROTHY WINIFRED BRADSHAW

31. INFORMANT'S NAME	32. RELATIONSHIP, POWER OF ATTORNEY	33. INFORMANT'S MAILING ADDRESS
EDWIN D TUCKER		2333 BRANDED DR ; COTTONWOOD, ARIZONA 86326

34. NAME AND ADDRESS OF FUNERAL FACILITY:	35. FUNERAL DIRECTOR:	36. LICENSE NUMBER:
BUELER COTTONWOOD FUNERAL HOME 699 NORTH TENTH STREET COTTONWOOD, AZ	BENJAMIN F BUELER ; FUNERAL DIRECTOR	F1226

37. METHOD(S) OF DISPOSITION:	38. NAME AND LOCATION OF 1st DISPOSITION FACILITY:	39. NAME AND LOCATION OF 2nd DISPOSITION FACILITY:
CREMATION	VERDE VALLEY CREMATORY, CAMP VERDE, ARIZONA	NONE

MEDICAL CERTIFICATION SECTION CAUSE OF DEATH PART I

IMMEDIATE CAUSE OF DEATH	40. A		41. APPROXIMATE INTERVAL: UNKNOWN
DUE TO OR AS A CONSEQUENCE OF:	42. B		43. APPROXIMATE INTERVAL: UNKNOWN
DUE TO OR AS A CONSEQUENCE OF:	44. C		45. APPROXIMATE INTERVAL:
DUE TO OR AS A CONSEQUENCE OF:	46. D		47. APPROXIMATE INTERVAL:

CAUSE OF DEATH PART II

48. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSES GIVEN ABOVE:	49. INJURY?	50. INJURY AT WORK?	51. MANNER OF DEATH	52. TIME OF DEATH
	NO	NO	NATURAL DEATH	7:45 PM
	53. WAS AN AUTOPSY PERFORMED? NO		54. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?	

CAUSE AND MANNER OF DEATH CERTIFICATION

☒ Certifying Physician/Nurse Practitioner/Physician's Assistant - To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Medical Examiner/Tribal Law Enforcement Authority - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.

55. NAME OF PERSON COMPLETING CAUSE OF DEATH:	56. DATE CERTIFIED:
JULIA A WILLIAMS, M.D.	08-24-2011
57. CERTIFIER'S ADDRESS:	**58. NAME OF REGISTRAR:**
1200 N BEAVER ST FLAGSTAFF, AZ 86001-3118	BECKY MAJOR
	59 DATE REGISTERED
	09-07-2011

Date Issued: 09-07-2011

This is a true certification of the facts on file with the OFFICE OF VITAL RECORDS, ARIZONA DEPARTMENT OF HEALTH SERVICES, PHOENIX, ARIZONA issued under the authority of A.R.S. 36-341, and by direction of:

Patricia Adams
PATRICIA ADAMS
ASSISTANT STATE REGISTRAR

This copy not valid unless prepared on a form displaying the State Seal and impressed with the raised seal of the issuing agency.

Arizona Department of Health Services

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT

3 of 6
2012-029197-0

16
14 73

16 FILED
O'Clock A M.
NOV 08 2011
SANDRA K. MARKHAM, Clerk
By:

Diane B. Prescott, State Bar No.: 013647
Law Offices of Diane B. Prescott, Inc.
551 S. Main Street
Cottonwood, Arizona 86326
Telephone: (928) 634-2803
Facsimile: (928) 639-3034
e-mail: dianep@qwest.net

Attorney for Personal Representative, Edwin D. Tucker

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

In the Matter of the Estate of	**CASE NO: V1300PB20118-0106**
JOYCE N. TUCKER **Decedent,**	**LETTERS OF APPOINTMENT OF PERSONAL REPRESENTATIVE AND ACCEPTANCE OF APPOINTMENT OF PERSONAL REPRESENTATIVE**

LETTERS OF PERSONAL REPRESENTATIVE

EDWIN D. TUCKER is appointed as Personal Representative of this Estate without restriction.

DATE: Nov 8, 2011

Sandra K Markham, Clerk of Superior Courts

By: _____
Deputy Clerk

LAW OFFICES OF DIANE B. PRESCOTT
551 S. MAIN STREET
COTTONWOOD, ARIZONA 86326

4 of 5
2012-029197-0

16
15 73

ACCEPTANCE OF APPOINTMENT

STATE OF ARIZONA)
) ss.
County of Yavapai)

I hereby accept the duties of Personal Representative of the Estate of the above-named Decedent and do solemnly swear that I will perform, according to law, the duties of such fiduciary.

DATED this 31 day of October, 2011

Edwin D. Tucker
EDWIN D. TUCKER

SUBSCRIBED AND SWORN to before me this 31 day of October, 2011, by **EDWIN D. TUCKER.**

Deborah Kampelis
Notary Public

My Commission Expires:
9-9-2014

16
16 73

LAW OFFICES OF EVANS & PRESCOTT
315 S MAIN STREET
COTTONWOOD, ARIZONA 86326

5 of 5
2012-028197-0

VOL. [redacted] PAGE 227

FORM 4-207c
(Nov. 1949)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

"ADP"

NOV - 9 1950

I hereby certify that the an[illegible]opy of patent is a true and literal e[illegible]cation from the record which is in my c[illegible]n this office.

IN TESTIMONY [illegible] I have hereunto subibed my name and caused [illegible]he seal of this office to be affixed, at the city of Washington, on the day and year above written.

Jas. F. Homer

Chief, Patents Section.

66003

RECORD OF PATENTS, Patent Number [redacted]

16
17 73

[redacted] 32 AK 228

Anchorage 011618 4—1041-B

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by Edwin A. Jarvi, according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto, for the following described Land:

Seward Meridian, Alaska.

T. 12 N., R. 5 W.,

sec. 29, SE¼SW¼ and SW¼SE¼;

sec. 32, N½NW¼.

The area described contains 160 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Edwin A. Jarvi, and to his heirs the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Edwin A. Jarvi, and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in

RECORD OF PATENTS: Patent Number 1129880

18 16 73

Vol 52 Page 321

Anchorage 011418

4—1044
(October 1949)

connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

And there is, also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat., 305).

Excepting and reserving, also, to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat., 755), all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in the District of Columbia, the SIXTH day of SEPTEMBER in the year of our Lord one thousand nine hundred and FIFTY and of the Independence of the United States the one hundred and SEVENTY-FIFTH.

For the Director, Bureau of Land Management.

Patent No. 1129889

By Jas F. Horner
Chief, Patents Section

U. S. GOVERNMENT PRINTING OFFICE 16—26796-1

2

Anchorage Precinct Anchorage Alaska Nov. 13, 1950
Filed for record 2:30 P.M. by Edwin A. Jarvis
Ex-Officio Recorder

16
19 73

Anchorage 011585
012002
012799

4—1048

VOL 62 PG. 111 1/2 1/51

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of William H. Hancock has been established and duly consummated, in conformity to law, for the following described land:

Seward Meridian, Alaska.

T. 12N., R. 3 W.,

Sec. 32, SW¼NE¼, Lot 2, NE¼NW¼.

The area described contains 139.51 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management;

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the said William H. Hancock the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said William H. Hancock and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right-of-way thereon for ditches or canals constructed by the authority of the United States.

And there is also reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat. 305).

16
20 73

U. S. GOVERNMENT PRINTING OFFICE 16—67248-1

Anchorage 011585
012002
012799

VOL. 62 PAGE 112

Excepting and reserving, [illegible] to the United States, pursuant to the provisions of the Act of Augu[illegible]46 (60 Stat. 755), all uranium, thorium or any other material which [illegible]y be determined to be peculiarly essential to the production of fissi[illegible]terials, whether or not of commercial value, together with the right o[illegible]ted States through its authorized agents or representatives at any t[illegible]ter upon the land and prospect for, mine, and remove the same.

And there is re[illegible]om the lands hereby granted, a right-of-way thereon for roads, r[illegible]ighways, tramways, trails, bridges, and appurtenant structu[illegible]ructed or to be constructed by or under authority of the United Stat[illegible]any State created out of the Territory of Alaska, in accordance wit[illegible] of July 24, 1947 (61 Stat. 418).

Anchorage Precinct, Anchorage, Alaska.
Filed for record 8-22-51 o'clock Noon
By Wm Hanevak Deputy to: Alex Rowe
As Spenard
Registered
District Recorder

4/2 - 3.00
regis [illegible]
3.75

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the NINTEENTH day of JULY in the year of our Lord one thousand nine hundred and FIFTY-ONE and of the Independence of the United States the one hundred and SEVENTY-SIXTH.

For the Director, Bureau of Land Management.

By Jas F. Hosmer
Chief, Patents Section.

U. S. GOVERNMENT PRINTING OFFICE 16—52800a-1

Patent No. 825569

21 16 73

VOL 75 PAGE 190 ... 21 ... 12N 3West

CHUGACH ELECTRIC ASSOCIATION, INC.

ANCHORAGE, ALASKA

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that (I) (We), the undersigned Edwin A. Jarvi Yula C. Jarvi (unmarried) (husband and wife), for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto the CHUGACH ELECTRIC ASSOCIATION, INC., a co-operative corporation, (hereinafter called the "Cooperative") whose post office address is Anchorage, Alaska, and to its successors or assigns, the right to enter upon the lands of the undersigned, situated in the Anchorage Recording Precinct, Third Division, Territory of Alaska, and more particularly described as follows: HRBS 12-15

SE 1/4 SW 1/4, SW 1/4 SE 1/4, Section 29.
N 1/2 NE 1/4 Section 32.
Township 12 N. Range 3 W.
Seward Meridian.
160 Acres.

and to construct, operate and maintain on the above described lands and/or in or upon all streets, roads or highways abutting said lands, an electric transmission or distribution line or system, and to cut and trim trees and shrubbery that may interfere with or threaten to endanger the operation and maintenance of said line or system.

THE UNDERSIGNED agree(s) that all poles, wires and other facilities, including any main service entrance equipment, installed on the above-described lands at the Cooperative's expense shall remain the property of the Cooperative, removable at the option of the Cooperative, upon termination of service to or on said lands.

THE UNDERSIGNED covenant(s) that they are the owner (s) of the above-described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character except those held by the following persons: ______

IN WITNESS WHEREOF, the undersigned (have) set (their) hand(s) and seal(s) this 5th day of August 195_

Signed, Sealed and Delivered in the Presence of:

[signature]	Edwin A. Jarvi (L.S.)
[signature]	Yula C. Jarvi (L.S.)
	______ (L.S.)
	______ (L.S.)

UNITED STATES OF AMERICA } ss
TERRITORY OF ALASKA

THIS IS TO CERTIFY that on this 5th day of August 195_ before me, a Notary Public in and for the Territory of Alaska, residing therein, duly commissioned and sworn, personally appeared Edwin A. Jarvi and Yula C. Jarvi (unmarried) (husband and wife), known to me to be the identical individual(s) described in and who executed the foregoing instrument, and (they) personally acknowledged to me that (they) executed the same freely and voluntarily for the uses and purposes therein specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the above-named Territory the day and year in this certificate first above written.

4/- 3.50

[signature]
Notary Public for Alaska, residing at Anchorage, Alaska
My commission expires: Sept 8, 1951

... Anchorage, Alaska, ... 1952 o'clock 4 PM
... Chugach Electric ... Mail to: Box 4__
... District Recorder

22 16 73

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

BOOK E 5 PAGE 182

SUPPLEMENTAL AND CONFIRMATORY EASEMENT

THIS INDENTURE, made this 13th day of May, 1959, by Edwin A. Jarvi and Iula C. Jarvi, (husband and wife)

hereinafter referred to as the "Grantor(s),"

WITNESSETH:

WHEREAS, a right-of-way easement was granted to the Chugach Electric Association, Inc. on the 5th day of August, 1948, over the following parcel of land, to wit:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4), and the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section Twenty-nine (29), and the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of Section Thirty-two (32), all of Township Twelve North (T12N), Range Three West (R3W), Seward Meridian, Alaska,

which said right-of-way easement was recorded at Page 190 of Volume 75 of the records of the United States Commissioner, ex officio Recorder, for the Anchorage Precinct and Recording District, Alaska; and

WHEREAS, the Chugach Electric Association, Inc. has entered into a Joint Pole Agreement with the City of Anchorage, Alaska, whereby the latter may affix and attach telephone communication lines and attendant facilities to the utility poles of the former; and

WHEREAS, the right-of-way easement aforesaid makes no provision for the construction and maintenance of telephone lines,

NOW THEREFORE, for a good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor(s) do (does) hereby confirm and ratify the right-of-way easement above-described, and to that intent and purpose, and for the additional purpose of providing for telephone lines or a telephone system, the Grantor(s) do (does) hereby grant, bargain and sell to the said Chugach Electric Association, Inc., and to its successors, assigns, licensees and permittees, the sole and exclusive right to construct operate and maintain any and all facilities necessary to electric transmission and distribution lines, or telephone lines, through, over, in and across the parcels of land above-described, save and except the following lots in the Sunset Hills Subdivision:

Block A: Lots 21, 22, 23, 24, 1, 2, and 3;

Block B: Lots 1, 2, 3, 4, 5, 6, 10, 11, 15, 16, 17, 26, 27, 28, 29, 30, 31, and 32;

Block C: Lots 11, 12, 13, 14, 17, 18, 19, 20, 21;

Block E: 1, 2, 8, and 9,

including the right of ingress and egress to the said property, and the right to cut and keep clear of all trees, shrubbery, undergrowth and other obstructions as may be required for the construction, operation and maintenance of such facilities.

BOOK E 5 PAGE 183

TO HAVE AND TO HOLD, the same to the said Association, its successors, assigns, licensees and permittees, FOREVER.

The Grantor(s) agree(s) that all poles, wires and other facilities, including any main service entrance equipment, installed on the above-described land at the said Association's expense, or at the expense of its successors, assigns, licensees, or permittees, will remain the property of the Association, or the property of its successors, assigns, licensees or permittees, and removable at its or their option.

IN WITNESS WHEREOF, the Grantor(s) have hereunto set his(their) hand(s) and seal(s) this 13th day of May 1959.

Edwin A. Jarvi (Seal) Ayla C. Jarvi (Seal)

Edwin A. Jarvi (Seal) Ayla C. Jarvi (Seal)

STATE OF CALIFORNIA } SS.
COUNTY OF [illegible] }

[illegible] before me, the undersigned, a Notary Public in and for said County and State, personally appeared [illegible] known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

(Seal) [illegible]
Notary Public in and for said County and State
My Commission Expires May 31 1962

} ss.
}

that on this [illegible] day of [illegible] before me, a Notary Public in and for [illegible], duly commissioned and sworn,

[illegible] known to me to be the identical individual(s) [illegible] foregoing instrument, and (he)(they) (has) (they) executed the same freely [illegible] purposes therein specified.

IN, I have hereunto set my hand and [illegible]-named Territory the day and year [illegible].

Notary Public for Alaska, residing at [illegible]

My commission expires: [illegible]

ACCEPTED FOR RECORD AT REQUEST OF

JUL 2 1959

FILED FOR RECORD AT REQUEST OF DISTRICT RECORDER

at [illegible] Block 1100

4/4
$11.50

16
25 73

VOL. 76 PAGE 98

(18)

CHUGACH ELECTRIC ASSOCIATION, INC.

ANCHORAGE, ALASKA

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that (I) (We), the undersigned William Harris and Caryl I Hancock (unmarried) (husband and wife) for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto the CHUGACH ELECTRIC ASSOCIATION, INC., a co-operative corporation, (hereinafter called the "Cooperative") whose post office address is Anchorage, Alaska, and to its successors or assigns, the right to enter upon the lands of the undersigned, situated in the Anchorage Recording Precinct, Third Division, Territory of Alaska, and more particularly described as follows:

S W 1/4 NE 1/4 Section 32 Township 12 N Range 3 W Seward Meridian.

Anchorage Precinct, Anchorage, Alaska.
Filed for record JUL 25 1952 o'clock 9 A. M.
By Chugach Elec. Ass'n Mail to: Box 488
At Anchorage ROSE WALSH
District Recorder

and to construct, operate and maintain on the above described lands and/or in or upon all streets, roads or highways abutting said lands, an electric transmission or distribution line or system, and to cut and trim trees and shrubbery that may interfere with or threaten to endanger the operation and maintenance of said line or system.

THE UNDERSIGNED agree(s) that all poles, wires and other facilities, including any main service entrance equipment, installed on the above-described lands at the Cooperative's expense shall remain the property of the Cooperative, removable at the option of the Cooperative, upon termination of service to or on said lands.

THE UNDERSIGNED covenant(s) that (they are) (he is) the owner (s) of the above-described lands, and that the said lands are free and clear of encumberances and liens of whatsoever character except those held by the following persons: Un-patented land

IN WITNESS WHEREOF, the undersigned (have) (has) set (their) (his) hand(s) and seal(s) this 20th day of March, 1949.

Signed, Sealed and Delivered In the Presence of:

Keith M. Spurling
William C. Young

W H Hancock (L.S.)
Caryl I. Hancock (L.S.)
(L.S.)
(L.S.)

UNITED STATES OF AMERICA)
TERRITORY OF ALASKA) ss

THIS IS TO CERTIFY that on this 20th day of March, 1949, before me, a Notary Public in and for the Territory of Alaska, residing therein, duly commissioned and sworn, personally appeared William Harris and Caryl I Hancock (unmarried) (husband and wife) known to me to be the identical individual(s) described in and who executed the foregoing instrument, and (he) (they) personally acknowledged to me that (he) (they) executed the same freely and voluntarily for the uses and purposes therein specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the above-named Territory the day and year in this certificate first above written.

Keith M. Spurling
Notary Public for Alaska residing at Anchorage
My commission expires [illegible]

3.50
4/4

16
26 75

65: 13, 020 BOOK 305 PAGE 174
Anchorage Recording District

WARRANTY DEED

THIS INDENTURE, made and entered into this 2nd day of July, 1965, by and between EDWIN A. JARVI and YULA C. JARVI, husband and wife, parties of the first part, hereinafter known as the Grantors, and the UNITED STATES OF AMERICA and its assigns, parties of the second part, hereinafter known as the Grantees,

W I T N E S S E T H:

That the Grantors, for and in consideration of the sum of TWENTY-FOUR THOUSAND ONE HUNDRED FIFTEEN ($24,115.00) DOLLARS, lawful money of the United States of America, and other good and valuable considerations in hand paid by the said Grantees, the receipt of all of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said Grantees the following-described real property situate, lying and being in the Anchorage Recording Precinct, Third Judicial District, State of Alaska, and more particularly described as follows, to-wit:

PARCEL 1

All that portion of the Southwest one-quarter (SW 1/4) of Section Twenty-Nine (29), Township Twelve North (T 12 N), Range Three West (R 3 W), Seward Meridian, Alaska, included within a tract of land described as follows:

BEGINNING at the most westerly corner of Lot Twenty-One (21) in Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof, and running thence North 89°51'30" East 47.81 feet along the northerly line of said Lot Twenty-One (21); thence North 46°45'00" West 233.84 feet; thence North 43°15'00" West 392.94 feet, thence North 39°45'00" West 294.74 feet; thence North 35°35'00" West 294.73 feet; thence South 36°26'20" East 525.41 feet; thence South 40°35'00" East 455.00 feet; thence South 46°28'00" East 204.81 feet to the point of BEGINNING, all bearings being based on the Alaska State Plane Coordinate System, Zone 4.

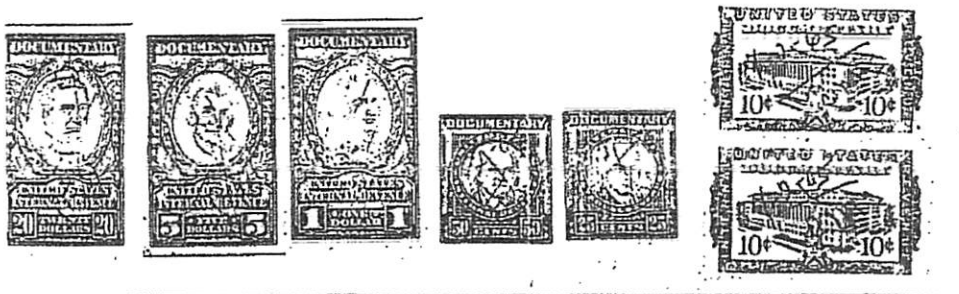
PARCEL 2

Lots Six (6), Eleven (11), and Twelve (12) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof recorded July 17, 1961, under Plat No. P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

PARCEL 3

Lot Ten (10) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska

J. L. McCARREY, JR.
ATTORNEY AT LAW
BOX 1252
ANCHORAGE, ALASKA
BROADWAY 7-8701



16
27 73

BOOK 305 PAGE 171
Anchorage Recording District

PARCEL 4

A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:

All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

The above-described premises are being acquired for the Alaska Railroad, Department of the Interior.

SUBJECT TO the reservations, restrictions and easements now of record.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments and appurtenances, including any alleys, streets, ways, strips or gores abutting or adjoining the land, thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, all and singular, together with the appurtenances and privileges incident thereto, unto the said Grantees forever, and the said Grantors hereby covenant and agree that they are the lawful owners of said premises; that they have the legal right to sell the same, and by these presents do warrant and will forever defend the said Grantees against any and all persons lawfully having or claiming any right, title or interest therein adverse to said Grantees, in the quiet and peaceable possession thereof; that the said premises are free from all encumbrances except any easements, restrictions and reservations of record.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands and seals the day and year first hereinabove written.

RECORDED-FILED 5—
Anch REC. DIST.
DATE 7/2 1965
TIME 11:55 A.M.
Requested by Title

Edwin A. Jarvi
EDWIN A. JARVI

Yula C. Jarvi
YULA C. JARVI

UNITED ~~STATES OF AMERICA~~)
THIRD ~~JUDICIAL DISTRICT~~) ss:
STATE OF ALASKA)

THIS IS TO CERTIFY that on this 2nd day of July, 1965, before me, the undersigned, a Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared EDWIN A. JARVI and YULA C. JARVI, Grantors, known to me and known to be the identical individuals named in and who executed the foregoing instrument, and they did acknowledge to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my hand and Notarial Seal the day and years last above written.

Notary Public in and for Alaska
My Commission expires 12-7-68

RETURN TO
Title Ins. & Trust Co. — Escrow Dept.

J. L. McCARREY, JR.
ATTORNEY AT LAW
BOX 1333
ANCHORAGE, ALASKA
BROADWAY 7-6701

16
28 73

BOOK 492 PAGE 30
Anchorage Recording District

WARRANTY DEED CREATING TENANCY BY THE ENTIRETY

THIS DEED, executed this 26th day of July, 1966, by EDWIN A. JARVI and YULA C. JARVI, husband and wife, of Anchorage, Alaska, as Grantors;

WITNESSETH:

That the Grantors, for and in consideration of the sum of Ten Dollars and other good and valuable considerations to them in hand paid by the Grantees, do by these presents grant, bargain, sell, convey and confirm unto EDWIN D. TUCKER and W. JOYCE TUCKER, husband and wife, of Anchorage, Alaska, Grantees, as TENANTS BY THE ENTIRETY with the right of survivorship, and to the heirs and assigns of the survivor forever, the following real property situated in the Anchorage Recording District, State of Alaska, and more particularly described as follows:

> Lot Thirteen (13) and Lot Fourteen (14) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to official Plat No. 600 filed July 17, 1961 in the office of the District Recorder for the Anchorage Recording District, State of Alaska;

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, subject to easements and restrictions of record, including the perpetual easement pertaining to that portion of the premises lying Southwesterly of the line designated as "Take Line" on that certain map entitled Potter Hill Relocation, Alaska Railroad, as shown on Plat No. 64-105, dated October 9, 1964.

ARTHUR D. TALBOT
ATTORNEY AT LAW
[illegible] TURNAGAIN ARMS
ANCHORAGE, ALASKA
BROADWAY 4-2481

In making this conveyance, however, the Grantors do hereby expressly reserve unto themselves, their heirs, executors, and assigns, all

29 16 73

and the whole of the mineral, oil and petroleum rights in and to the real property hereby conveyed.

This conveyance is also made upon the express condition that henceforth the two lots hereby conveyed shall constitute and be deemed for all purposes a single parcel or lot and that the Grantees and their successors in interest will neither subdivide nor convey less than the whole of said combined parcel to any person, said condition and covenant to be binding upon the Grantees, their heirs, executors, successors, and assigns, and to run with the land through and including December 31, 1991.

TO HAVE AND TO HOLD the said premises unto the Grantees, their heirs and assigns forever. And the Grantors, for themselves, their heirs and assigns, do covenant and agree with the Grantees that said Grantors are lawfully seized in fee of said premises, that the Grantors have good right to sell the same, and that there are no liens or encumbrances against said property, and that the Grantors warrant and will forever defend the Grantees, their heirs and assigns, in the quiet and peaceable possession of said premises against any and all persons having or claiming any right, title, interest or estate therein adverse to the Grantees by any lawful claim.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals the day and year first above written.

Edwin A. Jarvi
EDWIN A. JARVI

Yula C. Jarvi
YULA C. JARVI

ARTHUR D. TALBOT
ATTORNEY AT LAW
311 TURNAGAIN ARMS
ANCHORAGE, ALASKA
BROADWAY 4-3451

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared

16
30 73

EDWIN A. JARVI and YULA C. JARVI, known to me and to me known to be the individuals mentioned in and who executed the foregoing deed, and who acknowledged to me that they each executed the same freely and voluntarily with knowledge of its contents, for the uses and purposes therein mentioned.

WITNESS my hand and Notarial Seal this 26th day of July, 1966.

JEAN E. SMITH NOTARY PUBLIC OF ALASKA

Jean E. Smith
Notary Public in and for Alaska
My Commission Expires: 10-9-66,

72-011265-7

RECORDED ~~1:15~~
ANCHORAGE REC.
DISTRICT

APR 17 3 06 PM '72
REQUESTED BY Jean Smith
ADDRESS Box 1928
Anch 99510
486681

ARTHUR D. TALBOT
ATTORNEY AT LAW
311 TUKISLIS ARMS
ANCHORAGE, ALASKA
BROADWAY 4-2451

16
JI 73

BOOK 760

PAGE 0930

INTERIM EXTENDED WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 24 day of June, 19 82, by and between Central Alaska Utilities, Inc., hereinafter called Company, and Neil Bergt, hereinafter called Customer, said Customer being owner of Sunset Hills West Block 3 Lot 13.

WITNESSETH:
WHEREAS, the Company is providing water service in the vicinity of subject property but mains have not been installed immediately contiguous to subject property; and Whereas, subject property desires a connection to the water mains owned and operated by the Company; and Whereas, the Company someday hence, may at its option, or upon petition of the property owners, install a water main adjacent to above described property;

Now, therefore, the parties hereto mutually promise and agree as follows:
~~(1) A standard connection and keybox installation shall be installed at a point on the water main designated by the Company.~~
(2) The customer pays the service connection charge.
(3) Service line shall be extended by the Customer at his expense.
(4) Customer is responsible for maintenance of service line.
(5) At the time of application for service, Customer shall pay to the Company the off-site charge in effect at that time.
(6) At such time as mains are extended or installed to a point contiguous to the property being served, the property owner agrees to connect to the extended main, pay the appropriate on-site charge, and service connection charge.
(7) During the interim period, until such described water mains are installed, the Customer acknowledges and accepts the full responsibilities for all and any conditions which may effect his extended, temporary service connection, from the point he starts his installation at the existing water main to his premises.
(8) This agreement shall be effective immediately and shall continue in effect and shall inure to the benefit of the heirs administrators, executors, and assigns, of the parties hereto.

CENTRAL ALASKA UTILITIES, INC.
BY [signature]
Title Manager, Administrative Services
Date June 23, 1982

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

This is to certify that on the 25 day of June, 19 82, at Anchorage, Alaska, Jeffery R. Bowles, whom I know, appeared before men and acknowledged that he executed the foregoing instrument for and on behalf of Central Alaska Utilities, Inc., that he is the Mgr. Admin. Ser of said corporation and is authorized to so execute, and that he knows the contents thereof and acknowledged the same to be his act.

In witness wherof, I hereto set my hand and seal.

[signature]
Notary Public in and for Alaska
My commission expires 12-27-84

Accepted and Acknowledged
By [signature] for Neil Bergt Dated 6/28/82

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

This is to certify that on the 28 day of June, 19 82, appeared Sam Padgett for Neil Bergt whom I know and who affirmed to me that he did, of his own free will, accept and acknowledge the contents of the foregoing instrument.

In witness whereof, I herto set my hand and seal.

[signature]
Notary Public in and for Alaska
My commission expires ~~12-27-84~~ 12/20/85

32 16 73

82-045163

11—

RECORDED-FILED
ANCHORAGE REC.
DISTRICT

AUG 7 12 35 PM '82

REQUESTED BY CAUI

ADDRESS

33 16 73

CC

ALASKA

2009-024523-0
Recording Dist: 301 - Anchorage
4/15/2009 11:06 AM Pages: 1 of 14

[Space Above This Line For Recording Data]

UNITED TITLE 146860

DEED OF TRUST

MIN: 1000463-0010017370-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 10, 2009 together with all Riders to this document.

(B) "Borrower" is Peter E. Slaiby and Rejani M. Slaiby, Husband and Wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Residential Mortgage, LLC
Lender is a Limited Liability Company organized and existing under the laws of State of Alaska . Lender's address is 100 Calais Drive, Suite 100, Anchorage, AK 99503

(D) "Trustee" is United Title Guaranty Agency LLC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated April 10, 2009 . The Note states that Borrower owes Lender Six Hundred Twenty Five Thousand Five Hundred and no/100 Dollars (U.S. $625,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 01, 2039 .

16
JY 77

H

(G) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(H) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) [specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

(J) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) **"Escrow Items"** means those items that are described in Section 3.

(N) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's sucessors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **Recording District** of **Anchorage**
[Type of Recording District] [Name of Recording District]

Third Judicial District:

Lot Thirteen and Fourteen (13 & 14), Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof, filed under Plat No. P-600, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM that portion lying Southwesterly (SW'ly) of the "take line" shown on the plat of Potter Hill Relocation according to Plat No. 84-105.

which currently has the address of **14200 Jarvi Drive**
[Street]

Anchorage [City], Alaska **99515** [Zip Code] ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all

Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount

not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has—if any—with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During

such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in

Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall

not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and those remedies permitted by Applicable Law may be invoked. Lender shall be entitled to collect all expenses incurred in pursuing

the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

Lender may bring suit in any court of competent jurisdiction to foreclose the lien of this Security Instrument judicially and/or obtain judgment on the Note which it secures. Any election by Lender to invoke the power of sale provisions of this Section 22 shall not be considered a final and binding election of remedies that would preclude such a judicial foreclosure, until conclusion of the sale of the Property by the Trustee as described in this Section 22.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each Recording District in which any part of the Property is located. Lender or Trustee shall mail copies of the notice to the persons and in the manner prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Right to Demand Full Payoff. Notwithstanding Section 19 or any other provision of this Security Instrument, if a notice of default under this Security Instrument shall have been recorded two or more times previously and the default shall have been cured pursuant to Section 19 and Applicable Law, Lender shall have the right to refuse to accept a subsequent cure of a subsequent default under Section 19 and shall be entitled to proceed with foreclosure of this Security Instrument unless Borrower pays all sums secured by this Security Instrument. Acceptance by Lender of a cure of the subsequent default giving rise to the foreclosure shall not constitute a waiver of the right to reject a cure and proceed with foreclosure in the event of any future default.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 14 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

Peter E Slaiby (Seal) -Borrower
Peter E. Slaiby

Rejani M. Slaiby (Seal) -Borrower
Rejani M. Slaiby

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

State of Alaska
Judicial District Third SS.

The foregoing instrument was acknowledged before me this April 10, 2009 (date) by Peter E. Slaiby and Rejani M. Slaiby

OFFICIAL SEAL
STATE OF ALASKA
NOTARY PUBLIC
C. S. PALMATEER
My Comm. expires: March 26, 2010

Notary Public

My commission expires: 3/26/10

After Recording Return To: Residential Mortgage, LLC
100 Calais Drive
Suite 100
Anchorage, Alaska 99503

vol. 54 page 120

WARRANTY DEED CREATING TENANCY BY THE ENTIRETY

THIS INDENTURE, made and entered into this 16th day of September, 1951, by and between WILLIAM H. HANCOCK, of Anchorage, Alaska, party of the first part, and WILLIAM H. HANCOCK and CARYL J. HANCOCK, husband and wife, parties of the second part, WITNESSETH:

That the party of the first part, for and in consideration of the sum of Ten Dollars ($10.00), lawful money of the United States of America, and other good and valuable considerations to him in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these PRESENTS does GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the said parties of the second part, as TENANTS BY THE ENTIRETY, with the right of survivorship, and to the heirs and assigns of the survivor, all that certain real property in the Territory of Alaska, Third Judicial Division, Anchorage Recording District, and more particularly described as follows

The Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) and Lot Two (2) and the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of Section Thirty-two (32), Township Twelve North (12N), Range Three West (3W), Seward Meridian, Alaska, according to the official plat on file in the Bureau of Land Management in Anchorage, Third Judicial Division, Territory of Alaska.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, all and singular, with the appurtenances and privileges incident thereto, unto the said parties of the second part, as TENANTS BY THE ENTIRETY, And not otherwise, and with the right of survivorship, and to the heirs and assigns of the survivor, FOREVER; and the said party of the first part covenants and agrees with the parties of the second part that he is the lawful owner of said premises; that he has the legal right to sell the same, and does hereby WARRANT and will forever defend said parties of the second part, their heirs and assigns against any and all persons having or claiming any right, title or interest thereto adverse to said parties of the second part in the quiet and peaceable possession thereof.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed in the presence of:
Georgia Simmons
Ruth Crane

William H. Hancock (SEAL)
WILLIAM H. HANCOCK

UNITED STATES OF AMERICA)
TERRITORY OF ALASKA) ss:

THIS IS TO CERTIFY that on this 16th day of September, 1951, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn as such, came WILLIAM H. HANCOCK, known to me and known to be the person described in and who executed the foregoing Deed, and he acknowledged that he signed and sealed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my Hand and Notarial Seal the day and year last above written.

5/4 4.00

Georgia Simmons
Notary Public in and for Alaska
My commission expires: 7-5-54

Wm. H. Hancock
Star Route B.D.
Seward, Alaska

& ROBISON
BOX 1178
SONIC BLDG.
ORAGE, ALASKA

16
48 73

VOL 65 PAGE 290

WARRANTY DEED CREATING TENANCY BY THE ENTIRETY

THIS INDENTURE, made and entered into this 28th day of November, 1951, by and between WILLIAM H. HANCOCK, of Anchorage, Alaska, party of the first part, and WILLIAM H. HANCOCK and CARYL I. HANCOCK, husband and wife, parties of the second part, WITNESSETH:

That the party of the first part, for and in consideration of the sum of Ten Dollars ($10.00), lawful money of the United States of America, and other good and valuable considerations to him in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these PRESENTS does GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the said parties of the second part, as TENANTS BY THE ENTIRETY, with the right of survivorship, and to the heirs and assigns of the survivor, all that certain real property in the Territory of Alaska, Third Judicial Division, Anchorage Recording District, and more particularly described as follows:

> The Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) and Lot Two (2) and the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section Thirty-two (32), Township Twelve North (12N), Range Three West (3W), Seward Meridian, Alaska, according to the official plat on file in the Bureau of Land Management in Anchorage, Third Judicial Division, Territory of Alaska.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, all and singular, with the appurtenances and privileges incident thereto, unto the said parties of the second part, as TENANTS BY THE ENTIRETY, and not otherwsie, and with the right of survivorship, and to the heirs and assigns of the survivor, FOREVER; and the said party of the first part covenants and agrees with the parties of the second part that he is the lawful owner of said premises; that he has the legal right to sell the same, and does hereby WARRANT and will forever defend said parties of the second part, their heirs and assigns against any and all persons having or claiming any right, title or interest thereto adverse to said parties of the second part in the quiet and peaceable possession thereof.

This deed is given to correct an error in the spelling of the name of Caryl I. Hancock, in deed dated September 16, 1951, recorded in Book 64, page 120 of the Precinct Records in the Office of the U. S. Commissioner on October 17, 1951.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal this day and year first above written.

Signed in the presence of:)
Georgia Simmons)
Winfield T. Kay)

William H. Hancock
WILLIAM H. HANCOCK

UNITED STATES OF AMERICA)
TERRITORY OF ALASKA) ss:

THIS IS TO CERTIFY that on this 28th day of November 1951, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn as such, came WILLIAM H. HANCOCK, known to me and known to be the person described in and who executed the foregoing deed, and he acknowledges that he signed and sealed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my Hand and Notarial Seal the day and year last above written.

Georgia Simmons
NOTARY PUBLIC IN AND FOR ALASKA

My commission expires: 7-5-54

Anchorage Precinct, Territory of Alaska.
Filed for record NOV 28 1951 at 12 o'clock P M
By Caryl I. Hancock
Mail to: Same
ROSE WALSH

AY & ROBISON
BOX 1178
ASONIC BLDG.
HORAGE, ALASKA

16
49 77

U 1038

BOOK 235 PAGE 351
Anchorage Recording District

QUIT-CLAIM DEED

THE GRANTOR W.H. Hancock

for and in consideration of $10.00 and other valuable considerations I

convey and quit claim to Edwin A. and Yula C. Jarvi

the following described real estate, situated in the Anchorage Recording Precinct

State of Alaska: I remise, relinquish and forever Quit-Claim

Lot 14, Block 3 and Lot 22, Block 4 Sunset Hills West Subdivision. Located in the N½ of Section 32 T.12N - R3W, S.M.

RECORDED - FILED
Anch REC. DIST.
DATE 7-19 1961
TIME 10 46 A M
Requested by Jarvi

Dated this 18th day of July 1961

Signed, Sealed and Delivered in the Presence of W.H. Hancock (SEAL)

Jean S. Smith

W. L. Reynolds ________ (SEAL)

Individual Acknowledgment (Alaska)

UNITED STATES OF AMERICA,
STATE OF ALASKA } ss.

THIS IS TO CERTIFY that on this 18 day of July, 1961 before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared W. H. Hancock to me known to be the person described in and who executed the above and foregoing instrument, and acknowledged to me that he signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

Jean S. Smith

Notary Public for Alaska. My commission expires 10-9-62

This blank is guaranteed against successful alteration, which guaranty is insured in LLOYD'S, London - Pat. Pend.
Washington Legal Blank Co. (Quit-Claim Deed - Alaska) Form 1003 Printing Date 8-10-60

16
50 73

65: 13, 020 BOOK 305 PAGE 170
Anchorage Recording District

WARRANTY DEED

THIS INDENTURE, made and entered into this 2nd day of July, 1965, by and between EDWIN A. JARVI and YULA C. JARVI, husband and wife, parties of the first part, hereinafter known as the Grantors, and the UNITED STATES OF AMERICA and its assigns, parties of the second part, hereinafter known as the Grantees,

W I T N E S S E T H:

That the Grantors, for and in consideration of the sum of TWENTY-FOUR THOUSAND ONE HUNDRED FIFTEEN ($24,115.00) DOLLARS, lawful money of the United States of America, and other good and valuable considerations in hand paid by the said Grantees, the receipt of all of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said Grantees the following-described real property situate, lying and being in the Anchorage Recording Precinct, Third Judicial District, State of Alaska, and more particularly described as follows, to-wit:

PARCEL 1

All that portion of the Southwest one-quarter (SW 1/4) of Section Twenty-Nine (29), Township Twelve North (T 12 N), Range Three West (R 3 W), Seward Meridian, Alaska, included within a tract of land described as follows:

BEGINNING at the most westerly corner of Lot Twenty-One (21) in Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof, and running thence North 89°51'30" East 47.81 feet along the northerly line of said Lot Twenty-One (21); thence North 46°45'00" West 233.84 feet; thence North 43°15'00" West 392.94 feet, thence North 39°45'00" West 294.74 feet; thence North 36°35'00" West 294.73 feet; thence South 36°26'20" East 525.41 feet; thence South 40°35'00" East 455.00 feet; thence South 46°28'00" East 204.81 feet to the point of BEGINNING, all bearings being based on the Alaska State Plane Coordinate System, Zone 4.

PARCEL 2

Lots Six (6), Eleven (11), and Twelve (12) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof recorded July 17, 1961, under Plat No. P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

PARCEL 3

Lot Ten (10) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat P-600 in the Anchorage Recording Precinct, Third Judicial District, State of Alaska

J. L. McCARREY, Jr.
ATTORNEY AT LAW
BOX 1133
ANCHORAGE, ALASKA
BROADWAY 7-6701

16
57 73

BOOK 305 PAGE 171
Anchorage Recording District

PARCEL 4

A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:

All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.

The above-described premises are being acquired for the Alaska Railroad, Department of the Interior.

SUBJECT TO the reservations, restrictions and easements now of record.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments and appurtenances, including any alleys, streets, ways, strips or gores abutting or adjoining the land, thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, all and singular, together with the appurtenances and privileges incident thereto, unto the said Grantees forever, and the said Grantors hereby covenant and agree that they are the lawful owners of said premises; that they have the legal right to sell the same, and by these presents do warrant and will forever defend the said Grantees against any and all persons lawfully having or claiming any right, title or interest therein adverse to said Grantees, in the quiet and peaceable possession thereof; that the said premises are free from all encumbrances except any easements, restrictions and reservations of record.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands and seals the day and year first hereinabove written.

RECORDED-FILED 5—
Anch REC. DIST.
DATE 7/2 1965
TIME 11:55 A.M.
Requested by Title

Edwin A. Jarvi
EDWIN A. JARVI

Yula C. Jarvi
YULA C. JARVI

UNITED ~~STATES OF AMERICA~~)
THIRD ~~JUDICIAL DISTRICT~~) ss:
STATE OF ALASKA)

THIS IS TO CERTIFY that on this 2nd day of July, 1965, before me, the undersigned, a Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared EDWIN A. JARVI and YULA C. JARVI, Grantors, known to me and known to be the identical individuals named in and who executed the foregoing instrument, and they did acknowledge to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my hand and Notarial Seal the day and years last above written.

Notary Public in and for Alaska
My Commission expires 5-22-68

J. L. McCARREY, JR.
ATTORNEY AT LAW
BOX 1888
ANCHORAGE, ALASKA
BROADWAY 7-5701

RETURN TO
Title Ins. & Trust Co. — Escrow Dept.

16
52 77

BOOK 541 PAGE 30
Anchorage Recording District

WARRANTY DEED CREATING TENANCY BY THE ENTIRETY

THIS DEED, executed this 26th day of July, 1966, by EDWIN A. JARVI and YULA C. JARVI, husband and wife, of Anchorage, Alaska, as Grantors;

WITNESSETH:

That the Grantors, for and in consideration of the sum of Ten Dollars and other good and valuable considerations to them in hand paid by the Grantees, do by these presents grant, bargain, sell, convey and confirm unto EDWIN D. TUCKER and W. JOYCE TUCKER, husband and wife, of Anchorage, Alaska, Grantees, as TENANTS BY THE ENTIRETY with the right of survivorship, and to the heirs and assigns of the survivor forever, the following real property situated in the Anchorage Recording District, State of Alaska, and more particularly described as follows:

> Lot Thirteen (13) and Lot Fourteen (14) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to official Plat No. 600 filed July 17, 1961 in the office of the District Recorder for the Anchorage Recording District, State of Alaska;

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, subject to easements and restrictions of record, including the perpetual easement pertaining to that portion of the premises lying Southwesterly of the line designated as "Take Line" on that certain map entitled Potter Hill Relocation, Alaska Railroad, as shown on Plat No. 64-105, dated October 9, 1964.

ARTHUR D. TALBOT
ATTORNEY AT LAW
211 TURNAGAIN ARMS
ANCHORAGE, ALASKA
BROADWAY 4-2481

In making this conveyance, however, the Grantors do hereby expressly reserve unto themselves, their heirs, executors, and assigns, all

16
53 73

and the whole of the mineral, oil and petroleum rights in and to the real property hereby conveyed.

This conveyance is also made upon the express condition that henceforth the two lots hereby conveyed shall constitute and be deemed for all purposes a single parcel or lot and that the Grantees and their successors in interest will neither subdivide nor convey less than the whole of said combined parcel to any person, said condition and covenant to be binding upon the Grantees, their heirs, executors, successors, and assigns, and to run with the land through and including December 31, 1991.

TO HAVE AND TO HOLD the said premises unto the Grantees, their heirs and assigns forever. And the Grantors, for themselves, their heirs and assigns, do covenant and agree with the Grantees that said Grantors are lawfully seized in fee of said premises, that the Grantors have good right to sell the same, and that there are no liens or encumbrances against said property, and that the Grantors warrant and will forever defend the Grantees, their heirs and assigns, in the quiet and peaceable possession of said premises against any and all persons having or claiming any right, title, interest or estate therein adverse to the Grantees by any lawful claim.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals the day and year first above written.

Edwin A. Jarvi
EDWIN A. JARVI

Yula C. Jarvi
YULA C. JARVI

ARTHUR D. TALBOT
ATTORNEY AT LAW
511 TUBAGIN BANK
ANCHORAGE, ALASKA
BROADWAY 4-1481

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared

16
54 77

EDWIN A. JARVI and YULA C. JARVI, known to me and to me known to be the individuals mentioned in and who executed the foregoing deed, and who acknowledged to me that they each executed the same freely and voluntarily with knowledge of its contents, for the uses and purposes therein mentioned.

WITNESS my hand and Notarial Seal this 26th day of July, 1966.

JEAN E. SMITH NOTARY PUBLIC STATE OF ALASKA

Jean E. Smith
Notary Public in and for Alaska
My Commission Expires: 10-9-66,

72-011265

RECORDED-~~FILED~~
ANCHORAGE REC.
DISTRICT

APR 17 3 06 PM '72
REQUESTED BY Jean Smith
ADDRESS Box 1928
Anch 99510

486681

ARTHUR D. TALBOT
ATTORNEY AT LAW
211 TURNAGAIN ARMS
ANCHORAGE, ALASKA
BROADWAY 4-2451

16
55 73

BOOK 1411 PAGE 33
Anchorage Recording District

WARRANTY DEED CREATING TENANCY BY THE ENTIRETY

The Grantors, EDWIN D. TUCKER and W. JOYCE TUCKER, husband and wife, of Anchorage, Alaska, for and in consideration of the sum of Ten Dollars and other good and valuable considerations in hand paid, convey and warrant to RALPH M. ALLEY and VIRGINIA M. ALLEY, husband and wife, of Anchorage, Alaska, as TENANTS BY THE ENTIRETY with the right of survivorship, Grantees, the following described real estate situate in the Anchorage Recording District, Third District, State of Alaska, to-wit:

72-011266
3

RECORDED-FILED
ANCHORAGE REC.
DISTRICT

APR 17 9 08 PM '72

REQUESTED BY Tom Smith
ADDRESS Box 1928
Anch 99510
45682

Lots Thirteen (13) and Fourteen (14) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof, filed under Plat No. P-600, records of the Anchorage Recording District, Third District, State of Alaska, EXCEPTING THEREFROM that portion thereof lying Southwesterly of the "TAKE LINE" shown on the plat of Potter Hill Relocation according to Plat 64-105; subject to existing easements, restrictions, and reservations of record, if any.

Dated April 10, 1972.

Edwin D. Tucker
Edwin D. Tucker

W. Joyce Tucker
W. Joyce Tucker

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared EDWIN D. TUCKER and W. JOYCE TUCKER, known to me and to me known to be the persons named in and who executed the foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily, with knowledge of its contents, for the uses and purposes therein mentioned.

WITNESS my hand and Notarial Seal this 10th day of April, 1972.

Tom E. Smith
Notary Public in and for Alaska.
My commission expires: 10-9-74

A. D. TALBOT
LAWYER
643 TENTH AVENUE
ANCHORAGE, ALASKA
277-0323
277-4122

16
56 77

BOOK 64 PAGE 757
Anchorage Recording District

A-50921

QUIT-CLAIM DEED

THE GRANTORS, RALPH H. ALLEY and VIRGINIA M. ALLEY, husband and wife

for and in consideration of the sum of TEN DOLLARS ($10.00)----------

convey and quit claim to ALLEY ARCHITECTURAL GROUP, INC., an Alaskan Corporation

the following described real estate, situated in the Anchorage Recording District, Third Judicial District,
State of Alaska:

Lots 13 and 14, Block 3, SUNSET HILLS WEST SUBDIVISION, ~~According to Plat [illegible], filed in the Anchorage Recording~~ District, Third Judicial District, State of Alaska.

75- 048669

~~RECORDED-FILED~~
ANCHORAGE REC.
DISTRICT

Nov 24 3 47 PM '75

REQUESTED BY _____

ADDRESS
ALASKA TITLE GUARANTY COMPANY

RETURN TO,
[illegible]orage Branch
[illegible] Bank of Commerce
[illegible] 7013
[illegible]ge, Alaska 99501

Dated this 24th day of November, 1975

Signed, Sealed and Delivered in the Presence of

_____

_____

Ralph H. Alley (SEAL)

Virginia M. Alley (SEAL)

UNITED STATES OF AMERICA,
STATE OF ALASKA, } ss.

Individual Acknowledgment *(Alaska)*

~~THIS IS TO CERTIFY~~ that on this 24th day of November, 1975, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Ralph H. Alley and Virginia M. Alley to me known to be the persons described in and who executed the above and foregoing instrument, and acknowledged to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____

Notary Public for Alaska. My commission expires _____

This blank is guaranteed against unlawful alteration, which guaranty is insured Washington Legal Blank Co. (Quit-Claim Deed - Alaska) Form 5003

16
57 73

BOOK 262 PAGE 0[illegible]2

STATUTORY WARRANTY DEED

The GRANTOR, ALLEY ARCHITECTURAL GROUP, an Alaska Professional corporation for and in consideration of One Dollar ($1.00) and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, conveys and warrants to NEIL G. BERGT, a married man, as his sole and separate property, the following described real property:

Lots Thirteen (13) and Fourteen (14), Block Three (3), Sunset Hills West Subdivision according to Plat P-600 filed in the Anchorage Recording District, Third Judicial District, State of Alaska.

SUBJECT TO easements, reservations, restrictions and covenants of record.

Together with all and singular the tenements, hereditaments and appurtenance thereunto belonging or in anyway appertaining.

DATED at Anchorage, Alaska this 6th day of January, 1978.

ALLEY ARCHITECTURAL GROUP

By Ralph M. Alley
Ralph M. Alley, President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On this 6th day of January, 1978, before me, the undersigned, a Notary Public and and for the State of Alaska, duly commissioned and sworn, personally appeared RALPH M. ALLEY, to me known to be the President of Alley Architectural Group, an Alaska Professional Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for Alaska
My Commission expires: [illegible]

Return To: Alaska Title Guaranty Co.
510 Sixth Avenue
Anchorage, Alaska
Escrow No. 16623-8 Attn: CS

RUSKIN, BARKER & HICKS
ATTORNEYS AT LAW
420 WEST FOURTH AVENUE, SUITE 202
ANCHORAGE, ALASKA 99501
TELEPHONE 272-8401

66990

5[illegible]

RECORDED - FILED
ANCHORAGE REC.
DISTRICT

JAN 9 9 34 AM '78

REQUESTED BY [illegible]
ADDRESS [illegible]
ALASKA TITLE GUARANTY CO.

GRANTEE'S ADDRESS: NEIL G. Bergt
3201 "C" Street, Suite 600
Anchorage, Alaska 99503

16
58 73

BK 03835 PG 0939

Escrow/Order #25494/48481
After Recording Return to:
Grantee at address below

STATUTORY WARRANTY DEED

The Grantor(s), NEIL G. BERGT
whose address is: PO BOX 302, Homer, AK 99603

for and in consideration of the sum of TEN DOLLARS ($10.00), lawful money of the United States, and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, do hereby GRANT CONVEY and WARRANT to:

The Grantee(s), GARY E. CARLSON and KATHERINE E. CARLSON, husband & wife
whose address is: 14200 Jarvis Drive Anchorage, Alaska 99515

the following described real property, together with all tenements, hereditaments, and appurtenances located in the Anchorage Recording District, Third Judicial District, State of Alaska:

Lot Thirteen (13) and Fourteen (14), Block Three (3), SUNSET HILLS WEST SUBDIVISION according to the official plat thereof, filed under Plat No. P-600, in the records of the Anchorage Recording District, Third Judicial District, State of Alaska. EXCEPTING THEREFROM that portion thereof lying Southwesterly of the "take line" shown on the plat of Potter Hill Relocation according to Plat 84-105.

SUBJECT TO: the reservations and exceptions in U.S. Patent and/or in Acts authorizing the issuance thereof; real property taxes, if any due, easements, covenants and notes on Plat; easements, covenants, conditions and restrictions of record;

Dated this 10 day of May, 2001.

(X) _____
NEIL G. BERGT

STATE OF ALASKA)
) ss.
Third Judicial District)

The foregoing instrument was acknowledged before me this 10 day of May, 2001, by NEIL G. BERGT

WITNESS my hand and official seal.

(X) _____
Notary Public in and for Alaska
My Commission expires: 9-30-02

032029 15 2001 MY 11 AM 10: 14
ANCHORAGE
RECORDING DISTRICT REQUESTED BY
STEWART PAC RIM

MAY 18 2001 12:13 FR PACIFIC RIM TITLE 907 258 4636 TO 19072334228 P.08/17

1 16
55 73

2003-130318-0
Recording Dist: 301 - Anchorage
12/18/2003 8:29 AM Pages: 1 of 2
ALASKA

QUITCLAIM DEED

CC

The Grantors, Gary E. Carlson and Katherine E. Carlson, husband and wife, of 14200 Jarvi Drive, Anchorage, Alaska 99515, for and in consideration of the sum of Ten Dollars ($10) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby convey, release, and quitclaim all of their right, title, and interest to Gary E. Carlson and Katherine E. Carlson, Trustees of The Carlson Family Trust under trust agreement dated May 10, 1995, of 14200 Jarvi Drive, Anchorage, Alaska 99515, to be held subject to the terms and conditions of The Carlson Family Trust dated May 10, 1995, and signed by the undersigned as Trustors and Trustees, of the following-described real property:

Lot Thirteen (13) and Fourteen (14), Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof, filed under Plat No. P-600, records of the Anchorage Recording District, Third Judicial District, State of Alaska, EXCEPTING THEREFROM that portion thereof lying Southwesterly of the "take line" shown on the plat of Potter Hill Relocation according to Plat 64-105.

SUBJECT TO the reservations and exceptions in U.S. Patent and/or in Acts authorizing the issuance thereof; real property taxes, if any due, easements, covenants and notes on Plat; easements, covenants, conditions, and restrictions of record.

Dated this 12 day of Dec., 2003.

Gary E. Carlson

Katherine E. Carlson

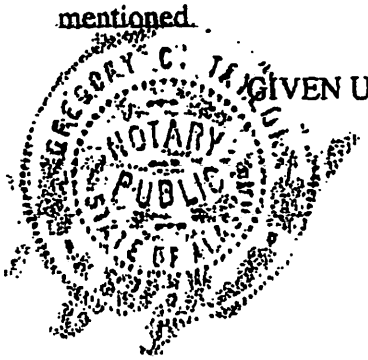
16
60 77

ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

This is to certify that on this 12th day of December, 2003, personally appeared before me **Gary E. Carlson** and **Katherine E. Carlson**, to me known to be the individuals described in and who executed the within Quitclaim Deed and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.



Notary Public in and for Alaska
My commission expires: 10-8-06

Record in the Anchorage Recording District
Return to:
Gregory C. Taylor, Esq.
Jermain, Dunnagan & Owens, P.C.
3000 A Street, Suite 300
Anchorage, AK 99503-4097

16
61 73

CC

ALASKA

2008-045040

Recording Dist: 301 - Anchorage
8/7/2008 11:32 AM Pages: 1 of 2

ATGA 23351-001-KMK **STATUTORY WARRANTY DEED**

THE GRANTOR, THE CARLSON FAMILY TRUST DATED MAY 10, 1995, whose mailing address is 13831 Venus Way, Anchorage, Alaska 99515, for and in consideration of $10.00 and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, conveys and warrants to **GRANTEES, PETER E. SLAIBY AND REJANI SLAIBY**, husband and wife, as tenants by the entirety with the right of survivorship, whose mailing address is: 14200 Jarvi Drive, Anchorage, Alaska 99515, the following described real property:

GARY E. CARLSON AND KATHERINE E. CARLSON, AKA KATHERINE E. CARLSON, SUCCESSOR TRUSTEES

Lots 13 and 14, Block 3, Sunset Hills West Subdivision, according to the official plat thereof, filed under Plat No. P-600, in the Anchorage Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM that portion thereof lying southwesterly of the "Take Line" shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105,

SUBJECT TO the reservations and exceptions as contained in the U.S. Patent recorded November 13, 1950, in Book 52, at Page 228, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the Right-Of-Way Easement, including the terms and provisions thereof, granted to Chugach Electric Association, Inc., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system by instrument recorded July 16, 1952, in Book 75, at Page 190, in the Anchorage Recording District, Third Judicial District, State of Alaska, which easement affects the Blanket Easement, and as supplemented by Supplemental and Confirmatory Easement allowing the City of Anchorage to attach telephone communication lines and appurtenances thereto to the utility poles of Chugach Electric Association, Inc., by instrument recorded July 2, 1959, in Book E-5, at Page 182, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the easements as shown on the plat of Sunset Hills West Subdivision,, being Plat No P-600;

FURTHER SUBJECT TO the covenants, conditions and restrictions, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law; as contained on the plat of Sunset Hills West Subdivision, being Plat No. P-600;

FURTHER SUBJECT TO the reservation of "... all and the whole of the mineral, oil, and petroleum rights ..." as reserved by Edwin A. Jarvi and Yula C. Jarvi, husband and wife, by recital in Warranty Deed recorded April 17, 1972, in Book 441, at Page 30, in the Anchorage Recording District, Third Judicial District, State of Alaska;

FURTHER SUBJECT TO the covenants, conditions and restrictions, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as contained in Warranty Deed recorded April 17, 1972, in Book 441, at Page 30, in the Anchorage Recording District, Third Judicial District, State of Alaska; and

FURTHER SUBJECT TO the rights of the public and/or governmental agencies in and to any portion of said land included within the right-of-way of the Alaska Railroad.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof, situated in the State of Alaska.

62 16 77

Dated this 6th day of August, 2008.

GRANTOR: THE CARLSON FAMILY TRUST DATED MAY 10, 1995

By: _____
Gary E. Carlson, Trustee of the Carlson Family Trust dated May 10, 1995

By: _____
Katherine Carlson, aka Katherine E. Carlson, Trustee of the Carlson Family Trust dated May 10, 1995

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 6th day of August, 2008, by GARY E. CARLSON AND KATHERINE CARLSON aka KATHERINE E. CARLSON, TRUSTEES OF THE CARLSON FAMILY TRUST DATED MAY 10, 1995.

JULIE NOLDE
My Commission Expires May 12, 2009
NOTARY PUBLIC
STATE OF ALASKA

_____
Notary Public in and for Alaska
My Commission Expires: 9/5/09

GRANTEES: PETER E. SLAIBY AND REJANI SLAIBY

_____
Peter E. Slaiby

_____
Rejani Slaiby

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 6th day of August, 2008, by PETER E. SLAIBY AND REJANI SLAIBY.

KATHLEEN M. [illegible]
NOTARY PUBLIC
STATE OF ALASKA

_____
Notary Public in and for Alaska
My Commission Expires: 9/5/09

After recordation return to:

Peter and Rejani Slaiby
14200 Jarvi Drive
Anchorage, Alaska 99515

63 16 77

2 of 2
2008-045040-0

ALASKA

2012-029197-0
Recording Dist: 301 - Anchorage
5/30/2012 11:10 AM Pages: 1 of 5

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Escrow Number: 00023351 - KMK

Filed for Record at Request of:
Alyeska Title Guaranty Agency
After Recording Mail to:
Peter E. Slaiby and Rejani Slaiby
14200 Jarvi Drive
Anchorage, AK 99515

ATGA

QUITCLAIM DEED

THE GRANTOR: **Edwin D. Tucker, individually, and as Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, deceased, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai**
whose address is: 2333 Branded Drive, Cottonwood, AZ 86326

for and in consideration of: Ten Dollars and Other Good and Valuable Consideration

hereby CONVEY(s) to: **Peter E. Slaiby and Rejani Slaiby, husband and wife**
whose address is 14200 Jarvi Drive, Anchorage, AK 99515

the following real property in the Third Judicial District, State of Alaska:

Lots 13 and 14, Block 3, Sunset Hills West Subdivision, according to the official plat thereof, filed under Plat No. P-600, in the Anchorage Recording District, Third Judicial District, State of Alaska; INCLUDING THAT PORTION, lying southwesterly of the "Take Line" shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105

This Deed is being recorded to correct the legal description of that original Warranty Deed recorded April 17, 1972 in Book 441 at Page 33.

Dated: May 24, 2012

Edwin D. Tucker
Edwin D. Tucker

Edwin D. Tucker
Edwin D. Tucker, Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai

16
64 77

State of Arizona } ss,
County of Yavapai

THIS IS TO CERTIFY that on May 24, 2012, before me the undersigned Notary Public, personally appeared **Edwin D. Tucker** known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and HE acknowledged to me that HE signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Maryann K. Eggert
Notary Public in and for Arizona
My commission expires: April 27, 2015

MARYANN K. EGGERT
Notary Public - Arizona
Yavapai County
My Commission Expires
April 27,2015

State of Arizona } ss,
County of Yavapai

THIS IS TO CERTIFY that on May 24, 2012, before me the undersigned Notary Public, personally appeared **Edwin D. Tucker, Personal Representative of the Estate of Joyce N. Tucker, also known as W. Joyce Tucker, deceased, under Probate Case No. V1300PR20118-0106, Superior Court of the State of Arizona, in and for the County of Yavapai** known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and HE acknowledged to me that HE signed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and official seal.

Maryann K. Eggert
Notary Public in and for Arizona
My commission expires: April 27, 2015

MARYANN K. EGGERT
Notary Public - Arizona
Yavapai County
My Commission Expires
April 27,2015

65 16 73

CERTIFICATION OF VITAL RECORD

"VERIFICATION BOX" (HOLD BETWEEN THUMB AND FOREFINGER. OR BREATHE ON IT. COLOR WILL CHANGE TO BLUE AND THEN RETURN.)

STATE OF ARIZONA

STATE OF ARIZONA
DEPARTMENT OF HEALTH SERVICES - OFFICE OF VITAL RECORDS
CERTIFICATE OF DEATH

State File NO. 102-2011-032611

1. DECEDENT'S LEGAL NAME (FIRST, MIDDLE, LAST)	2. AKA'S (IF ANY)	3. DATE OF DEATH
WJOYCE TUCKER	JOYCE TUCKER	AUGUST 24, 2011

4. SEX	5. SOCIAL SECURITY NUMBER	6. DATE OF BIRTH	7. AGE	UNDER 1 YEAR		UNDER 1 DAY	
				8. MONTHS	9. DAYS	10. HOURS	11. MINUTES
FEMALE		03-11-1931	80				

12. PLACE OF DEATH - HOSPITAL: ☐ INPATIENT ☐ E.R./OUTPATIENT ☐ DEAD ON ARRIVAL

13. PLACE OF DEATH - OTHER THAN HOSPITAL: ☐ NURSING HOME OR LONG TERM CARE FACILITY ☒ RESIDENCE ☐ HOSPICE FACILITY ☐ OTHER

14. FACILITY NAME (OR STREET ADDRESS IF NOT A FACILITY)	15. CITY, TOWN & ZIP CODE OR LOCATION OF DEATH	16. COUNTY OF DEATH
195 S WILLARD ST	COTTONWOOD 86326	YAVAPAI

17. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY)	18. MARITAL STATUS AT TIME OF DEATH	19. NAME OF SURVIVING SPOUSE (MAIDEN NAME IF WIFE)
PHOENIX, ARIZONA	DIVORCED	

20. DECEDENT'S USUAL RESIDENCE (STREET ADDRESS)	21. CITY AND COUNTY	22. STATE	23. ZIP CODE	24. EVER IN THE ARMED FORCES
195 S WILLARD ST,	COTTONWOOD, YAVAPAI	ARIZONA	86326	NO

25. WAS DECEDENT OF HISPANIC ORIGIN?
☒ NO, NOT SPANISH, HISPANIC OR LATINO
☐ YES, MEXICAN, MEXICAN AMERICAN, CHICANO
☐ YES, PUERTO RICAN
☐ YES, CUBAN
☐ YES, OTHER (SPECIFY)
☐ UNKNOWN

26. DECEDENT'S RACE(S):
☒ WHITE
☐ BLACK, AFRICAN AMERICAN
☐ NATIVE HAWAIIAN
☐ ASIAN INDIAN
☐ CHINESE
☐ FILIPINO
☐ JAPANESE
☐ GUAMANIAN OR CHAMORRO
☐ KOREAN
☐ VIETNAMESE
☐ SAMOAN
☐ AMERICAN INDIAN OR ALASKA NATIVE
☐ OTHER ASIAN (SPECIFY)
☐ OTHER PACIFIC ISLANDER (SPECIFY)
☐ OTHER (SPECIFY)
☐ UNKNOWN

27. IF AMERICAN INDIAN OR ALASKA NATIVE, SPECIFY UP TO 4 TRIBES, PRIMARY OR ENROLLED TRIBE.
ADDITIONAL TRIBE:
ADDITIONAL TRIBE:
ADDITIONAL TRIBE:

28. OCCUPATION: CARTOGRAPHER

29. FATHER'S NAME (FIRST, MIDDLE, LAST)	30. MOTHER'S NAME (FIRST, MIDDLE, & LAST NAME PRIOR TO FIRST MARRIAGE)
HENRY CLAY NIX	DOROTHY WINIFRED BRADSHAW

31. INFORMANT'S NAME	32. RELATIONSHIP	33. INFORMANT'S MAILING ADDRESS
EDWIN D TUCKER	POWER OF ATTORNEY	2333 BRANDED DR ; COTTONWOOD, ARIZONA 86326

34. NAME AND ADDRESS OF FUNERAL FACILITY	35. FUNERAL DIRECTOR	36. LICENSE NUMBER
BUELER COTTONWOOD FUNERAL HOME 699 NORTH TENTH STREET COTTONWOOD, AZ	BENJAMIN F BUELER FUNERAL DIRECTOR	F1226

37. METHOD(S) OF DISPOSITION	38. NAME AND LOCATION OF 1st DISPOSITION FACILITY	39. NAME AND LOCATION OF 2nd DISPOSITION FACILITY
CREMATION	VERDE VALLEY CREMATORY, CAMP VERDE, ARIZONA	NONE

MEDICAL CERTIFICATION SECTION CAUSE OF DEATH PART I

IMMEDIATE CAUSE OF DEATH	40. A	41. APPROXIMATE INTERVAL: UNKNOWN
DUE TO OR AS A CONSEQUENCE OF:	42. B	43. APPROXIMATE INTERVAL: UNKNOWN
DUE TO OR AS A CONSEQUENCE OF:	44. C	45. APPROXIMATE INTERVAL:
DUE TO OR AS A CONSEQUENCE OF:		47. APPROXIMATE INTERVAL:

CAUSE OF DEATH PART II

48. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSES GIVEN ABOVE:	49. INJURY?	50. INJURY AT WORK?	51. MANNER OF DEATH	52. TIME OF DEATH
	NO	NO	NATURAL DEATH	7:45 PM
	53. WAS AN AUTOPSY PERFORMED? NO		54. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?	

CAUSE AND MANNER OF DEATH CERTIFICATION

☒ Certifying Physician/Nurse Practitioner/Physician's Assistant - To the best of my knowledge, death occurred due to the cause(s) and manner stated
☐ Medical Examiner/Tribal Law Enforcement Authority - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.

55. NAME OF PERSON COMPLETING CAUSE OF DEATH	56. DATE CERTIFIED
JULIA A WILLIAMS, M.D.	08-24-2011
57. CERTIFIER'S ADDRESS	**58. NAME OF REGISTRAR**
1200 N BEAVER ST FLAGSTAFF, AZ 86001-3118	BECKY MAJOR
	59. DATE REGISTERED 09-07-2011

Date Issued: 09-07-2011

3 of 6 2012-029197-0

16 66 73

This is a true certification of the facts on file with the OFFICE OF VITAL RECORDS, ARIZONA DEPARTMENT OF HEALTH SERVICES, PHOENIX, ARIZONA issued under the authority of A.R.S. 36-341, and by direction of:

Patricia Adams
PATRICIA ADAMS
ASSISTANT STATE REGISTRAR

This copy not valid unless prepared on a form displaying the State Seal and impressed with the raised seal of the issuing agency.

Arizona Department of Health Services

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT

FILED
10 o'Clock A M.
NOV 08 2011
SANDRA K. MARKHAM, Clerk
By:

Diane B. Prescott, State Bar No.: 013647
Law Offices of Diane B. Prescott, Inc.
551 S. Main Street
Cottonwood, Arizona 86326
Telephone: (928) 634-2803
Facsimile: (928) 639-3034
e-mail: dianep@qwest.net

Attorney for Personal Representative, Edwin D. Tucker

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

In the Matter of the Estate of	CASE NO: V1300PB20118-0106
JOYCE N. TUCKER Decedent,	LETTERS OF APPOINTMENT OF PERSONAL REPRESENTATIVE AND ACCEPTANCE OF APPOINTMENT OF PERSONAL REPRESENTATIVE

LAW OFFICES OF DIANE B. PRESCOTT
551 S MAIN STREET
COTTONWOOD, ARIZONA 86326

LETTERS OF PERSONAL REPRESENTATIVE

EDWIN D. TUCKER is appointed as Personal Representative of this Estate without restriction.

DATE: Nov 8, 2011

Sandra K Markham, Clerk of Superior Courts

By: _____
Deputy Clerk

4 of 5
2012-029197-0

67 73

LAW OFFICES OF HANG & PRESCOTT
511 S MAIN STREET
COTTONWOOD, ARIZONA 86326

ACCEPTANCE OF APPOINTMENT

STATE OF ARIZONA)
) ss.
County of Yavapai)

I hereby accept the duties of Personal Representative of the Estate of the above-named Decedent and do solemnly swear that I will perform, according to law, the duties of such fiduciary.

DATED this 31 day of October, 2011

Edwin D. Tucker
EDWIN D. TUCKER

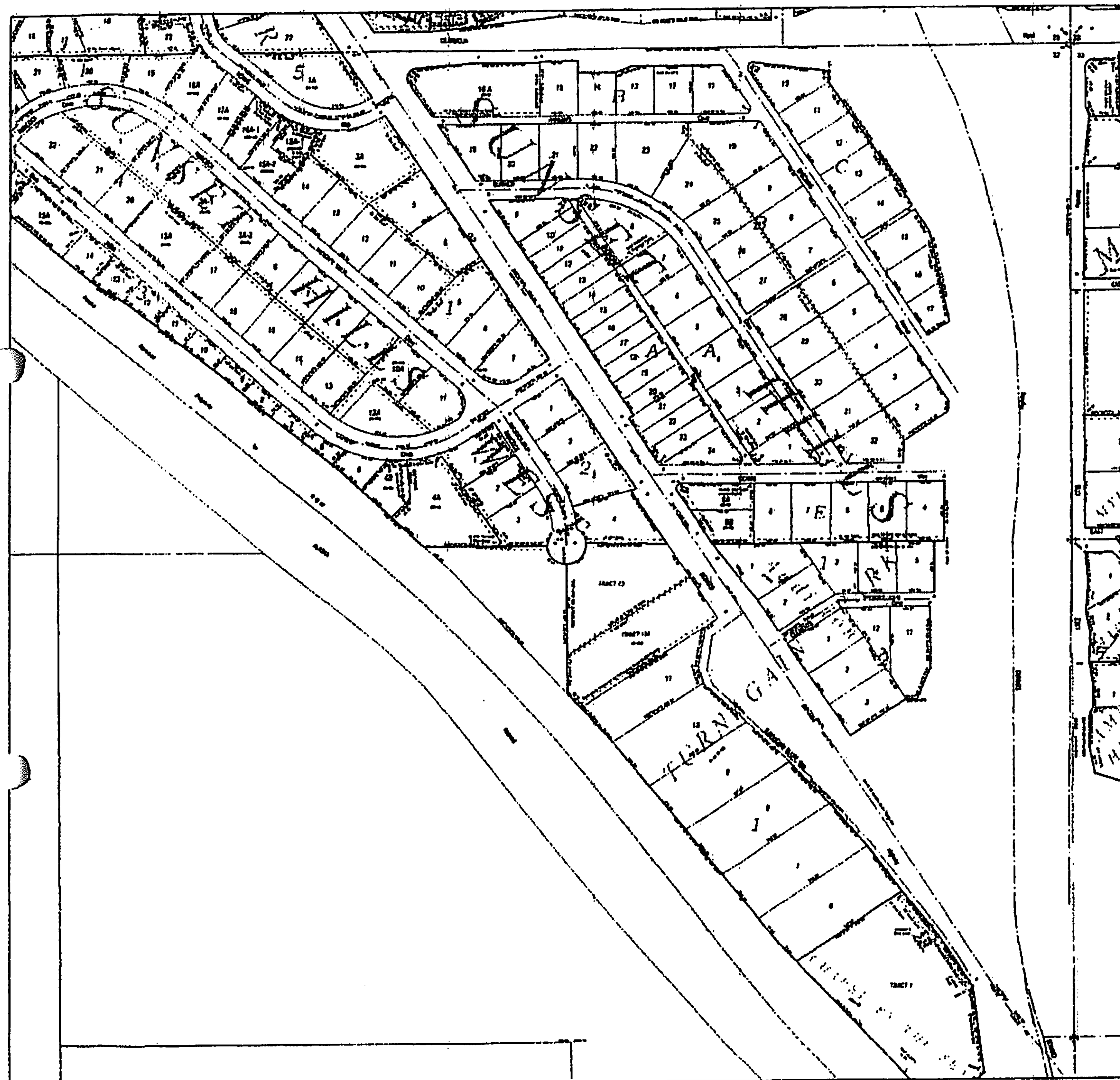
SUBSCRIBED AND SWORN to before me this 31 day of October, 2011, by **EDWIN D. TUCKER.**

Deborah Kampelis
Notary Public

My Commission Expires:
9-9-2014

6 of 6
2012-029197-0

16
68 73



SW3033 Grid Map

- Parcel Line
- Deeded Parcel Line
- Subdivision Boundary
- Subdivision Addition
- Easement Line
- Easement Centerline
- Road Centerline
- Private Road Centerlines
- Section Line
- Railroad
- Stream Centerline
- Monument
- BLM Monument
- Witness Corner
- Bearing Break
- Lot Number
- Block Number
- Subdivision Names
- BLM Lot Number
- Section Number
- ADDRs

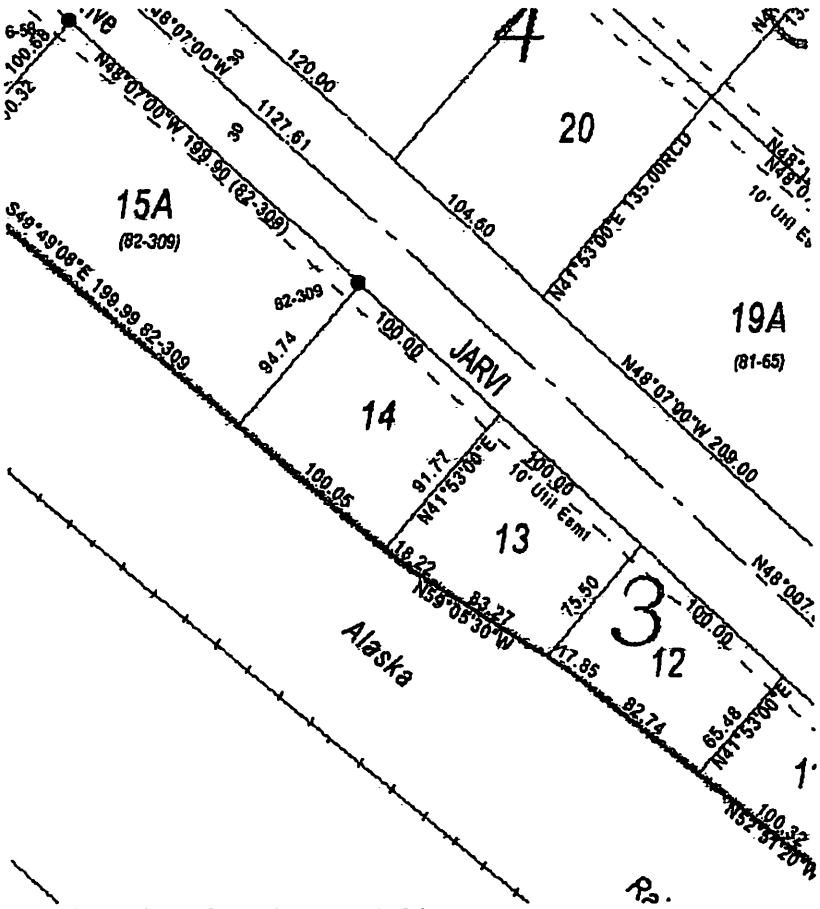
Municipality of Anchorage

MOA 1/4 Section Grid Map

NE 1/4 Sec32 T12N R3W

Feb 05, 2008 | GRID SW3033

69 1k 73



Municipality of Anchorage Grid Map 3033

COMPLIMENTS OF FIDELITY TITLE

This plat is given to assist in locating the premises only and the company assumes no liability for variation, if any, in dimensions and location.

16
770 73

SURVEYED TOWNSHIP 12 NORTH RANGE 3 WEST OF THE SEWARD MERIDIAN, ALASKA

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS

MTP
SUPPL SECS 29 & 32
NO 1

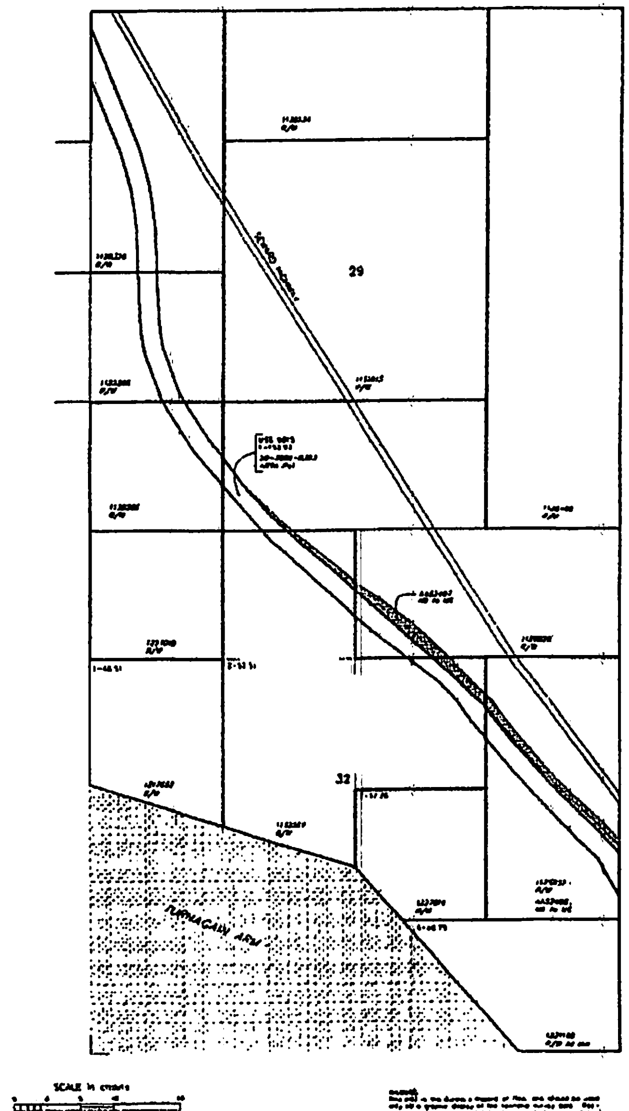
FOR ORDERS AFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION MINERALS, WATER AND/OR OTHER PUBLIC PURPOSES REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

Anchorage-Seward Hwy 150' C/L ... PLO 1613 ...

AA 05 ... 96-487 12/2/1980 Sec 906(c)

A ... SS ...

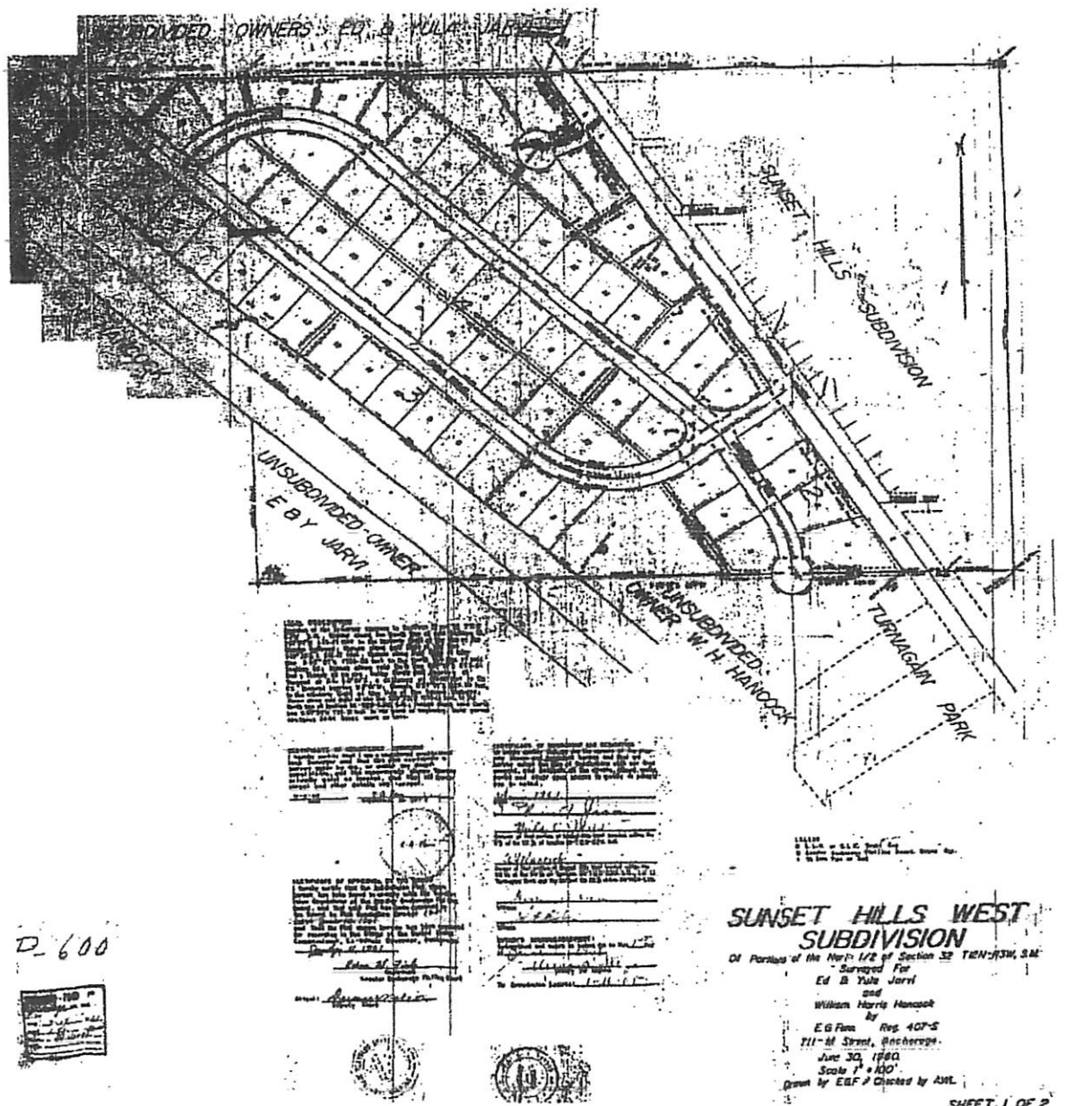
A ... IC ... 1/10/1983
Sec 29
Sec 32



CURRENT TO	
10-7-2008	

Anq NO 7
Sdb Mer
T 12 N
R 3 W
ACAD

16
23
71



D-600

P-600

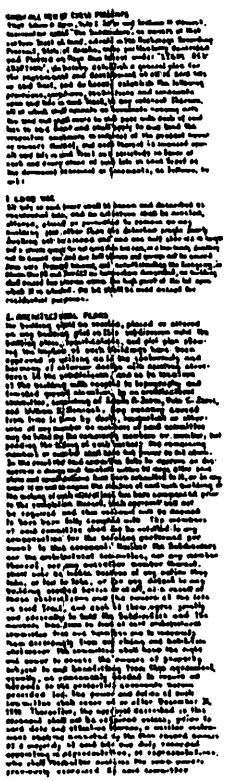
16

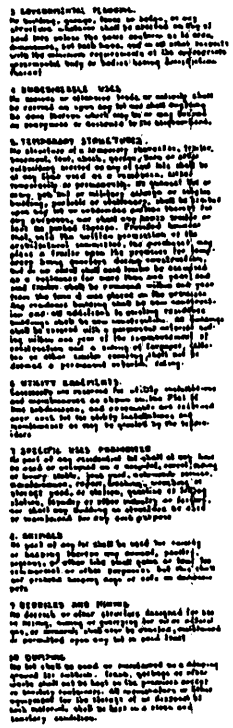
72 73

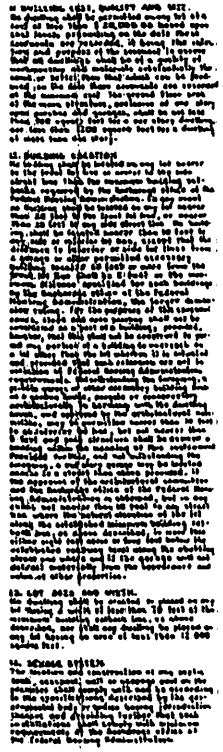
SUBDIVISION GENERAL PLAN

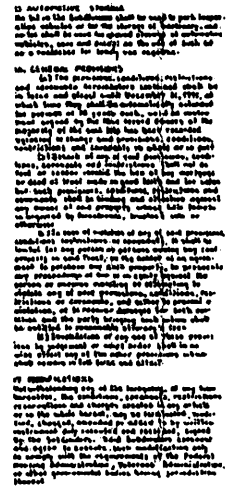
OF

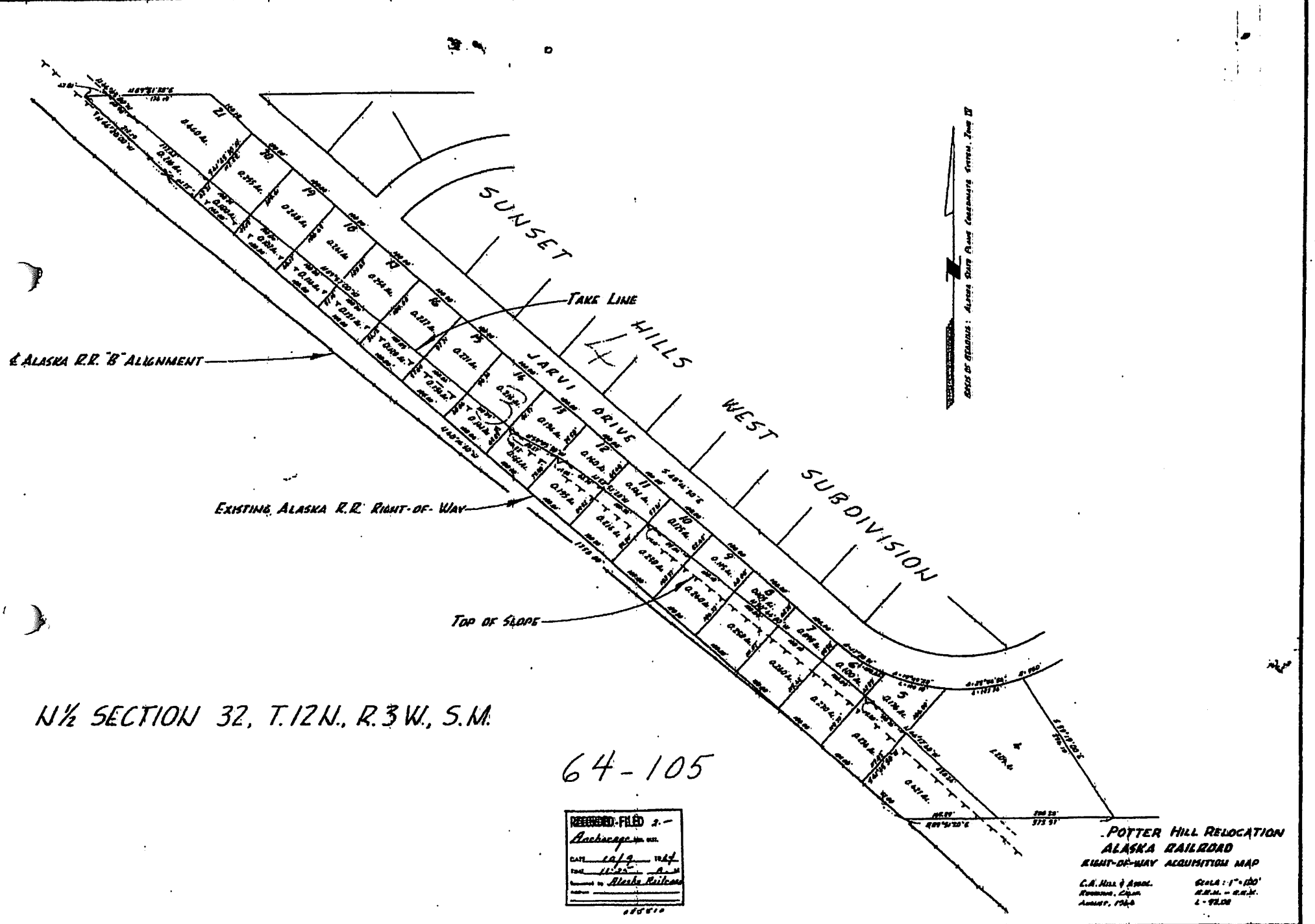
SUNSET HILLS WEST










SUNSET HILLS WEST SUBDIVISION
JARVI DRIVE
TAKE LINE
℄ ALASKA R.R. "B" ALIGNMENT
EXISTING ALASKA R.R. RIGHT-OF-WAY
TOP OF SLOPE
BASIS OF BEARINGS: ALASKA STATE PLANE COORDINATES, ZONE 3
N½ SECTION 32, T.12N., R.3W., S.M.
64-105
RECORDED-FILED
Anchorage
POTTER HILL RELOCATION
ALASKA RAILROAD
RIGHT-OF-WAY ACQUISITION MAP
C.A. Hill & Assoc.
Anchorage, Alaska
SCALE: 1" = 100'
L-93.08

64-105 F.C.R.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA 2014-27	)	AA-55129
	)	
PETER SLAIBY AND REJANI SLAIBY,	)	Land Conveyance
	)	
Appellants.	)	
	)	

INTERVENOR ALASKA RAILROAD CORPORATION'S ANSWER TO APPELLANTS' STATEMENT OF REASONS

Intervenor Alaska Railroad Corporation ("ARRC") hereby files its Answer to the Statement of Reasons filed by Appellants.[1/]

I. INTRODUCTION

The decision by BLM to grant ARRC a patent conveying at least an exclusive use easement in the portion of the ARRC railroad right-of-way ("ROW") adjacent to Appellants' residential property[2/] is proper as a matter of law. The Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201-1214 ("ARTA") specifically requires BLM to issue such a patent to ARRC. ARTA, which authorized the transfer of the federally-owned Alaska Railroad to the State of Alaska ("State"),[3/] requires BLM to convey to the State the United States' entire interest in all Alaska Railroad properties. More specifically, ARTA requires BLM to convey at least an exclusive use

---

[1/] Appellants' Statement of Reasons ("SOR") was served on ARRC on January 13, 2014. ARRC and appellee Bureau of Land Management ("BLM") received 30-day extensions of their time to respond to the SOR pursuant to 43 C.F.R. § 4.405(f).

[2/] The portion of the ARRC ROW at issue in this appeal will be referred to herein as "the Property." The Property is more specifically described in Section II, *infra*.

[3/] ARTA defines "State" as the "State of Alaska or the State-owned railroad, as the context requires." 45 U.S.C. § 1202(13). ARRC is the instrumentality created by the State of Alaska to own and operate the Alaska Railroad upon transfer from the United States. *See* AS 42.40 (Alaska Railroad Corporation Act).

BCM 4958
S

easement, as defined in ARTA, in the ROW.[4/] That requirement is critical. Congress recognized in passing ARTA that transfer of less than an exclusive interest in the ROW would undermine ARRC's ability to operate a railroad safely and economically. The exclusive use easement requirement functions as a safety net to ensure that even where ARRC owns less than fee simple interest in the ROW, it can still safely and economically operate a railroad.

Appellants argue that BLM may not convey an exclusive use easement in the Property to ARRC. They assert that BLM may only convey a non-exclusive easement. They base this argument on three incorrect premises: (i) that ARTA does not require BLM to convey an exclusive use easement in the Property; (ii) that the United States does not own at least an exclusive use easement in the Property; and (iii) that Congress cannot require the United States to convey a greater interest than it owns in the Property. They also argue that a patent is an improper instrument for conveying an easement. All of these assertions are wrong.

Under ARTA, that BLM must convey to ARRC at least an exclusive use easement in all portions of the ARRC ROW. Moreover, the warranty deed by which the United States purchased a perpetual railroad right-of-way and easement in the Property granted the United States exclusive use of the ROW, and that right is available for conveyance to ARRC. Not only is a patent an appropriate vehicle for conveying an exclusive interest in the ROW, ARTA expressly requires BLM to issue patents for the railroad lands to be conveyed. Finally, even if the perpetual railroad right-of-way and easement obtained by the United States is non-exclusive - which it is not - Congress had the authority to require BLM to obtain and transfer to ARRC an exclusive interest in the Property. That Congress intended to exercise that authority is evident from the fact that ARTA requires the U.S. Department of Justice to defend any challenges to ARRC's exclusive title to the ROW.

[4/] *See* Section II.A.2, *infra* (describing ARTA and its exclusive use easement requirement).

II. BACKGROUND

This appeal challenges a decision by BLM approving the issuance of a patent to ARRC for the Property, which is located adjacent to Appellants' home in Anchorage, Alaska. The Property is described in the proposed patent at issue in this appeal:

> All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of Sunset Hills West Subdivision, according to the recorded plat thereof, laying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.[5/]

On September 16, 2013, BLM issued Decision No. AA-55129-20 ("Decision"), which approved the issuance of a patent for the Property pursuant to ARTA and set forth a proposed patent conveying to ARRC all of the United States' interest in the Property, but not less than an "exclusive use easement" as that term is defined in ARTA ("Proposed Patent").[6/] In order to understand why BLM decided to issue a patent for an exclusive use easement to the Property, and why that decision is required by ARTA, a general understanding of the histories of both the Alaska Railroad and the Property is critical. Those histories are summarized below.

A. The Alaska Railroad

The Alaska Railroad is the only railroad ever constructed, owned and operated by the United States federal government. Accordingly, the history of its establishment, operation and eventual transfer to the State of Alaska is unique.

1. The Federally-Owned Alaska Railroad

During the early 1900s, several privately-owned railroads were built and operated in the Territory of Alaska. Each of these railroads ultimately failed or faced dire financial

---

[5/] *See* Appellants' Exhibit ("App. Ex.") 1, at 4. Appellants assert an interest only in the portions of Lots 13 and 14 contained in the lands to be patented. The owner of the non-ROW portion of Lot 4 has not appealed.

[6/] *See* App. Ex. 1. The Decision and the process leading to it are detailed in Section II.C, *infra.*

circumstances.[7/] Having seen the difficulties faced by private entities constructing and operating railroads in Alaska, and recognizing the importance of rail service to the development of the Territory, Congress took a different approach. It passed legislation authorizing the creation of a federally owned and operated railroad in Alaska.[8/]

The Act of 1914 authorized and directed the President to take a broad range of actions to construct, own and operate a railroad on a route of up to 1,000 miles in the Territory of Alaska. Among the actions authorized by the Act of 1914 were (i) "to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act"; (ii) "to exercise the power of eminent domain in acquiring property for such use"; and (iii) "to acquire rights of way, terminal grounds, and all other rights . . . ."[9/] The Act went on to provide that:

> Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this Act, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road . . . .[10/]

The federal government wasted no time in complying with Congress's directives in the Act of 1914. Rights-of-way were established between the seaport of Seward and the interior mining community of Fairbanks and preliminary construction began on the railroad in 1915.[11/] The Alaska Railroad's "golden spike" was driven by President Harding in Nenana in July 1923.[12/]

[7/] *See* ARRC Exhibit ("ARRC Ex.") A at 27-28.

[8/] Act of March 12, 1914, 43 U.S.C. 975 *et seq.*; 38 Stat. 305 ("Act of 1914"), repealed by ARTA, Pub.L. 97-468, Title VI, §615(a)(1). A copy of the Act of 1914 is attached as ARRC Ex. B.

[9/] *See* ARRC Ex. B at 2 (Act of 1914, Section 1).

[10/] *See id.* at 3 (Act of 1914, Section 1).

[11/] *See* ARRC Ex. A at 35-41

[12/] *See* ARRC Ex. A at 49.

For the next several decades, the federal government owned and the U.S. Department of Transportation operated the Alaska Railroad, moving freight and passengers between Seward, Anchorage and Fairbanks. By the early 1980s, however, the federal government began discussing the concept of transferring the Alaska Railroad to another entity.

2. The Alaska Railroad Transfer Act (ARTA)

In 1982, the legislation was introduced in Congress authorizing the transfer of the Alaska Railroad, including all of its real and personal property, to the State of Alaska. As the proposed legislation worked its way through Congress, the issue of the appropriate level of title to the Alaska Railroad ROW and other lands to be transferred to the State of Alaska was prominent among the points under discussion.

There was general agreement that most land of the federally-owned Alaska Railroad, including its ROW, was held in fee simple title by the United States and that most land therefore would be transferred to the State in fee.[13/] It was recognized, however, that some Alaska Railroad lands were subject to third party claims, including claims by Native groups and individuals under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* ("ANCSA") and claims of other third-parties such as those holding homestead patents.[14/] Congress

---

[13/] *See, e.g.*, ARRC Ex. C, Report No. 97-479, Senate Committee on Commerce, Science and Transportation, 97th Congress, 2d Session, June 22, 1982, at 5 (Under the proposed ARTA, the United States "would convey to the State a fee interest in the 200-foot strip comprising the railroad track right-of-way, amounting to roughly 12,000 acres. This fee estate is recognized by the Committee to be the current interest of the Alaska Railroad derived from common practice and authorized under section 1 of the March 12, 1914 Alaska Railroad Act.").

[14/] *See* ARRC Ex. C, at 4. Federal lands in Alaska could have been subject to a wide variety of both Native and non-Native claims prior to transfer of the Alaska Railroad to the State. Such claims could have arisen under several Native allotment acts, including the Alaska Native Allotment Act, 34 Stat. 197, May 17, 1906; the Alaska Native Townsite Act, 44 Stat. 629, May 25, 1926; the Townsite Act, 26 Stat. 1099, March 3, 1891; Native Regional Corporation selections; the Homestead Act of Alaska, 30 Stat. 409, May 14, 1898; mining claims under the General Mining Act, 17 Stat. 91, May 10, 1872; and acts providing for claims of trade and manufacture sites. Appellants' focus on just on 1906 Native Allotment Act claims and Native Village Corporation claims in arguing for a narrow construction of the coverage of Section 1205

recognized not only that the proposed transfer legislation must set forth a process for determining any such third-party claims, but also that it was critical that the United States provide the State with exclusive control of the ROW.[15/] Otherwise, the State's ability to maintain and operate a safe and economical railroad would be undermined.[16/] Consequently, a minimum interest to be conveyed to the State, called an "exclusive use easement" was developed "to insure that the State-owned railroad will receive exclusive and complete control over land traversed by the right-of-way."[17/]

ARTA was enacted on January 14, 1983. It provides detailed procedures governing the transfer of the Alaska Railroad from federal to State ownership. Several provisions relate to transfer of real property, the type of conveyances to be used in that transfer and the nature of the title to be conveyed.[18/] ARTA requires that, upon the date of transfer of the Alaska Railroad to the State, the United States must convey to the State all federal interest in "rail properties of

---

effectively - and improperly - ignores the many and various third-party claims that might have been necessary to resolve under the process laid out in ARTA.

[15/] *See, e.g.*, ARRC Ex. D, Congressional Record-Senate, Dec. 21, 1982, at 2 ("On the date of the transfer [under ARTA], the State would be granted fee title to lands not subject to such [unresolved] claims [of valid existing rights] and, with respect to lands so subject, an operating license to insure that operations of the railroad are not affected in any way by the new process."); *id.* ("The concept of an exclusive use easement . . . represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process. . . . It is also the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State."

[16/] *See, e.g.*, ARRC Ex. C, at 5 ("[T]ransfer of the railroad right-of-way in fee simple is essential to the continued operation of the railroad, and . . . the actual physical characteristics of the railroad (e.g., the right-of-way and reserves) [should] be maintained to the extent required to assure the transfer of an economically viable railroad operation."); *id.* at 9 (in adjudicating third party claims, the Secretary of the Interior "is directed to consider the findings and policies of this legislation, including the importance of transferring the right-of-way in fee to the continued operation of the railroad . . . . [T]his determination is critical to the future of the railroad and must be made expeditiously."); ARTA, 45 U.S.C. § 1205(b)(4)(A)(ii) ("Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.").

[17/] ARRC Ex. D, at 2.

[18/] *See* 45 U.S.C. §§ 1203, 1204, 1205.

the Alaska Railroad."[19] Rail properties of the Alaska Railroad are defined broadly as:

> [A]ll right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of January 14, 1983 . . . .[20]

Under ARTA, therefore, the State received the entire federal interest in the ROW. As discussed above, the United States owned fee simple title in most of the ROW when ARTA was enacted.

ARTA mandates several types of conveyance of rail properties to the State depending on the property type and status.[21] Two conveyance methods apply to land located outside Denali National Park. With respect to surveyed land that is not subject to unresolved claims of valid existing rights,[22] the United States must deliver a patent to the State.[23] With respect to unsurveyed land not subject to unresolved claims, the United States must deliver to the State an interim conveyance.[24] An interim conveyance "shall . . . convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent . . . ."[25]

With respect to land that is subject to unresolved claims of valid existing rights, the United States must deliver to the State an exclusive license pending the determination of such claims.[26] The exclusive license shall be subject only to leases, permits, and other instruments

---

[19] *See* 45 U.S.C. §1203(a), (b). Section 1203(c) provides for the conveyances to contain certain reservations in favor of the United States which are not relevant here.

[20] 45 U.S.C. §1202(10).

[21] *See* 45 U.S.C. §1203 (b)(1)(A)-(D).

[22] A "claim of valid existing rights" is "any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983." 45 U.S.C. §1202(3).

[23] *See* 45 U.S.C. §§1203(b)(1)(B); 1203(2).

[24] *See* 45 U.S.C. §1203(b)(1)(B).

[25] *See* 45 U.S.C. §1203(b)(3).

[26] *See* 45 U.S.C. §1203(b)(1)(C).

issued before the date of transfer and certain easements in favor of the United States.[27/] Once land subject to an exclusive license becomes available for conveyance due to resolution of claims, an interim conveyance must be issued for that land.[28/]

Once Alaska Railroad land was transferred to the State using one of the conveyances described above, ARTA required the United States to survey any remaining unsurveyed land and then to issue a patent for that land.[29/] Surveys were completed for most of the ROW during the 1980s and 1990s, and patents to those lands began to be issued. For example, the patent for the portion of the ROW adjacent to the Property was patented by BLM to ARRC in 2006.[30/] Only a few portions of the ROW remain to be conveyed by patent, including the Property.

In addition to the above-described conveyance provisions, ARTA contains procedures for the resolution of third party claims to Alaska Railroad lands that existed when ARTA was enacted. Recognizing that the United States did not own some portions of the ROW in unencumbered fee simple, ARTA includes detailed provisions to resolve third-party claims while still ensuring that ARRC can operate a railroad on the entire ROW without interference.

ARTA, at 45 U.S.C. §1205(b), contains procedures requiring the Secretary of the Interior ("DOI") to resolve any third-party claims to Alaska Railroad lands. Subsection 1205(b)(1) sets up an initial ten-month review and settlement process for claims by Native Village Corporations. Subsection 1205(b)(2) requires DOI to resolve any remaining claims of valid existing rights, including both Native and non-Native claims, by January 14, 1986, except for remaining Village Corporation claims, which were to be resolved by January 14, 1985. Subsection 1205(b)(2) also requires DOI to survey all unsurveyed lands by January 14, 1988. Subsection 1205(b)(3) requires that land subject to Village Corporation claims be managed in accordance with certain

---

27/ *See* 45 U.S.C. §1203(b)(4).

28/ *See* 45 U.S.C. §1203(b)(2).

29/ *See* 45 U.S.C. §1203(b)(3).

30/ *See* ARRC Ex. E, U.S. Patent No. 50-2006-0363, dated August 9, 2006.

agreements pending the resolution of such claims. Subsection 1205(b)(4) sets up procedures to ensure finality of Village Corporation claims and "to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of the right-of-way." To that end, the United States is required to convey to the State at least an exclusive use easement in all portions of the ROW that left federal ownership before January 14, 1983, or as to which a claim of valid existing rights existed as of that date.[31/]

ARTA also specifically explains why Congress guaranteed at least an exclusive use easement with respect to all portions of the ROW:

> The Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.[32/]

Further underscoring Congress's recognition that it was critical to provide the State with exclusive rights in the ROW, ARTA specifically requires the federal government to defend the State's title in the ROW against claims that it had less than an exclusive use easement.[33/]

The exclusive use easement that ARTA requires to be conveyed to the State provides broad exclusive rights to the ROW:

> "[E]xclusive-use easement" means an easement which affords to the easement holder the following:
>
> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
>
> (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
>
> (C) subjacent and lateral support of the lands subject to the easement; and

---

[31/] As noted above, "claims of valid existing rights" refers to both Native and non-Native claims.

[32/] *See* 45 U.S.C. §1205(b)(4)(A)(ii); *see also* ARRC Ex. D, at 2.

[33/] *See* 45 U.S.C. §1205(b)(4)(B).

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.[34/]

ARTA therefore required the United States to convey to the State, at a minimum, the exclusive right to use and occupy the ROW for transportation, communication and transmission purposes, including the right to exclude all other persons and entities from all or any of the ROW.

3. Conveyance of Patents to ARRC ROW by BLM

As required by ARTA, BLM initially conveyed Alaska Railroad lands, including ROW, to ARRC by means of an interim conveyance and an exclusive license.[35/] After BLM surveyed those lands, it issued patents for them. The interim conveyance, exclusive license and patents all transferred to ARRC the entire interest of the United States in the land and specified that said interest was "not less than an exclusive use easement, as defined in [45 U.S.C. § 1202(6)]."[36/] The Proposed Patent is the latest example of such a conveyance.

B. The Property at Issue in this Appeal

The Property is a portion of the ARRC ROW in the Potter Hill area of Anchorage, Alaska. It lies adjacent to the portion of the ROW conveyed to ARRC in 2006 by means of U.S. Patent No. 50-2006-0363.[37/] The Property, like several other parcels in the Potter Hill area, was added to the ROW shortly after the devastating earthquake of 1964.

On Good Friday of 1964, an earthquake of magnitude 9.2 on the Richter scale caused extensive damage to Southcentral Alaska. It severely damaged the Alaska Railroad ROW in the Potter Hill area, requiring the tracks in that area to be realigned.[38/] Consequently, in 1965, the United States purchased portions of a number of lots on Potter Hill in order to provide a

---

[34/] 45 U.S.C. § 1202(6) (emphasis supplied).

[35/] *See* ARRC Ex. F (example interim conveyance); ARRC Ex. G (example exclusive license).

[36/] *See* ARRC Ex. E, at 2.

[37/] *See id.*

[38/] *See* App. Ex.12, at 2.

stable ROW for rebuilding. Portions of two of those lots constitute the Property. The Property had previously been patented by the United States to Edwin Jarvi in 1950 by means of a homestead patent to a larger tract that included the Property.[39/] In 1965, Edwin and Yula Jarvi sold and conveyed an interest in the Property to the United States via a warranty deed dated July 2, 1965 (the "Jarvi Deed").[40/] With respect to the Property, the Jarvi Deed conveyed:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described [as Parcel 4 of the Jarvi Deed].[41/]

The Jarvi Deed explains that "the above-described premises are being acquired for the Alaska Railroad, Department of the Interior." The United States paid a total of $24,115[42/] to the Jarvis for the purchased interest in the Property and other parcels conveyed by the Jarvi Deed.[43/]

Property records indicate that between 1965 and today, the portions of Lots 13 and 14 not included in the ARRC ROW were transferred to new owners on several occasions. The last transfer was to Appellants in 2008 via a warranty deed that expressly excluded the Property from the property they purchased:

> EXCEPTING THEREFROM that portion thereof lying southwesterly of the "Take Line" shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105."[44/]

Indeed, the deeds issued to convey the portion of Lots 13 and 14 lying outside the ROW from

---

[39/] *See* App. Ex.16, at 17-19.

[40/] *See* App. Ex.12, at 2.

[41/] The Jarvi Deed included four parcels comprising portions of Lot 21 (Parcel 1); Lots 6, 11 and 12 (Parcel 2); Lot 10 (Parcel 3) and Lots 3, 13 and 14 (Parcel 4) of Block 3 of Sunset Hills West Subdivision. The portions of Lots 13 and 14 contained in Parcel 4 constitute the Property at issue here. *See* App. Ex. 16, at 27-28.

[42/] This amount is approximately equivalent to $180,000 in 2014 dollars. *See* ARRC Ex. H.

[43/] App. Ex. 16, at page 27.

[44/] *See* App. Ex. 16, at 62. The express exclusion from Appellants' warranty deed of the portion of Lots 13 and 14 within the ROW raises substantial doubt about whether Appellants hold any interest at all in the Property, much less the servient fee estate they claim. That doubt, in turn, suggests that Appellants may not qualify as an "adversely affected" party eligible to appeal the Decision under 43 CFR § 4.410(a).

1972 and 2008 consistently excluded the portions of those lots within the ROW from the premises being conveyed.[45/] The forty-year absence of any ownership interest in the ROW by the various residential owners, including Appellants, throws substantial doubt on any claim of ownership of the Property by Appellants.[46/]

C. The Decision, the Proposed Patent and This Appeal

In 2012, BLM identified the Property and other lots on Potter Hill obtained for the ROW after the 1964 earthquake to be considered for conveyance to ARRC by patent. As BLM prepared to make a patent determination regarding those lots, it obtained a memorandum offering a legal opinion regarding the United States' legal interest in the lots from a Senior Attorney in the U.S. Department of the Interior, Office of the Solicitor, Alaska Region ("Senior Attorney"). In a memorandum dated December 20, 2012, the Senior Attorney noted that "ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive use easement."[47/] The Senior Attorney then explained that the lots in question should be conveyed to ARRC using BLM's normal process of issuing a decision to convey with copies served on all appropriate parties. Following the decision, requisite notice and the resolution of any appeal, BLM could convey the lots by patent.

With respect to the Property in particular, the Senior Attorney noted that the Jarvi Deed granted the United States a perpetual easement for railroad purposes and that "[t]he wording of that easement . . . contains terms and provisions very similar to the requirements of an

---

[45/] *See* App. Ex.16 at pages 56-64.

[46/] In 2012, Appellants obtained a quit claim deed purporting to "correct the legal description" of a 1972 warranty deed that expressly excluded the ROW portion of Lots 13 and 14. *See* App. Ex. 16 at 64. The effect of that quitclaim deed, an issue beyond the scope of this appeal, is questionable given the forty-year absence of the Property from the adjacent owners' chain of title.

[47/] App. Ex. 12, at 1.

exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C. § 1202(6) . . . ."[48]

Although acknowledging that the Jarvi Deed did not specify that the easement granted was exclusive of all other uses, the Senior Attorney concluded that the granted easement was nevertheless exclusive:

> [T]here is no doubt the property is physically and legally subject to an easement for an existing railroad easement. Railroad easements are by their nature both broad and exclusive. Exclusive control is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be construed to match the specific terms of the exclusive-use easement definition in ARTA.[49]

The Senior Attorney observed that ARTA required BLM to convey at least an exclusive use easement "[e]ven if the Jarvi deed were construed to grant less interest than the exclusive-use easement of ARTA."[50] Accordingly, the Senior Attorney found that BLM should issue a decision approving conveyance of an exclusive use easement in the Property and the other lots.[51]

On September 13, 2013, BLM issued the Decision, which attached the Proposed Patent.[52] The Decision explained that the conveyance of the Property was being made pursuant to the transfer provisions of 45 U.S.C. § 1203(b)(2) and 45 U.S.C. § 1203(b)(3), and that pursuant to 45 U.S.C. § 1205(b)(4)(B), the interest being granted was "not less than an exclusive use easement as defined in [45 U.S.C. § 1202(6)]."[53] The Proposed Patent grants and conveys to ARRC "the full and complete right, title, and interest of the United States in and

---

[48] App. Ex. 12, at 4.

[49] App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)).

[50] App. Ex. 12, at 4 (citing U.S. 45 U.S.C. § 1205(b)(4)(B)).

[51] App. Ex. 12, at 4.

[52] App. Ex. 1 (BLM Decision No. AA-55129-20 and attached Proposed Patent).

[53] App. Ex. 1 at 1-2.

to the said real property . . .," and provides that the interest conveyed in the Property "is not less than an exclusive use easement."[54/]

On October 15, 2013, Appellants filed their Notice of Appeal, challenging BLM's decision to approve the patent to ARRC for the Property. ARRC intervened in this appeal. On January 10, 2014, Appellants filed their Statement of Reasons.

III. STANDARD OF REVIEW

Decisions of BLM regarding the use and disposition of the public lands and their resources are reviewed de novo by the Board to determine whether the record in a case supports the action taken.[55/]

IV. ARGUMENT

The Decision is correct as a matter of law. ARTA mandates that BLM convey to ARRC the entire federal interest in the Property and that the interest conveyed be at least an exclusive use easement as defined in 45 U.S.C. § 1202(6). BLM complied precisely with that mandate in issuing the Decision and the Proposed Patent, which grants to ARRC an exclusive use easement in the Property. BLM could not have acted otherwise and still complied with ARTA. BLM also employed the correct procedures applicable to the Decision and Proposed Patent. None of Appellants' arguments, many of which are based on misreadings of ARTA, alter the fact that the Decision and Proposed Patent are proper as a matter of law and should be affirmed.

A. BLM's Issuance of the Proposed Patent is Mandatory Under ARTA

ARTA requires - the statute is mandatory, not permissive - BLM to convey to the State

---

[54/] App. Ex. 1 at 5. The conveyance is made subject to two reservations not relevant here. *Id.*

[55/] *See Wyoming Outdoor Council*, 160 IBLA 387, 397-98 (2004) (citing *National Wildlife Federation*, 145 IBLA 348, 362 (1998)); *see also Hickory & Tinnell*, 160 IBLA 166, 176 n.14 (2003) (applying de novo review in case affirming rejection of application to correct a patent).

all of the United States' right, title and interest in "rail properties of the Alaska Railroad."[56] "Rail properties of the Alaska Railroad" include "lands" in which the United States held an interest as of January 14, 1983.[57] The United States purchased a perpetual railroad right of way and easement in the Property on July 2, 1965, and held that interest as of January 14, 1983. BLM was required to convey that entire interest in the Property to ARRC, and to issue a patent to ARRC for the Property.

BLM also was required to ensure that the interest it conveyed in the Property was at least an exclusive use easement. Because most of the ROW was owned solely by the United States prior to transfer of Alaska Railroad lands to the State, the requirement that the State receive the United States' full interest in the land means that ARRC holds fee simple interest in most of the ROW. But even where the United States did not own fee simple interest in a portion of ROW at the time of transfer, ARTA nevertheless requires DOI to convey to ARRC at least an exclusive use easement, as that term is explicitly defined in ARTA:

> Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title ***shall*** grant not less than an exclusive-use easement in such properties.[58]

Underscoring the mandatory nature of DOI's obligation to convey to ARRC at least an exclusive use easement is ARTA's requirement that the federal government defend the State's title against claims that it had less than an exclusive use easement in its ROW.[59]

The plain language of ARTA, therefore, compels BLM not only to convey to ARRC the United States' entire interest in the Property, but also to ensure that the interest conveyed is at

---

[56] *See* 45 U.S.C. §1203(a),(b). Section 1203(c) provides for the conveyances to contain certain reservations in favor of the United States which are not relevant here.

[57] 45 U.S.C. §1202(10).

[58] 45 U.S.C. §1205(b)(4)(B) (emphasis added).

[59] *See* 45 U.S.C. §1205(b)(4)(B).

least an ARTA exclusive use easement. That is precisely what BLM has done by means of the Decision and the Proposed Patent. For that reason alone, BLM's Decision is correct as a matter of law and should be affirmed.

B. BLM Followed the Appropriate Procedures in Issuing the Decision

BLM not only complied with ARTA's substantive mandate in issuing the Decision and Proposed Patent, it also followed appropriate procedures in doing so. As a preliminary matter, BLM complied with the procedures set forth in ARTA, which expressly provides a detailed process to be employed in transferring Alaska Railroad property from federal to State ownership. ARTA commands DOI to issue an interim conveyance of rail properties to ARRC except where properties have already been surveyed, in which case DOI is to issue a patent.[60/] Because the Property has been surveyed, BLM issued the Proposed Patent. This precisely tracks with the process required in ARTA.

BLM also followed its own procedures for conveying property under ARTA. As described by the Senior Attorney, the appropriate process to be used to convey the Property was BLM's "normal process." The memorandum specified that process: BLM was to (i) issue a decision approving conveyance of the Property to ARRC; (ii) serve copies of the decision on interested parties, including specifically successors in interest to the Jarvi Deed; and (iii) wait to make the actual conveyance until the appeal period had run or any appeal had been resolved.[61/] That is exactly how BLM proceeded in issuing the Decision and Proposed Patent. In short, all applicable procedures have been properly followed.

Appellants attempt to throw doubt on BLM's process by arguing that issuance of a patent is an improper procedure for conveying the federal interest in the Property. Invoking BLM regulations, they assert that BLM must convey a railroad easement via an assignment using

---

[60/] 45 U.S.C. §1203(b)(2); *see also supra* Section II.A.2.

[61/] *See* App. Ex. 12, at 4.

BLM Form SF-299.[62/] This argument fails for several reasons. First, ARTA expressly requires conveyances of Alaska Railroad land to be made by patent. BLM's regulations do not purport to - nor could they - control over ARTA's specific conveyance instructions.[63/] Second, the cited regulation applies to rights of way under the Federal Land Management Policy Act ("FLMPA"), 43 U.S.C. §§ 1701 *et seq*. The specific provisions of ARTA, not the FLMPA or its implementing regulations, apply to transfers under ARTA. Congress could have provided that ARTA transfers would apply FMPLA procedures; ARTA was passed after the FMPLA. But it did not do so, instead including in ARTA very specific procedural requirements for property transfers. Finally, the cited regulation neither requires nor prefers assignment of easements to patents; it merely states that an easement may be transferred via assignment.

Most fundamentally, a patent is the appropriate method for conveying lands under ARTA because that is the mechanism Congress chose. That approach is also appropriate because of the exclusive nature of the minimum interest Congress directed be conveyed to the State.

C. Appellants' Arguments Misread ARTA and/or are Irrelevant to the Review of the BLM's Decision

Appellants make several arguments challenging the propriety of BLM conveying an exclusive use easement to ARRC for the Property. They assert that BLM (i) impermissibly seeks to convey an interest the United States does not hold; (ii) has mischaracterized the scope of the easement it proposes to convey; and (iii) did not follow the correct procedures in deciding to issue the Proposed Patent. Each of these assertions is incorrect as a matter of law and fact. Appellants also assert that ARRC does not qualify to take ownership of the Property under Alaska law. Besides being an incorrect legal assertion, this argument is irrelevant to the issue

---

[62/] *See* SOR at 14-15 (citing 43 CFR § 2807.21).

[63/] *See Krier*, 92 IBLA 101, 103-104 (1986) (Burski, AJ, concurring) (BLM substantive regulation contrary to ANCSA would have "no force and effect" and would be a "nullity not binding on anyone.") (citing *Manhattan General Equip. Co. v. Commissioner*, 297 U.S. 129, 134 (1936)).

on appeal here, namely whether BLM's Decision passes legal muster.

1. The United States has the Exclusive Interest in the Property that BLM Proposes to Convey to ARRC

a. The United States Owns an Exclusive Railroad ROW and Easement in the Property

A recurring theme in Appellants' Statement of Reasons is that BLM is attempting to convey an exclusive interest in the Property to ARRC when the United States only holds a non-exclusive interest. Appellants further assert that such a conveyance is improper. They are wrong on both counts.

First, as correctly determined by the Senior Attorney, the United States owns an exclusive interest in the Property. The perpetual railroad right-of-way and easement the United States acquired in the Property from the Jarvis in 1965 meets ARTA's definition of an exclusive use easement. The United States purchased a "perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances . . ." in the Property. The United States still owned that interest in the Property in 1985, when federal Alaska Railroad properties were transferred to ARRC, and it has never conveyed any portion of that interest to any other party since that transfer. In short, the Property is subject to a perpetual railroad right-of-way and easement held by the United States.[64/]

The perpetual railroad right-of-way and easement held by the United States in the Property is an exclusive interest. As the Senior Attorney noted, "[t]he wording of that easement . . . contains terms and provisions very similar to the requirements of an exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C. § 1202(6) . . . ."[65/] Indeed, railroad

---

[64/] Even Appellants do not argue that the United States does not hold a perpetual railroad right-of-way and easement in the Property. Instead, they incorrectly assert that the admitted railroad right-of-way and easement is non-exclusive in nature.

[65/] App. Ex. 12, at 4.

easements are by their nature broad and exclusive. Settled law and public policy demonstrate that railroad easements provide exclusive possession and use with many hallmarks of fee title:

> A railroad under an easement for railroad purposes acquires the right of exclusive possession and most of the qualities of a fee title subject to the limitation that an easement must be used for railroad purposes.
>
> *****
>
> It would seem to be true generally that a railroad right-of-way partakes more of the nature of an estate in fee than an easement. A railroad right-of-way includes the actual possession or the right to the actual possession of the entire surface for every proper use and purpose in construction and operation of the road.[66/]

As stated by another commentator:

> Generally, after a railroad company's right of way has been located and constructed, it has the right to the uninterrupted and exclusive possession, use, and control of the surface of the land constituting its right of way and necessary for conducting its business. . . . As long as the railroad company occupies any portion of its right of way, it has the exclusive use and right of control coextensive with its boundaries.[67/]

The U.S. Supreme Court and other courts have agreed with this interpretation. In *Western Union Telegraph Company v. Pennsylvania Railroad Company*, the Supreme Court stated:

> A railroad right-of-way is a very substantial thing. It is more than a mere right of passage. [A right-of-way] is more than an easement . . . . [I]f a railroad's right-of-way was an easement it was 'one having the attributes of the fee, perpetuity and exclusive use and possession' . . . .").
>
> *****
>
> A railroad's right of way has, therefore, the substantiality of the fee, and it is private property, even to the public, in all else but an interest and benefit in its uses. It cannot be invaded without guilt of trespass. It cannot be appropriated in whole or part except upon the payment of compensation. In other words, it is entitled to the protection of the Constitution, and in the precise manner in which protection is given.[68/]

[66/] G. Thompson, Commentaries on the Modern Law of Real Property (1965), §381, at 503, 512 (emphasis added).

[67/] 74 C.J.S. Railroads § 225 (2002) (emphasis added; footnotes omitted). *See also* 65 Am.Jur.2d, Railroads, §104, at 403 (Railroad right-of-way easement is essentially different from any other in that it requires exclusive occupancy).

[68/] 195 U.S. 540, 570 (1904) (emphasis added); *see also State v. Oregon Shortline Railroad Co.*, 617 F.Supp. 207, 210 (D. Idaho 1985) (Federally-granted railroad rights-of-way entitle railroads to the exclusive use and occupancy of those rights-of-way, which is necessary for

The basis for the exclusivity of a railroad easement, even where a separate underlying fee owner is present, lies in the nature and risk of railroad operations:[69]

> The inherent risk facing trespassers around the operation of railroad tracks precludes any safe uses of the land available to the landowner holding the underlying fee. The danger to a trespasser from a fast-moving train, lacking the ability to stop suddenly, is the basis for the exclusivity of use. An easement for a railroad right-of-way differs in important respects from other easements, [in] that the right of possession of the right-of-way is exclusive in the railroad.[70]

In ARTA, Congress recognized these concerns and specifically explained why it guaranteed the transfer to the State of at least an exclusive use easement with respect to all portions of the Alaska Railroad ROW:

> The Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.[71]

Railroad easements provide a railroad with exclusive use and possession of its right-of-way as a matter of law. Such exclusive rights are critical to ensure the safe and economic railroad and utility corridor operations in the ROW.[72] The legal and public policy principles described above apply specifically to the interest in the Property BLM proposes to convey to ARRC. As the Senior Attorney concluded:

> Exclusive control [of the Property] is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be

---

railroads to function); *cf. Vieux v. East Bay Regional Park Dist.*, 906 F.2d 1330, 1333 (1990) (referring to post-1871 federal railroad rights-of-way as "exclusive use easements").

[69] The railroad operating environment is inherently a hazardous one. Trespassing along railroad rights-of-way is the leading cause of rail-related fatalities in America, resulting in approximately 500 deaths each year. *See* ARRC Ex. I.

[70] Jeffery M. Heftman, Railroad Right-of-Way Easements, Utility Apportionments, and Shifting Technological Realities, 2002 Univ. of Illinois Law Review, Vol. No. 5 at 1409 (citing cases; emphasis added).

[71] *See* 45 U.S.C. §1205(b)(4)(A)(ii).

[72] *See* App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)); *see also* ARTA, 45 U.S.C. § 1205(b)(4)(A)(ii); *see also supra* Section II.A.2 (discussing ARTA legislative history).

construed to match the specific terms of the exclusive-use easement definition in ARTA.[73/]

As demonstrated both by the plain language of the Jarvi Deed and the settled law applicable to railroad rights-of-way and easements, the property interest that BLM proposes to convey to ARRC provides the holder with an exclusive right to use and occupy the Property. That property interest equates to an exclusive use easement as defined in ARTA, 45 U.S.C. § 1202(6). Contrary to Appellants' assertions, therefore, the United States does have an exclusive interest to convey to ARRC.

b. Neither the 1875 Act nor the 1914 Act Apply Here.

In attempting to evade the obvious conclusion that the perpetual railroad right-of-way and easement applicable to the Property provides exclusive use and occupancy rights, Appellants invoke the 1875 General Railroad Right-of-Way Act[74/] and the 1914 Act. Appellants' reliance on those statutes is misplaced.

Neither the 1875 Act nor the 1914 Act supports a conclusion that the property interest at issue here is less than an exclusive use easement. The 1875 Act has never applied to any property of the Alaska Railroad, including the ROW. The federal government established the original Alaska Railroad ROW pursuant to the 1914 Act, which does not mention, much less incorporate, the 1875 Act. The very nature of the 1914 Act - authorizing and directing the federal government to designate federal lands for a railroad to be owned and run by the federal government - is completely different from the purposes of the 1875 Act and other acts that granted lands to private railroad companies on which to operate railroads. Simply put, the 1875 Act is irrelevant to any aspect of the Alaska Railroad ROW, including the Property.[75/]

[73/] App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)).

[74/] General Railroad Right-of-Way Act of March 3, 1875, 18 Stat. 482 (43 U.S.C. §§ 934-39).

[75/] In any event, railroad rights-of-way granted under the 1875 Act are exclusive in the sense of allowing railroad companies exclusive use and occupancy of the right-of-way lands as long as they operate railroads within those corridors. *See supra* Section IV.C.1.a.

Appellants appear to assert that adding the Property to the Alaska Railroad ROW in 1965 constituted an exercise by the United States of a 1914 Act railroad easement reserved in Mr. Jarvi's 1950 homestead patent. That assertion is incorrect. The 1914 Act, while implicated in the establishment of the original Alaska Railroad ROW, is not at issue with respect to the Property. The Property was not part of the original ROW. The perpetual railroad right-of-way and easement in the Property was purchased by the United States in 1965 - decades after the original ROW was established - to realign the ROW in an area damaged by the 1964 earthquake. Neither the Jarvi Deed nor any other document describes that 1965 purchase as an exercise of an easement under the 1914 Act or even mentions that Act.

Moreover, the fact that the United States paid a significant amount of money - the equivalent of over $180,000 in 2014 dollars - for the property interests it purchased from the Jarvis in 1965 to realign the ROW belies the idea that the United States was merely exercising an existing easement right. The railroad easement under the 1914 Act was already reserved by the United States when it granted the 1950 Jarvi patent. The United States could have exercised that interest in 1965. If that was the United States' intent, it certainly would have done so expressly and would not have paid such a substantial amount to acquire an interest it already held by virtue of its reservation under the 1950 patent.

Simply put, the United States was not exercising its reservation under the 1914 Act when it purchased its interest in the Property from the Jarvis in 1965. To the contrary, the plain language of the Jarvi Deed, the lack of any reference to the 1914 Act in that deed or other documents and the payment made by the United States for the Property point unmistakably to the conclusion that the United States purchased the perpetual and exclusive railroad right-of-way and easement in the Property, separate and apart from any rights it might have had under the 1914 Act. Appellants' assertions to the contrary simply do not hold water.

Even if Appellants' assertions that the 1914 Act applies here were correct - which they are not as explained above - railroad rights-of-way and easements acquired under that statute are exclusive. As explained in Section IV.C.1.a, *supra*, settled law holds that railroad rights-of-way provide the exclusive use and occupancy rights necessary to safely and economically operate a railroad. The legal and public policy principles and authorities underpinning this approach to railroad rights-of-way apply just as strongly to Alaska Railroad ROW designated by the United States under the 1914 Act as they do to any other railroad right-of-way.

Finally, even if the 1914 Act conflicted with ARTA's requirement to convey an exclusive use easement in the ROW, ARTA's provisions would expressly trump the 1914 Act. ARTA, 45 U.S.C. § 1213, flatly states that "[t]he provisions of [ARTA] shall govern if there is any conflict between [ARTA] and any other law."

c. The Requirement that the United States Convey an Exclusive Use Easement is Not Limited to Denali National Park or Areas Subject to Native Claims

Appellants try to avoid ARTA's requirement that ARRC receive at least an exclusive use easement for all portions of the ROW by arguing that the requirement only applies to portions of the ROW within Denali National Park and areas subject to Native land claims.[76/] Appellants assert that other than those areas, the ROW was to be transferred as only a non-exclusive easement. This argument flatly misreads ARTA and makes no sense given ARTA's purpose of providing the State with a ROW allowing safe and economical railroad operations.

Congress recognized in passing ARTA that the United States owned most of the ROW in fee simple and would transfer it as such.[77/] Fee simple title, by its nature, provides exclusive rights to the ROW. Congress also expressly recognized that the State needed exclusive control over the entire ROW in order to operate a safe and economical railroad. Consequently, ARTA

[76/] *See* SOR at 11-13 (citing 45 U.S.C. §§ 1203(a)(1)(D); 1205(b)(4)(B)).
[77/] *See* Section II.A.2, *supra* (describing legislative history of ARTA).

set the defined exclusive use easement as a safety net for situations where full fee ownership was not possible or not allowed under ARTA.

For example, since the U.S. National Park Service did not want the State to own land in fee within the boundaries of Denali National Park, Congress expressly provided in 45 U.S.C. § 1203(a)(1)(D) that the United States would transfer only an exclusive use easement in the ROW through Denali National Park.[78/] The fact that Congress chose to limit the ROW to an exclusive use easement in Denali Park has no bearing on the level of title to be conveyed with respect to other portions of the ROW.

Appellants' argument that 45 U.S.C. § 1205(b)(4)(B) only applies to Native claims fails based on the plain language of that subsection and Section 1205 as a whole. Appellants first argue erroneously that 45 U.S.C. § 1205, in its entirety, applies only to Native claims. But Section 1205, entitled "Lands to be Transferred," deals with Alaska Railroad lands subject to claims from parties, both Native and non-Native, other than the federal government and the State that existed as of January 13, 1983.

Subsection 1205(b) nowhere provides that its coverage is limited to Native claims. Indeed, as described in Section II.A.2, *supra*, although some provisions in subsection 1205(b) relate to Native Village Corporation claims under ANCSA,[79/] its plain language demonstrates that it covers lands subject to any third-party claims, whether Native or non-Native. Subsection 1205(b)(2) requires the Secretary of Interior to adjudicate all claims (not just Native claims) within two years of enactment of ARTA. Subsection 1205(b)(4)(B), asserted by Appellants to be

---

[78/] *See* 45 U.S.C. § 1203(b)(1)(D); ARRC Ex. J, Congressional Record-House, Dec. 21, 1982, at 14 (exclusive use easement in Denali National Park was intended "to allow continued operation of the railroad [in Denali Park] without creating new administrative and management problems arising from the creation of new non-Federal inholdings.") ARTA also provides that the State's use of the ROW in Denali National Park would be limited to uses made of the ROW prior to the effective date of ARTA. 45 U.S.C. § 1203(b)(1).

[79/] Subsections 1205(b)(1) and 1205(b)(3) deal with Native Village Corporation claims, giving them priority in adjudication and making such adjudications subject to certain prior agreements.

limited to Native claims, sets out specific administrative adjudication procedures for all claims on lands subject to ARTA transfer. It applies "where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is [*sic*] subject to a claim of valid existing rights by a party other than a Village Corporation . . . ." Subsection 1205(b)(4)(B), rather than being limited to Native claims, expressly applies to all claims to ROW lands that left federal ownership before ARTA was enacted and all claims to the ROW other than Native Village Corporation claims qualifying as "claims of valid existing rights." Section 1202(3) defines a "claim of valid existing rights" as "any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983." That provision unambiguously encompasses both Native and non-Native claims. In summary, subsection 1205(b)(4)(B) and its requirement to convey at least an exclusive use easement, apply to all portion of the ROW as to which any third party may have a valid claim.

Appellants' argument that Congress intended to limit exclusive use easements to ROW located in Denali National Park or subject to Native claims also contradicts Congress's purpose in transferring the Alaska Railroad to the State. Congress intended to supply the State with legal rights in the ROW that would allow safe and economical operation of a railroad. To achieve that end, it required in ARTA that the State receive the exclusive control of the ROW necessary to allow safe and economical railroad operations. It would undermine this very purpose of ARTA in guaranteeing exclusive control of the ROW if any portion of the ROW was conveyed subject to a non-exclusive easement. The ROW, like a chain, is only as robust as its weakest link. To convey any of the ROW without exclusive use rights would render the entire ROW potentially unsafe and uneconomical, thereby undermining the purpose of ARTA.

The meaning, intent and operation of ARTA are clear. As to all portions of the Alaska Railroad ROW, including areas subject to Native claims or other third-party claims, BLM must convey to the State at least an exclusive use easement so there is a protective floor in place for

the State to operate a railroad. ARTA cannot reasonably be interpreted in a manner that contradicts its plain language and its underlying purpose. Appellants' arguments seeking such an interpretation should be rejected.

d. ARTA's Requirement of an Exclusive Use Easement Clearly Indicates Congress's Intention to Supply the State with an Exclusive Interest.

Despite ARTA's plain language, Appellants argue that BLM cannot convey an exclusive use easement to ARRC because there is no clear indication such a result was intended.[80/] They rely on the following quote from a California case: "'[A]n exclusive easement is an unusual interest in land, amounting almost to a conveyance of the fee; and, therefore, no intention to convey such a complete interest can be imputed . . . in the absence of a clear indication of such an intention.'"[81/] Even if that passage states a valid legal principle, it is harder to imagine a clearer indication of an intention to convey an exclusive interest in the ROW than ARTA's mandatory requirement to convey an exclusive use easement that is defined in extreme detail in the statute. Simply put, Congress, in passing ARTA, clearly intended to provide the State with a very specifically defined exclusive easement in the ROW.

2. Alaska Law Pertaining to ARRC's Acquisition and Use of Land are Irrelevant to the Issue of Whether BLM's Decision was Proper

Perhaps recognizing the fatal flaws in their arguments under ARTA, Appellants attempt to derail the Decision by asserting that ARRC is not eligible to receive a patent to the Property

---

[80/] *See* SOR at 13 (citing state law cases).

[81/] *Id.* (quoting *City of Pasadena v. California-Michigan Land & Water Co.*, 110 P.2d 983,985 (Cal. 1941). *City of Pasadena* actually undermines Appellants' position. That case involved underground water line easements which were clearly non-exclusive by their terms. *Id.* at 984-85. The court distinguished those easements from grants of exclusive surface rights-of-way (such as those at issue here) and noted that the water line easements could have been made exclusive by using clear language to that effect. *Id.* at 986. Similarly unavailing to Appellants is *Myers v. U.S.*, 378 F.3d 696, 702 (Ct.Cl. 1967), which held that absent clear statutory language or legislative intent, a statute repealing an earlier statute did not affect reservations and right-of-way grants under the earlier statute. Here, however, ARTA was clearly intended to grant exclusive use easements in the entire ROW regardless of prior reservations or claims.

because it failed to obtain a State legislative finding that the land is needed for railroad purposes as purportedly required by AS 42.40.285(5).[82/] This argument fails for several reasons.

Most importantly, ARRC's eligibility to receive the Property is irrelevant to BLM's Decision. ARTA requires BLM to patent to ARRC the entire federal interest in the Property. Nothing in ARTA conditions that obligation on ARRC's eligibility under Alaska law to own the Property. Even if ARRC was ineligible to receive the Property under state law, which is not the case, any remedy presumably would lie under Alaska law following the issuance of the patent. Because ARRC's eligibility under Alaska law to receive the Property is irrelevant to BLM's duty to transfer under ARTA, Appellants' attempt to defeat the Decision on that grounds must fail.

In addition, Appellants' assertion that ARRC must obtain a legislative finding before obtaining transfer of the Property is legally incorrect. Transfers of Alaska Railroad land under ARTA are expressly excepted from the statutory requirement that ARRC obtain a legislative finding before acquiring land in a municipality.[83/] The proposed transfer of the Property to ARRC is expressly being made under ARTA, meaning that ARRC is eligible for the Proposed Patent.

An assertion made by Appellants' in conjunction with their AS 42.40.285(5)(c) argument should be mentioned to eliminate any potential confusion. Appellants postulate that ARTA provides for conveyance of "two different types of easements"; they assert that 45 U.S.C. § 1202(6) provides for grants of exclusive use easements, while 45 U.S.C. § 1202(10) provides for grants of "1914 easements."[84/] They go on to argue that BLM mistakenly based its conveyance decision on subsection 1202(6) instead of on subsection 1202(10).[85/] These

---

[82/] *See* SOR at 6-7.

[83/] *See* AS 42.40.285(5)(c).

[84/] *See* SOR at 6-7. The latter assertion apparently is intended to mean that subsection 1202(10) provides for easements based on the Act of 1914.

[85/] *See id.*

assertions are nonsensical. Nothing in Section 1202, which is the definitions section of ARTA, provides for grants of easements. Subsections 1202(6) and 1202(10), respectively, define "exclusive use easement" and "rail properties of the Alaska Railroad." As definitions, neither subsection is - or could be - authority for creating or conveying easements.[86/]

In any event, BLM did not cite either subsection of Section 1202 as authority for the conveyance. Instead, BLM properly cited three other provisions of ARTA as bases for its decision to convey the Property: 45 U.S.C. § 1203(b)(2), 45 U.S.C. § 1203(b)(3) and 45 U.S.C. § 1205(b)(4)(B).[87/] Those subsections set out the process for issuing interim conveyances and patents to Alaska Railroad lands under ARTA, require conveyance of at least an exclusive use easement in the ROW, and guarantee that the federal government will defend the title conveyed.[88/] Notwithstanding Appellants' erroneous assertions regarding ARTA's definitions, the ARTA provisions cited by BLM provide a valid basis for the Decision.

3. Even if the United States Does Not Hold Exclusive Rights to the Property, it Must Nevertheless Convey an Exclusive Use Easement to ARRC

As explained above, the United States holds an exclusive interest in the ROW that BLM is obligated by ARTA to convey to ARRC. But even if the United States' interest in the Property was less than an ARTA exclusive use easement - which it is not - that would not change DOI's obligation to convey to ARRC at least an exclusive use easement.

ARTA unambiguously requires BLM to convey to ARRC not less than an exclusive use easement in the Property because it is located in the ROW. That obligation exists regardless of the United States' legal interest in the Property.[89/] Congress underscored the guarantee of

---

[86/] The only reference to the 1914 Act in subsection 1202(10) is a proviso that unexercised reservations in favor of the U.S. under that Act are excluded from "rail properties."

[87/] *See* App. Ex. 1, at 1, 4, 5.

[88/] *See supra* Section II.A.2.

[89/] *See* App. Ex. 12, at 4.

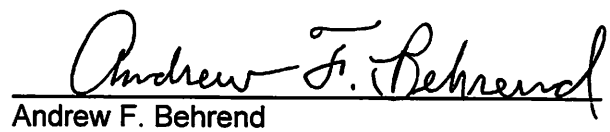
conveyance of at least an ARTA exclusive use easement by requiring the federal government to defend ARRC's title against claims that it owns less than such an interest in the ROW.

If BLM needs to acquire an additional interest in the Property to effectuate ARTA's exclusive use easement requirement, then ARTA would function to effect an inverse condemnation of any additional interest necessary to meet that requirement. Such an inverse combination might require the United States to compensate Appellants for the difference, if any, between the values of an ARTA exclusive use easement in the Property and the interest conveyed to the federal government by the Jarvi Deed. Even if that happened, the ultimate result would be the same: BLM would convey to ARRC via patent at least an exclusive use easement in the Property.

V. CONCLUSION

For the foregoing reasons, BLM's Decision was proper as a matter of law and ARRC respectfully requests that the Board affirm it and allow the Proposed Patent to become final.

DATED this 11th day of March, 2014.



Andrew F. Behrend
Senior Attorney, Real Estate & Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
907.265.2305
907.265.2443 (Facsimile)
behrenda@akrr.com

CERTIFICATE OF FILING AND SERVICE

I certify that on March 11, 2014, I filed and served this Intervenor Alaska Railroad Corporation's Answer to Appellants' Statement of Reasons, as indicated below, on:

FILED:
United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, Virginia 22203
[via U.S. Express Mail]

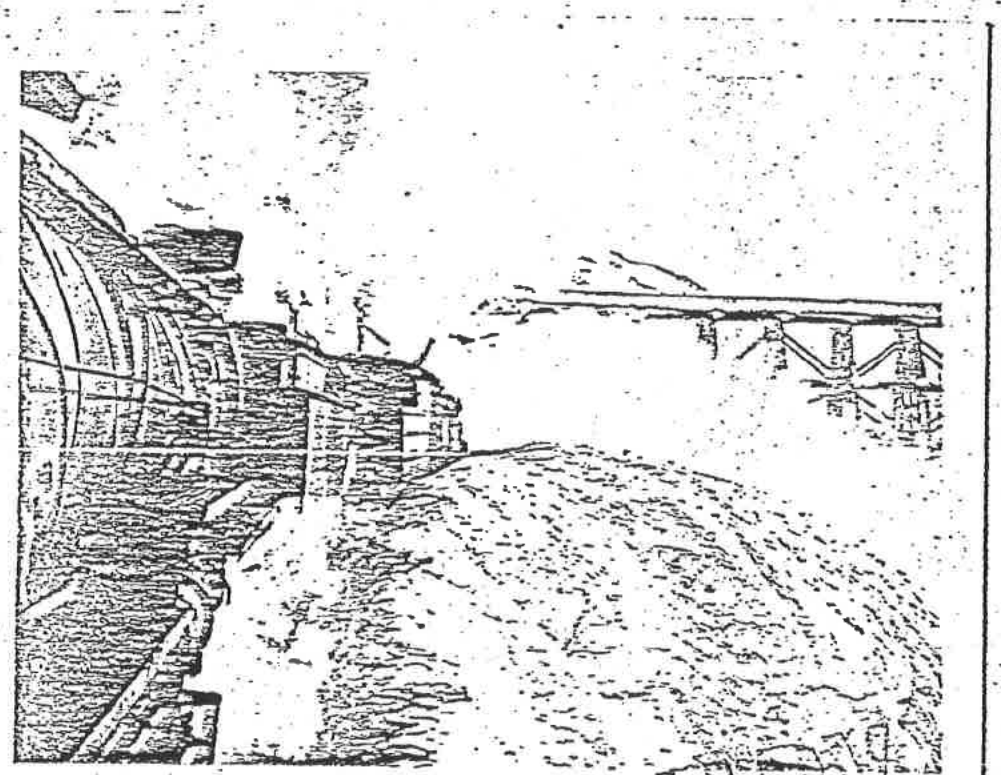
SERVED:
Roy Longacre, Esq.
Counsel for Appellants
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
[via Electronic Roy@LongacreLaw.com and U. S. Mail]

Steve Scordino, Esq.
Attorney Advisor for Bureau of Land Management, Alaska State Office
U.S. Department of the Interior, Office of the Solicitor, Alaska Region
4320 University Drive, Suite 300
Anchorage, Alaska 99508
[via Electronic steven.scordino@sol.doi.gov and U.S. Mail]

Andrew F. Behrend

Andrew F. Behrend
Alaska Railroad Corporation
907.265.2305
behrenda@akrr.com

The Alaska Railroad:
Probing The Interior



PRELIMINARY

History and Archaeology
Series Number 15
Miscellaneous Publications

Office of Statewide Cultural Programs
Alaska Division of Parks
323 E. Fourth Avenue, Anchorage

October 1975

TH[illegible]SKA RAILROAD: PROBING THE [illegible]IOR

PRELIMINARY

Winter scene in the Loop District, Alaska Railroad.

Researched and written by Charles Michael Brown
Edited and prepared by Michael S. Kennedy

History and Archaeology
Series Number 15
Miscellaneous Publications

Office of Statewide Cultural Programs
Alaska Division of Parks
323 E. Fourth Avenue, Anchorage

October 1975

PREFACE

On January 6, 1975, Walker T. Johnston, General Manager of the Alaska Railroad, formally requested the Office of Statewide Cultural Programs, Alaska Division of Parks, to conduct a survey of historical sites and structures on the property of the Government railroad. In early March, 1975, a staff researcher of the Alaska Division of Parks was assigned to the project. After five months of research and writing, the researcher completed the study, which was then submitted to the Alaska Historic Sites Advisory Committee and the Alaska Railroad for review.

In undertaking this project, the researcher, Charles Michael Brown, proposed to locate, describe, and evaluate historical sites and structures on the property of the Alaska Railroad in accordance with the criteria of the National Register of Historic Places. Unfortunately, the task was only partially completed. Once a list of structures was compiled for public documents, maps, newspapers, and various secondary sources, the researcher arranged a rail tour with Alaska Railroad officials in order to assess and record the present condition and historical integrity of the structures. Such an inspection of the line between Seward and Anchorage was made on May 6, 1975.

In the case of the line between Anchorage and Fairbanks, representatives of the Alaska Railroad were unable to provide transportation services for the researcher. Before any structure on the line north of Anchorage is subjected to alterations or demolition, the structure should be inspected and evaluated by an historian in accordance with the criteria of the National Register of Historic Places. The exceptions, of course, are those sites and structures on the old Eska, Chickaloon, and Chatanika branch lines, which are no longer a part of the Alaska Railroad; as well as those bridges and depots which the researcher inspected and evaluated on July 23-24, 1975 and included in Part III of this study. Sites and structures which should be inspected in the near future are so indicated in the "Inventory of Sites" of this study.

Michael S. Kennedy
State Historian

PRELUDE

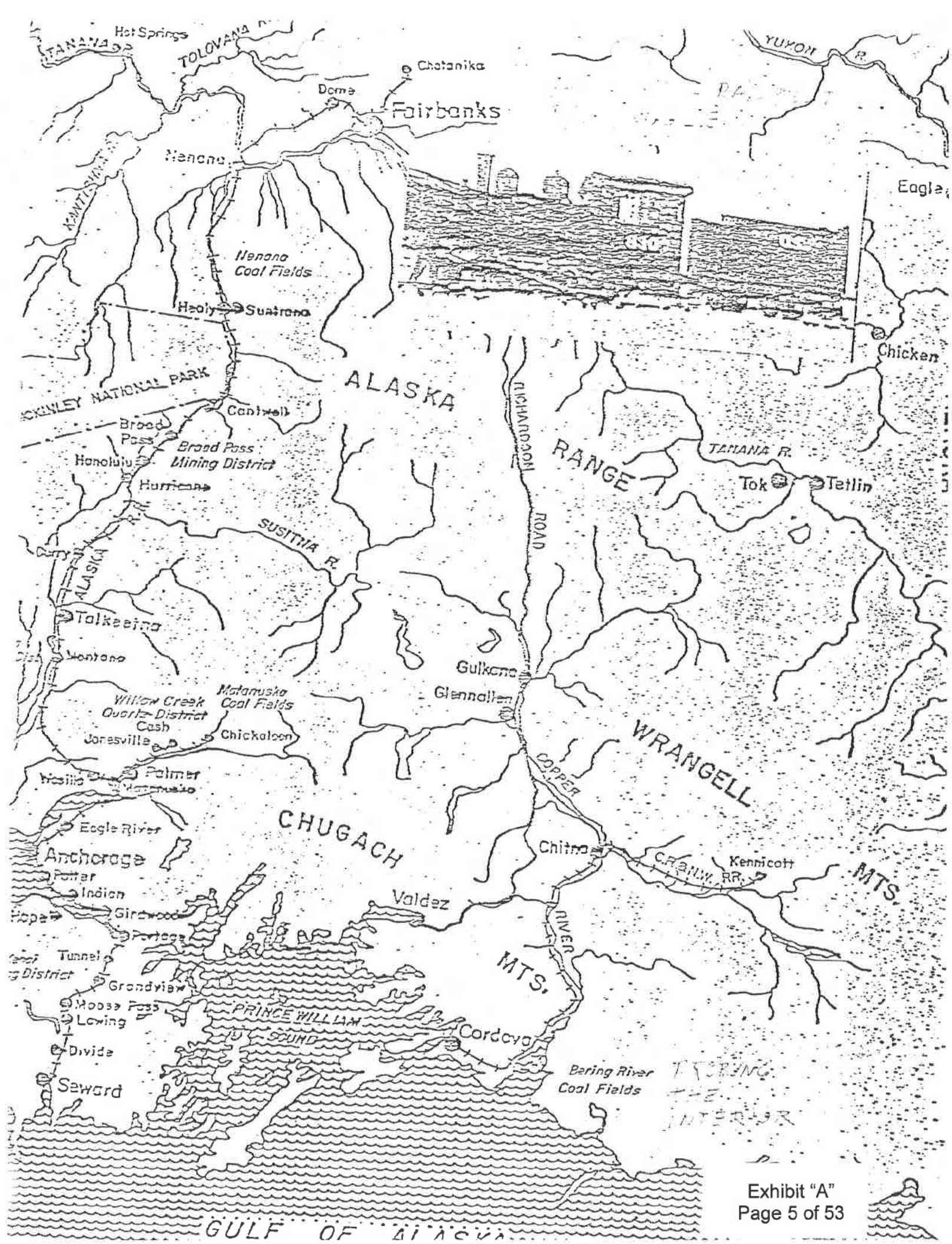
The Railroad Era of Alaska

The long-standing railroading era of the contiguous United States occupied much of the expansionist 19th century and culminated with that period of the westward movement which has been aptly labeled "Manifest Destiny". Asa Whitney, five years before the 1849 gold strike in California, proposed the first transcontinental railroad--from the Great Lakes, via South Pass, Wyoming, to the small port of Seattle, connecting the Atlantic and Pacific Oceans. Even before the Civil War, Congress had pledged land grants of some 28,000,000 acres for 50 railroads in and through the territories west of the Mississippi, whose total trackage was already 8,647 miles. Four of these systems eventually became transcontinentals, and others were vital interstate connections. The nation's manifest destiny witnessed development of one of the world's most complex rail systems—some 260,000 miles of track, tens of thousands of lines, 40,000 stations, interties and an incredible array of rolling stock—(excluding extensive rural, interurban and street railroads); which in turn merged and fed into the several vast Transcontinental Railroads. Land grant railroads eventually received a total of 131,000,000 acres of public lands from Congress, as a subsidy to promote development and financing. Generally all of this—particularly the paralleling of the continent 3,000 miles from ocean to ocean--occurred in the late 40-year westward expansion period between the Civil and the Spanish-American Wars. (Union Pacific, 1864, Santa Fe, 1871; Great Northern, after 1900).

Compared to this, Alaska's "Railway Age"—certainly its dominant era—was feeble and late. But it was just as vital to the last frontier as other rail systems were to the western frontier. As with most Alaskan development, the Frontier (and only) Railroad Era followed, generally, the earlier American pattern. But as in other things it came considerably after the nexus of the railroading surge of the "lower 48"; as well as for Mexico and Canada in a similar time frame.

Alaska railroading dawned with the 20th Century. It speedily reached its apogee in the dramatic, but short span of only 16 years. Despite the fact that almost half a hundred railroad ventures were proposed and promoted--and at least 39 were incorporated—only 9 Alaskan railroads (and a few of these hardly dignifying the term) were actually constructed and operated; albeit for a very brief period in history.

Despite undisputed need, before the end of the first quarter of this century (actually after 1923) railroading in Alaska meant essentially only three lines: Number one, the dominant government-owned and operated Alaska Railroad; 2) twenty miles of the Canadian White Pass and Yukon; and 3) the spectacular and expensive 195 mile Morgan-Guggenheim syndicate monopoly Copper River & Northwestern Railway serving the Kennicott Copper Mining Company interests. The others were:


Hot Springs
TANANA R.
TOLOVANA R.
Chatanika
Dome
Fairbanks
YUKON R.
Nenana
KANTISHNA
Nenana Coal Fields
Healy
Suntrana
Eagle
Chicken
ALASKA
RANGE
RICHARDSON ROAD
DENALI NATIONAL PARK
Cantwell
Broad Pass
Broad Pass Mining District
Honolulu
Hurricane
TANANA R.
Tok
Tetlin
SUSITNA R.
Curry
ALASKA
Talkeetna
Montana
Gulkana
Glennallen
Matanuska Coal Fields
Willow Creek Quartz District
Cash
Jonesville
Chickaloon
Palmer
Wasilla
Matanuska
WRANGELL
COPPER
CHUGACH
Eagle River
Anchorage
Chitina
C.R.&N.W. RR.
Kennicott
MTS.
Potter
Indian
Hope
Girdwood
Portage
Valdez
RIVER
Tunnel
District
Grandview
Moose Pass
Lowing
PRINCE WILLIAM SOUND
MTS.
Cordova
Divide
Seward
Bering River Coal Fields
GULF OF ALASKA

The rival Alaska Central (1900-1904) and Alaska Northern (1904-1915) Railroads (basically one and the same, like the chicken and the egg) at the southern or seaport terminus; and the colorful Falcon Joslin's great dream for the Interior (1904-1917) the northern or interior terminus, the Tanana Valley narrow-gauge, absorbed in development of the Alaska Railroad. The others: Wild Goose, Council City & Solomon River and Seward Peninsula-Nome gold fields lines--were phasing out; as had, or would happen soon, to Yakutat Southern, Cook Inlet Coal, and the six-mile Katalla & Carbon Mountain Railway Co., fish and coal hauling venture which was abandoned long before it was fully operative.

The first railroad on Alaskan soil was, enigmatically, the White Pass and Yukon, a product of the Klondike Gold Rush. It represented a remarkable engineering feat—accomplished with astonishing speed, financed with British capital and built for Canada's benefit. (Although it more directly benefitted Alaska). The WP & Y provided low cost, heavy goods transport from the U.S. port of Skagway into the rich gold region of the upper Yukon River headwaters. But despite the inexorable advantages to the United State of its torturous 102 miles of rail, only 20.4 were in Alaska. The initial franchise by three Victoria, B.C. business men was purchased by the London bankers, Close Brothers in March 1898. To be on the safe side Close Brothers obtained the Alaska right-of-way by having five Americans incorporate the "Pacific & Arctic Railway & Navigation Co." in West Virginia, the President being their Chicago-based Samuel H. Graves. He bought the George Bracket wagon toll road (from Skagway to White Pass) for $100,000, hired 1000 men and launched construction of the Alaska segment on May 27, 1898. This Alaska-based span covered the dizzying, rocky mountain drop from desolate, snowcapped White Pass at the Canadian border down to sea level, the ice-free Lynn Canal docks. The White Pass and Yukon Railroad initially was mining-oriented. And so too, were all but one of railroads actually built in Alaska. In slightly more detail, the Alaskan lines were:

The Copper River and Northwestern—$23,000,000 worth--started in 1905 and completed in 1911, out of the seaport of Valdez initially, but finally from Cordova. An incredibly difficult 195 miles into the mountain-river glaciated interior terrain, it tapped the copper-silver lodes of the Kennecott-Guggenheim-Morgan Alaska Syndicate Interests and was entirely mining oriented. The final CR & NW train run was November 11, 1938, when the mines were finished. Its peak years were from 1911 to the end of World War I.

2. The Seward Peninsula Railroad (80 miles) and its Paystreak Branch railroad (6.5) were both narrow-gauge. They were vital to one of the world's most spectacular 1898-1900 gold strikes on the bleak tundra and beaches of the isolated Seward Peninsula, off the Arctic Bering Sea. Also there were two other lines to the South, the Council City & Solomon River and the Wild Goose of Ophir Creek. All four were entirely gold-oriented, resulting from the rich discoveries there after 1898 and all were built and operating soon after 1900.

3 & 4. Alaska Northern and Alaska Central Railroads which overlapped and in turn were absorbed with beginning of construction of the Alaska Railroad; from the southernly ice-free port of Seward, eventually, to service the more frigid interior regions north of Mt. McKinley (pre-

dominantly, at first, they were both coal and gold-oriented.) Because the Alaska Central, started by the dynamic genius of John E. Ballaine in 1900, was almost concurrent with White Pass & Yukon, it was not only the first Alaskan railroad; but when sold by Ballaine (for financial reasons) in 1905 and renamed Alaska Northern, it would be the parent of the Alaska Railroad. Both lines will be treated in depth in this study.

5. Tanana Valley Railroad developed under the genius of Alaska's most colorful, "Railroad King", Falcon Joslin. It was under construction from 1905-07 and was built entirely (44.7 miles) of narrow-gauge. It serviced thousands of miners, several camps and hundred of mines and gold placers in the teeming, large gold fields in centuries-old permafrost muck around the Fairbanks area; and very near to the Arctic Circle. Joslin's biggest problem was finance. Had capital been available he would have been the Jim Hill of Alaska. Eventually his line, too, was absorbed in the Alaska Railroad. It too is a part of this study. (Chapter I.)

6. As previously stated, the Council City & Solomon River Railroad (32.5 miles) was one dimension of the four sprawling Seward Peninsula arctic gold fields railroads. It was below Nome, on Norton Sound--and although never as rich as Nome or Anvil Creek, this area had highly productive gold placers, as well as galena properties, after 1900. It operated during much of the same time frame as the much more extensive Copper River & Northwestern.

7. Yakutat Southern--was a unique, short-lined, 12 mile railroad, with no interties and the only one with little or no association with mining development. It was built to haul salmon and other seafoods from the fishermen's wharves to local canneries.

8. Cook Inlet Coal Railroad, 8.5 miles, was developed and built to tap the [illegible] coal fields at a [illegible] supporting [illegible]. But it [illegible] operated, due to changing conditions and eventual absorption by the [illegible] Railroad. The [illegible] are part of this study.

9. Alaska Pacific Railway & Terminal Co. (Katalla Railway) was six miles long. It was promoted and built to serve, essentially, the first oil fields of Alaska, at Katalla. But it was in existence only a few years and then abandoned. Because of its proximity, by sea, to Seward its purpose was absorbed by Alaska Northern and subsequently the Alaska Railroad.

10. The Wild Goose, (or officially) Council and Ophir Creek Railroad; was the third of the four independent segments of the Nome Gold District on the Seward Peninsula. It was but five miles in length and connected the twin diggings of Council and Ophir in competition with the Council City & Solomon River line.

One visionary proposal outdid the maximum dreams of either Ballaine or Joslin--each of whom wanted to interlace Alaska, with rail lines from Canada to the Bering Sea. But another proposal was World-shaking in its implications: Connecting the U.S. and Canada--via Alaska--by tunnel under the Bering Sea with Asia, through the Trans-Siberian Railroad. A $6,000,000 French, Russian, American syndicate headed by Loicq de Lobel of Paris, incorporated in New Jersey in 1906 proposed the tunnel, via Big Diomede Island. Work could be done under contract with the Russian Imperial Trans-Siberian Commission, with terminus at Kansk. The rail-

INTRODUCTION

In his prize-winning book The Age of Reform, Richard Hofstadter analyzed the American Populist and Progressive movements in the late nineteenth and early twentieth centuries as a popular assertion of agrarian, Yankee-Protestant ideals which seemed threatened by the impersonal forces of industrialization and urbanization. Alarmed by the increasing numbers of immigrants, the power of the newly rich, the widespread corruption in the cities, the questionable future of the small farmer, the Progressives moralized on the need for economic and social reforms. In Hofstadter's words, the Progressives wanted "to restore a type of economic individualism and political democracy that was widely believed to have existed earlier in America and to have been destroyed by the great corporation and the corrupt political machine; and with that restoration to bring back a kind of morality and civic purity that was also believed to have been lost." Abandoning traditional suspicions of big government, the Progressives demanded national legislation to check and regulate the activities of the large corporations, and thereby preserve the social and economic opportunities of an earlier America.

Much of the history of Alaska since the Klondike Gold Rush of 1897-98 can be understood in light of the Populist and Progressive experience. Since the Klondike Gold Rush, Alaska was seen as a land of opportunity, a pioneer country where the "man on the make" could still strike it rich. In the mid-1900's, however, the specter of big business was raised in the form of the Alaska Syndicate, a powerful combination of corporations popularly believed to be devoted to the monopolization of Alaska fishing, railroad, steamship, copper, gold, and coal mining industries. Such incidents as the "Keystone Canyon Clash" in 1906 and the ensuing trials confirmed the belief that the corporations would stop at nothing to control and exploit the natural resources of Alaska.

The coal-land withdrawals in 1906 and 1909, the creation of several forest reserves, and the extension of the Interstate Commerce Commission's authority to Alaska in 1911 were important checks on the corporations in Alaska. These actions, however, also had the effect of blocking practically all industrial developments in Alaska. Soon, Alaskans were complaining that Eastern faddists were reserving Alaska to death, that the Government policies of conservation restricted the economic development of Alaska.

Following the Ballinger-Pinchot controversy and the "Cordova Coal Party" in 1911, both events receiving wide publicity in the muckraker press, the Government took up the question of Alaska's economic future. In the political turmoil of the early 1910's, the Government searched for a means to provide for the development of Alaska industries by small entrepreneurs rather than the large corporations. This search yielded three proposals. First, Alaska should have an Alaska Development Board

"Had it happened that way the Copper River Valley would be a mecca today for hunters and fishermen from the lower 48, its lodges and resorts advertised in brochures on the counters of New York travel agencies. And there would have been no Anchorage. Cordova, solidly dug into the rocky slope about Prince Williams Sound, would reign as Alaska's number one city.

"Cordova's ill-fortune did not end with the broken dream of being the railhead for the Alaska Empire's artery of steel. Hope flared anew with plans to convert the old rail bed to a modern highway linked to the Richardson to open a truck route to Fairbanks. This would uncork the hunting, fishing and recreational potential of the valley (and significantly improve Interior transportation).

"But the 1964 earthquake blasted the dream by destroying several of the steel railroad spans whose existence was essential to financing the highway construction."

The reality becomes even more pertinent in 1975 with the building of the trans-Alaska pipeline. Had ARC recommendations been followed, a new era of railroading in Alaska would now be underway.

Perhaps there may be a return to railroading in Alaska. If so it lies in the future. But at the turn of this century, there was no doubt in most minds that the transportation dilemma of The Great Land would be solved by rails. It was almost universally agreed that this was the only pragmatic, viable means of economic and social advancement; for best exploitation and utilization of treasuries of untapped Alaska natural resources; and improving general commerce.

The Railroad Era of Alaska, therefore, is a tantalizing enigma of history. Since it happened, and is documented history, it is our concern. Such facts may help predicate the future. Perhaps not; but as history alone it is significant and fascinating; yet requiring extensive further study. This, then, is a beginning of that applied knowledge, leading to possible preservation of some of the historic properties which resulted from Alaska's "railroad age".

Michael S. Kennedy

which would consolidate and coordinate Federal activities in Alaska. Second, the Alaska coal-lands should be opened to development with the adoption of a coal-land leasing law. And finally, the Government should construct and own a system of public railroads in Alaska. According to the Progressives, these measures would facilitate the development of Alaska industries, and yet spare Alaska from the worst effects of industrialization.

This study presents an historical sketch of the Government railroad in Alaska to 1925. In addition, the study includes historical summaries of two private railroads in Alaska, namely the Tanana Valley Railroad and the Alaska Central Railway, both of which were later incorporated in the Government railroad system. The study then closes with an inventory of historical sites and structures, and a description of certain structures which deserve entry to The National Register of Historic Places.

Falcon Joslin and the Tanana Valley Railroad

"A railroad system is like a plant; once you lay down the trunk line, it grows." (US Senate April 1912: 31) When Falcon Joslin, president of the Tanana Valley Railroad Company, made this statement before a Senate committee deliberating transportation problems of Alaska, he endorsed the popular impression that railroads were indeed the key to the economic development of frontiers. Pioneer railroads brought reduced transportation rates which in turn allowed settlers, miners and the like to ship heavy machinery into the wilderness for extensive and intensive development of agricultural lands, gold, copper, and coal mines, etc. In other words, railroads brought Progress, which in turn brought more railroads. That Joslin should adopt this popular view of railroads was somewhat paradoxical. His own enterprise, the Tanana Valley Railroad, was founded with the idea that the road would grow with each passing year. Like most Alaska railroads, however, the Tanana road was a failure almost from the very beginning.

A participant in the Klondike gold rush of 1897, Joslin first engaged in railroad construction in the North during the years 1902 and 1903. In that time he built twelve miles of narrow-gauge road linking a coal mine which he had leased near Dawson with the Yukon River. On hearing news of the Fairbanks gold rush, Joslin sold his unprofitable Canadian railroad in 1904 and rushed to the Tanana Valley. Soon after his arrival he again found himself making plans for another railroad project. (US Senate April 1912: 25)

As Joslin early recognized, the Tanana Valley promised years of gold production. As an experienced railroad builder, he also saw the excellent opportunity in constructing a light road from Chena, where river steamers unloaded heavy freight directly onto the banks, to the junction of Pedro and Gilmore Creeks, near the site of one of the richest gold strikes in the district. Prospectors were paying at a minimum $3 per ton-mile in transporting freight by team from Chena to their diggings. A railroad could reduce these rates substantially, and perhaps monopolize heavy freight traffic from navigable waters to the mines. (Joslin 1909: 247) It was an exciting proposition, leading Joslin to believe that he could construct twenty or thirty miles of road a year. The road could be extended either to Circle City or Rampart, thence to Nome. An even more attractive possibility was to extend the road up the Tanana Valley to the International Boundary, there connecting with a proposed Canadian line from Haines. This line would not only provide year-round connections with Pacific ports; but also tap various coal fields and "a mountain of undeveloped iron ore" near tidewater. (Joslin 1909: 245, 247; US Senate April 1912: 22)

With high expectations, Joslin made preliminary surveys, collected data, and then left the Tanana Valley for London in search of financial backing. He found it in the Close Brothers & Company, the same financial house which invested in the White Pass & Yukon Railway. Securing nearly $400,000 and a tentative promise of more money to extend the road periodically, Joslin thus organized the Tanana Mines Railroad under the laws of Maine with himself as president. (US House 1908: 12; US House, The Building of Railroads...1913: 44)

In the middle of May 1905 river steamers arrived at Chena with equipment and materials for the new railroad. Construction began immediately with common laborers hired at $7 a day, which Joslin complained were "the highest wages in the world" but necessary to attract men from the placer mines. (US House April 1912: 9) From Chena, the base of operations, the narrow-gauge road was pushed about twenty-one miles to Gilmore and Pedro Creeks, a 4.8-mile branch to Fairbanks leaving the main line from a point five miles north of Chena. On July 17, 1905, citizens of Fairbanks gathered to hear District Judge James Wickersham's address before the driving of the golden spike by Virginia Barnette, daughter of E. T. Barnette, one of the earliest settlers of Fairbanks. (Wickersham 1905: 3-4) Within two months, then, Joslin's men had constructed twenty-five miles of a light road at about $20,000 a mile. Much of this expense, Joslin noted, was due to high freight rates: a forty-pound rail, for example, cost more than twice its actual value to ship from Milwaukee to Chena. (Joslin 1909: 247; US Senate April 1912: 7-9)

Shortly after his railroad was placed in operation, Joslin returned to the States in hopes of finding money to extend his road. Unable to raise money through the Close Brothers, which was then investing heavily in a railroad up the Copper River and wanted out of the Tanana railroad, Joslin organized the Tanana Valley Railroad Company. Selling bonds at a considerable discount chiefly through the Knickerbocker Trust Company of New York, Joslin eventually raised $700,000 from American and European subscribers and paid his debt to the Close Brothers. Thus on January 1, 1907, the property of the Tanana Mines Railroad Company was transferred to the new company. Once these financial negotiations were concluded, Joslin then appealed to Congress for relief from the license tax of $100 per operating mile. On March 2, 1907, Congress suspended the tax as applied to the Tanana railroad for five years. With this boon Joslin hurriedly returned to Alaska to prepare for spring construction. (TVRR Annual Report 1908: 1; TVRR Annual Report 1911: 3; US Senate April 1912: 19,22; US House, The Building of Railroads...1913: 44,50)

Joslin originally intended to extend his railroad only twelve miles; but after surveys demonstrated increasing mining activities in the Chatanika Valley, he decided upon twenty miles of new road. Completed on September 29, 1907, when the last spike was driven at Chatanika, the narrow-gauge road extended from a point near Gilmore Station down the valley of Fox Gulch, continuing on a line between Vault City and Dome City and then through the Chatanika Valley to the town of

Chatanika. Although the road cost more than $330,000, exceeding Joslin's original estimate of $107,000, it tapped several placer mining districts previously without access to navigable waters. Believing the new extension had lessened the effects of the financial Panic of 1907, Joslin predicted that further extensions would be made in a few years. (TVRR Annual Report 1908: 1-3)

However, Joslin's optimism was premature. After 1909, the year of its greatest earnings, the fortunes of the Tanana railroad began a persistent, almost uninterrupted, decline. There were many causes for the decline. The Alaska Road Commission having just completed a road system in the Fairbanks district, Joslin was periodically forced to reduce freight and passenger rates in order to compete with automobile and wagon transportation companies. Also, the railroad invested in its own wagon transportation business, hauling freight and passengers at a distance of one to five miles to and from certain railroad stations. (TVRR Annual Report 1909: 1) Although these measures produced a slight rise in passenger traffic, the railroad could not compete with the frequent services of automobiles in short distances. The Government road from Fairbanks to Fox, for example, was only eleven miles in distance; the railroad route was eighteen miles. (TVRR Annual Report 1910: 1) To offset the effects of automobile competition, Joslin ordered an Edison-Beach Electric Storage Battery Passenger Car as a popular attraction and inexpensive means of transportation. At first, the experiment appeared a success, Joslin noting in 1912 that "automobile competion for passenger business has practically ceased." (TVRR Annual Report 1912: 1) The increase in passengers was misleading; there was no corresponding increase in passenger earnings. Most passengers made use of the passenger car for short distances at low rates. Even another substantial reduction in passenger rates in 1913 could not offset automobile competition. (TVRR Annual Report 1913: 1)

In general, the same decline in passenger earnings on the Tanana Valley Railroad was reflected in freight transportation. Seldom a year passed without Joslin expressing hopes that quartz gold production, the primary source of freight revenue, would develop in the Fairbanks district. Due to limited capital, only a few stamp mills were operating in 1910. (TVRR Annual Report 1910: 1; Annual Report 1911: 2) When in 1912 a number of new stamp mills were erected, Joslin observed that the railroad would benefit indirectly from the quartz mines, which were five to ten miles beyond the railroad line. He wanted to construct a ten-mile branch directly to or within a mile of several stamp mills; but again was unable to raise the money. (TVRR Annual Report 1912: 2-3) In 1913, however, many of the new stamp mills failed, evidently because of lack of capital and excessive speculation. Joslin contended that most would have succeeded if cheap means of transportation from Pacific ports to the Tanana Valley had been available. In any case, Joslin periodically reduced freight rates in order to attract ore shipments from the few mills working regularly. He was never able to capture the market. (TVRR Annual Report 1913: 1-2)

In addition to the revenue losses from automobile and team competition as well as the stagnation of gold production in the Fairbanks district, the Tanana railroad was also subject to high maintenance costs. Each winter exacted heavy damage on roadbeds, ties, and timber trestles. Excessive snowfalls sometimes curtailed railroad traffic for several weeks. In 1911, 1913, and 1916 severe winters caused a significant rise in fuel consumption and considerable labor expense in removing snow and ice from steel rails. The winter of 1911 was particularly expensive, hard-packed snowdrifts blocking the line for three weeks on one occasion and for shorter periods at other times. After experiencing that winter, Joslin pleaded "that such season may not occur again for many years." (TVRR Annual Report 1911: 2) With the arrival of spring, however, rivers flooded the low roadbed and washed out trestles.

Of course, whenever the Chena River flooded, the Tanana railroad underwent heavy losses in passenger and freight business. During the summer months the railroad relied upon "steamboat freight" shipments between Chena and Fairbanks. When, however, the Chena River was high, steamboats proceeded directly to Fairbanks.

In view of the persistent decline in railroad revenues, Joslin took an active role in provoking the Government's interest in Alaska railroads. In 1909, when President Taft endorsed Government aid for Alaska railroads, Joslin began a long campaign for a Government-aided railroad from the Gulf of Alaska to the Tanana Valley. Like many other interested Alaskans, he believed that the Copper River & Northwestern Railway and the Alaska Central Railway would have pushed a road into the Tanana Valley if the Government had not withdrawn the coal-lands in 1906 and 1909. A trans-Alaska railroad would have reduced transportation costs from West American ports to interior Alaska, and thereby stimulated business in the Tanana Valley. Moreover, without coal, the quartz mining industry in the Tanana Valley could only develop slowly. The only source of energy in the Tanana Valley was wood, and that was being rapidly depleted. Reasoning thus, Joslin at first urged the Government to extend its credit to private railroads in Alaska. Later he supported Government construction, but not ownership of an extension of the Copper River & Northwestern Railway from Chitina to the Tanana Valley. As chairman of the Alaska committee of the American Mining Congress and as a witness before numerous Congressional hearings, Joslin played an important role in bringing about the Government railroad. Ironically, the Government railroad was the coup de grace for Joslin's railroad.

In the fall of 1914 Joslin reported that the Tanana Valley Railroad Company was forced to borrow money from a Fairbanks bank in order to meet the semi-annual installment on its bonds falling due June 1, 1914. Considering that Congress had relieved all Alaska railroads of the license tax with a tax of one percent on gross earnings, and that wages and salaries on the Tanana railroad were reduced to the minimum, Joslin believed that "a substantial and rapid business improvement would follow," since the Government had at last decided to construct a trans-Alaska railroad. The expected revival of business did not occur. Indeed, the

coming of the Government railroad had just the opposite effect, some mining operators reducing operations and postponing the opening of new mines until the Government railroad brought lower rates for fuel, supplies, etc. When the second semi-annual installment fell due in December 1914, Joslin again admitted that he was unable to make payment without borrowing money. (TVRR Annual Report 1914: 2-3)

Joslin hoped that the Government railroad would terminate at Chena, allowing the Tanana Valley Railroad to survive as a transporter of freight from Chena to Fairbanks. However, during the summer of 1915, Government survey crews located a line into Fairbanks which paralleled the Tanana railroad for a distance of fourteen miles. Joslin thus entered negotiations with the Government whereby the latter would purchase the entire Tanana Valley Railroad or purchase that portion which paralleled the Government railroad. The Tanana Valley Railroad Company would reserve trackage rights on that portion. (TVRR Annual Report 1915: letter) Apparently these negotiations were unsuccessful, for in 1916 Government forces began grading operations on a line paralleling the Tanana railroad. Joslin made a "strong protest" against the work until the Government first made some satisfactory compensation and a traffic connection with the Government railroad. As a result, the Government changed its course and began grading from Happy Station south to the new town of Nenana, which, incidentally, drew a considerable portion of the Fairbanks population and further reduced the revenues of the Tanana Valley Railroad. (TVRR Annual Report 1916: 1-2)

As early as 1912 the Government apparently considered the purchase of the Tanana Valley Railroad as a branch to a trans-Alaska railroad. Without purchasing the Tanana railroad, the Government would have been forced to arrange a joint right-of-way occupancy. On the other hand, if the railroad was purchased, the ten miles of road from Chena to Fairbanks could be converted into a standard-guage road by simply laying a third rail. Besides, adequate terminal facilities existed and it was recognized that the road would be a valuable feeder to the mainline. (US House 1919: 193-94)

Negotiations continued through the spring of 1917. Finally, on June 2, 1917, Secretary of the Interior Lane announced that the Government was authorized to purchase the property of Tanana Valley Railroad Company at a price not to exceed $300,000. Until the transaction was formalized, the Alaska Engineering Commission would lease and operate the road. Five months later the Tanana Valley Railroad was sold for $200,000 in foreclosure proceedings at Fairbanks to Benjamin Allen, president of the Columbia Trust Company and one of the vice-presidents of the Tanana Valley Railroad Company. With the title cleared, the railroad was then turned over to the Alaska Engineering Commission for $300,000, or about $6,818 per mile. (The Nenana News November 3, 1917: 2; US House 1919: 194) The Tanana Valley Railroad, estimated to have cost the private owners about $867,000, was now public property.

After the sale of the Tanana Valley Railroad, Falcon Joslin made plans for another Alaska railroad. In 1917 he leased several quartz mining claims on Ester Dome near Fairbanks and developed, with George C. Hazelet of Cordova, the property of the Chilkat Oil Company near Katalla. In 1918 Joslin organized the Bering River Coal Company and announced his intention to construct a sixty-five-mile railroad from a Bering River coal mine to the Copper River & Northwestern Railway, a Morgan-Guggenheim enterprise. In 1923, however, the United States Navy again tested the Bering River coal and found it unsatisfactory for steaming purposes. The Bering River coal company thus allowed its coal-land lease to expire. Joslin of course decided not to build the railroad. At any rate, Joslin remained active in Alaska politics as a director of the Alaska Steamship Company (another Morgan-Guggenheim enterprise) a leading member of the Seattle Chamber of Commerce, and head of the Chilkat Oil Company. (The Nenana News June 9, 1917: 2; October 13, 1917: 2; November 3, 1917: 2; The Nenana Daily News July 3, 1918: 1)

In closing, the story of the Tanana Valley Railroad is not unlike that of several other minor Alaska railroads. Insufficient capital, excessive debts, lack of a viable source of revenue, high maintenance costs, etc.—all contributed to the failure of Joslin's railroad. Behind all of these considerations, however, is the inescapable fact that the Tanana Valley, indeed most of Alaska, was economically depressed in the two decades after the Klondike Gold Rush. The depression was a leading factor in the failure of the Tanana Valley Railroad. A trans-Alaska railroad might have stimulated business in the Tanana Valley, hence the fortunes of the Tanana railroad. Although many trans-Alaska railroads were planned, none was ever constructed by private enterprise. In the end, it would take the failure of one of these private railroads, the Alaska Central, before the Government decided that the economic needs of Alaska would not be satisfied by private enterprise.

II

The Alaska Central Railway

Like many other railroad companies, the original Alaska Central Railway Company was an attempt to profit from the peculiar transportation situation which developed in Alaska following the Klondike gold rushes of 1897-98. Since the early 1900's most traffic to interior Alaska flowed over one of two routes: the White Pass and Yukon Railway route, or the Bering Sea-Yukon River route. Each, however, had its disadvantages. For a considerable part of the year ice fields blocked access to the Yukon River by way of the Bering Sea. Although providing year-round services, the White Pass and Yukon Railway traversed mainly Canadian territory, which of course meant payment of duties on the Alaska-Canada frontier. In addition, both routes did not open up areas of Alaska known to be rich in natural resources but inaccessible by water. What was needed, then, was a direct, short route linking the ice-free waters of the Gulf of Alaska with the Yukon River.

In response to this widespread agitation for an "all-American" route to interior Alaska, the War Department and Geological Survey cooperated in a number of fact-finding expeditions in the late 1890's to locate such a route. By 1900 the Government decided to improve a trail from Valdez to Eagle for use of military telegraph construction and maintenance crews as well as for the public. While the trail was a popular winter route among small bands of travelers in the early 1900's, it was hardly passable in summer and at no time was it an inexpensive means for heavy freight shipments to and from interior Alaska. As a result, the popular cry for an "all-American" route to interior Alaska persisted.

To speculators following events in Alaska closely, a marvelous opportunity presented itself in constructing a pioneer railway. Rumors circulated wildly of rich gold and copper deposits, and extensive coal and oil fields throughout Alaska. Government expeditions reported in glowing colors of Alaska's mineral, agricultural, and timber resources. The tens of thousands of people in the Klondike, and later Nome, promised a profitable passenger traffic. The activities of the Army and Post Office in interior Alaska almost guaranteed Government contracts for freight and mail deliveries. On the other hand, the Government presented few obstacles for railroads in Alaska, indeed urged railroad construction by only requiring an annual tax of $100 per mile of operating road, the lowest rate in the United States. Taking into account all of these attractions, it is no wonder that railroad speculators flocked to Alaska in the early 1900's. If there remained doubters, it was only necessary to point out the success of the White Pass and Yukon Railway, which paid for itself in less than a year.

These attractions did not escape the attention of young John E. Ballaine, the leading force behind the original Alaska Central Railway Company. Following his return to Washington state from the Philippines, "Major" Ballaine spent the years 1900 and 1901 examining routes for a railroad from the southern coast of Alaska to the Tanana Valley. Finally deciding upon the Resurrection Bay-Susitna Valley route, Ballaine interested a number of prominent men to form the Alaska Central Railway Company, incorporated under the laws of Washington in March 1902. George W. Dickinson, president of the new company, was formerly the general superintendent and general manager of the Northern Pacific Railway. Other directors included United States Senator George Turner, a former Federal judge who would represent the United States in the Alaska Boundary Tribunal in 1903; John H. McGraw, a later Governor of Washington who once spent two years at Rampart; E. E. Caine, president of the Alaska Pacific Steamship Company; James A. Haight, a Seattle attorney; F. Augustus Heinz, a Butte, Montana copper mining operator and president of the Mercantile National Bank; and Frank L. Ballaine. The secretary of the finance committee was John Ballaine, formerly a teacher, journalist, newspaper publisher, and secretary to Governor John R. Rogers of Washington. (Ballaine 1923: 1,7)

Although familiar with the agricultural, timber and mineral resources of the Cook Inlet-Susitna Valley region, the officers of the Alaska Central were not certain that the area could support a railroad during construction or, for that matter, whether a railroad route from Resurrection Bay to interior Alaska could be found, military and Geological Survey reports to the contrary. A survey expedition was thus organized from money raised through the sale of preferred stock in Minnesota. In the spring of 1902, eight survey crews of seventy-seven men under chief engineer C. M. Anderson began running preliminary lines in sections from Resurrection Bay northward. By early November, 1902, Anderson's men had surveyed a crude line from Resurrection Bay to Turnagain Arm, the line then following the northerly shore of Turnagain Arm to Knik Arm, thence northward to Broad Pass, terminating at Atwood (probably named after W. G. Atwood, who surveyed the line north from Broad Pass) at the confluence of the Tanana and Nenana Rivers. (Dickinson 1903: 4-5, 18) In addition, a crew under assistant engineer R. E. Field located 1,400 acres on Lowell Point, Resurrection Bay, for a townsite and terminal. (Dickinson 1903: 30-31)

Submitting their reports in late 1902, the Alaska Central engineers claimed that the construction of a standard-gauge railroad from Resurrection Bay to Atwood presented few of the difficulties encountered by the transcontinental railroads in mountain country. Only a few miles of light rock work was necessary to maintain the easy grade characteristic of the entire line. An abundant supply of timber ensured ties and bridging material at cheap cost and without the necessity of long hauls. Labor would not be any more expensive than at Seattle; and transportation rates from Seattle to Resurrection Bay were nominal. Since most of the line penetrated a region subject to pleasant winters and light snowfalls, at least not as great as in Minnesota and Wisconsin, construction of the road could proceed throughout the year, and at a cost not exceeding $35,000 per mile. (Dickinson 1903: 19-22)

The Alaska C[illegible]al board of directors issued a prospectus in January 1903, describing their intention to push a railroad "through the richest mineral, timber, agricultural and stock-grazing region in the central part of Alaska." (Dickinson 1903: 1) Five considerations were taken into account in choosing the Resurrection Bay-Atwood route: First, Resurrection Bay was an ice-free, deep-water port, bordered with land for a town with a population of 25,000 to 35,000. Second, Atwood, the interior terminal, was located a point central to the widest possible area of producing country. Third, the route offered easy grades, protected from heavy snowfalls and floods. Fourth, the tributary country was capable of supporting traffic from the beginning. And lastly, the route could be regarded as a trunk line with branches to be later constructed to the semi-anthracite coal beds in the Susitna Valley and particularly to the coal deposits near present-day Healy, described as "one of the most extensive blanket deposits of coal on the American continent" and suitable for steaming and coking purposes. (Dickinson 1903: 5-6, 10-12)

Finding it nearly impossible to sell the Alaska Central bonds, partly because of panic resulting from President Roosevelt's unexpected court attack against the Northern Securities Company, Ballaine organized the Tanana Construction Company with himself as president, general manager, and the largest stockholder. Ballaine then accepted a contract from the Alaska Central to construct the first twenty miles of road in Alaska. As payment, the Tanana company received $35,000 a mile in Alaska Central bonds and a majority of Alaska Central stock. Using the contract as security, Ballaine then borrowed about $325,000 from several financial houses in Chicago and Seattle. (US House, The Building of Railroads...1913: 96; Ballaine 1923: 1,8)

With his financial negotiations concluded, Ballaine proceeded to Resurrection Bay in late August 1903. His brother Frank had landed a month earlier to make surveys and file on the future townsite of Seward. Through the fall and winter the Ballaine brothers and chief engineer "Colonel" A. W. Swanitz directed about 200 workers in constructing a dock, sawmill, and various temporary structures. Bridge timbers were hauled to the various river and creek crossings. In early spring, 1904, the laying of steel began with the driving of the first spike on the dock on April 16, 1904. About four months later, workers had extended fifty-six-pound steel about eighteen miles north of Seward to Kenai Lake. Grading was completed about eight miles beyond the end of steel. (US Senate 1913: 26, 393; Ballaine 1923: 8)

When construction was underway at Seward, John Ballaine returned to Washington in hopes of finding additional financial aid. Apparently he was unsuccessful. When, however, the high-grade Chickaloon coal fields received wide publicity in a Seattle newspaper report by George Janne, a prospector, Ballaine was able to attract the interest of Frost & Osborne Company of Chicago and Toronto, a financial house which had already invested a substantial amount in the Alaska Central. Following favorable reports on the value of the Matanuska coal by William Griffith, reportedly "one of the best mine experts in the United States," and a survey of the railroad route by W. P. Poland, a construction engineer formerly with the Baltimore & Ohio Railroad, Frost and Osborne offered to purchase

Ballaine's stock in the Tanana Construction Company, which also meant ownership of the Alaska Central. Having few alternatives, Ballaine agreed. In December 1904, ownership in the construction company and the Alaska Central was transferred to A. C. Frost and H. C. Osborne. Ballaine, Turner and Haight retained a minority of stock in Alaska Central as well as their seats on the railroad board of directors. Ballaine, who was very much embittered by the whole transaction, continued to possess numerous properties at Seward. (Ballaine 1923: 8-9; US Senate 1913: 26-27; US House, The Building of Railroads...1913: 199)

The transfer of ownership in the Alaska Central marked the beginning of a two-year period in heavy construction. Backed by the Sovereign Bank of Canada for $3.5 million with a tentative promise of up to $18 million, Frost and Osborne Company accelerated construction in an effort to reach the Matanuska coal fields by the fall of 1906. For the season of 1905 it was expected that fifty to seventy-five miles of road would be constructed at a cost between $20,000 and $30,000 per mile. (US House Railroads in Alaska, 1906: 99)

Through the summer of 1905 various survey crews located lines for the road from the Placer River valley to present-day Potter (Mile 45 to Mile 101). Contractors erected sawmills along the right-of-way which produced ties and, in some cases, bridge material. Along the first twenty miles of steel, laborers eliminated curves and improved the roadbed. (US Senate 1913: 26, 393) At Seward, carpenters constructed numerous structures, including a large, two-story general office building. All the while, 1,000 or more men cleared the right-of-way, graded, and laid steel north of Kenai Lake. By early fall, 1905, steel was extended about forty-seven miles north of Seward, more than double the distance accomplished in 1904 and over a much more difficult terrain. (Atwood 1909: 199-200) According to Ballaine, however, that distance cost $55,000 per mile and for every mile, $35,000 "might just as well have been thrown to the sea....It was an expensive mistake." (US House, The Building of Railroads...1913: 153)

With winter approaching, men hastened to establish a large camp near Mile 52 in the upper Placer Valley, where high mountains sloped sharply into the valley. The problem confronting engineers was how to push the road through Placer Valley to the head of Turnagain Arm without exceeding a three percent grade and a twelve degree limit of curvature. Two routes appeared feasible. Originally surveyed by engineers employed by Ballaine, one route followed the westerly mountain sides to Turnagain Arm at Mile 63. Although this line could be had at a 1.2 percent grade, it required heavy rock work and numerous snowsheds. During the summer of 1905, however, chief engineer W. P. Poland and locating engineer G. A. Kyle ran seven preliminary lines into Placer Valley, finally locating an alternative route shorter in distance. The line required two 14° curves, one with a central angle of 233° and the other 213°; seven tunnels; and a number of high bridges. (Atwood 1907: 199) Although much criticized later, the "Loop District" between Mile 48 and Mile 52 was widely recognized as an important, if costly, engineering achievement.

Agreeing to complete the tunnels by April 1, 1906, contractors began bridge and tunnel work in October 1905. Two months later, the contractors abandoned the work, finding it too difficult and expensive

to attract and retain laborers from the Pacific Coast states. Alaska Central company men thus resumed work in the "Loop District." Tunnel work was forced into ten-hour days, sometimes day and night, each man receiving a weekly bonus if he exceeded his work of the previous week. Labor and supply shortages, however, prevented the completion of the tunnels until November 1906. Even then steel could not be laid through to the tunnels since the bridges had not yet been completed. (Brooks Jr. 1903: 264; "Methods..." 1909: 276-77, 281)

Anticipating that work in the "Loop District" would deplete his financial resources, A.C. Frost applied to Congress in February 1906 for Government assistance, that is, a guarantee of the interest on Alaska Central bonds. According to Frost, the Alaska Central had underestimated construction costs, spending more than $2,500,000 for forty-five miles of road. After that unexpected expense, the Alaska Central believed that investors would have been sufficiently assured of the enterprise and readily subscribed to Alaska Central bonds. Due to lack of interest and knowledge of Alaska's natural resources, however, investors would not subscribe to Alaska Central bonds except at a "ruinous discount." Therefore, construction of the railroad would probably be stopped or curtailed in late 1906. If, however, Congress guaranteed the interest on the bonds, capital might be attracted to the road. Once the road reached the Matanuska coal fields, Frost assured the Congressmen, the road would begin earning a profit. (US House, Railroads in Alaska, 1906: 99-104) Congress was unaffected, only passing legislation which relieved the Alaska Central of the license tax for a period of three years.

As Frost predicted, work on the Alaska Central railroad was virtually halted in the fall of 1906. Whether Frost was unable to raise capital after the Alaska coal-lands were withdrawn, or whether he decided to channel Alaska Central money into various mining properties or his Chicago & Milwaukee Electric Railway is unknown. In any case, through the winter of 1906 and into the summer of 1907, a reduced force of workers were employed to complete the four main bridges in the Placer River Valley, and to clear a right-of-way and grade the line along Turnagain Arm. By fall, sixty-five-pound steel was laid as far as Mile 52. Grading and pile bridges were completed and ready for track between Mile 53 and Mile 67. About seventy-five percent of the grading was completed between Mile 67 and Mile 75. Right-of-way was cleared and some grading finished (mostly beyond Mile 90) between Mile 75 and Mile 105, Knik Arm. (US Senate 1909: 1; Brooks Jr. 1903: 264)

In the last two weeks of October 1907, financial panic again swept across the United States. The Sovereign Bank of Canada, on the point of failing, appealed to a number of the largest banks in Canada and the United States for assistance in meeting its liabilities. Financers, including J. P. Morgan & Company, agreed to aid the failing bank and took over its assets as security. The Sovereign Bank then voluntarily liquidated, its bondholders appointing three trustees to wind up the affairs of the bank. Frost & Osborne Company, in debt to the Sovereign Bank to the sum of $4 million or more, was ruined. The bondholders of the Sovereign Bank of Canada now owned the Alaska Central Railway Company.

While the Sovereign Bank was undergoing a reorganization, John Ballaine and James Wickersham petitioned the Fairbanks court to appoint a receiver for the Alaska Central Railway. Without notice of a hearing and much to the surprise of the petitioners, Judge Silas Reid appointed his brother-in-law, O. G. Labarea of Seattle, as receiver in September 1908. Reid then adjourned his court for six months. As Duncan M. Stewart, the business manager of the Sovereign Bank until 1907, pointed out, this action effectively prevented the Sovereign Bank from removing the receiver and gaining rightful management of the Alaska Central. (Stewart 1911: 322) The receiver, under court orders, continued work on the Alaska Central with funds aggregating $275,000 raised on receiver's certificates. By the close of 1909, steel extended as far as Mile 71 near Kern Creek on Turnagain Arm. (US Senate 1913: 388) For the next seven years this was to be the most northern point reached by the Alaska Central.

In October, 1909, all assets of the Alaska Central Railway Company was purchased by F. G. Jemmett, a trustee of the Sovereign Bank, after a decree of foreclosure and sale was entered by the Alaska District Court, Third Division. (US House #1547 1913: 2) On Jemmett's recommendations, bondholders in the Sovereign Bank organized a syndicate in the Alaska Northern Railway Company. Incorporated under the laws of Washington in late October, 1909, with $30 million in capital, the Alaska Northern was entirely a Canadian venture, although the board of directors were residents of Seattle. All stock was owned and controlled by the three trustees of the Sovereign Bank: F. G. Jemmett, manager of the Sovereign Bank since 1907; W. E. Stewart, assistant manager of the Bank of Montreal; and W. J. Boland, a Toronto barrister. On April 15, 1910, Jemmett conveyed by deed all Alaska Central property, with the exception of a strip of land at Seward, to the Alaska Northern. (US House 1910: 115; US House #1547 1913: 2)

In gaining control of the Alaska Central, the Canadian owners hoped of course to recoup their losses in the financial panic of 1907. Under the circumstances, only two alternatives seemed open. One possibility was to sell the railroad for the amount actually invested. On the other hand, if steel was extended to the coal fields, the Navy, which had made a reservation in Resurrection Bay in 1907, might be inclined to establish a coaling station at Seward. The Government might then be pressed to make a decision on the Alaska coal problem. Whatever decision the Government made—to mine the coal itself, or open the coal fields to private operators—the Alaska Northern was sure to profit, since it was the only railroad in the area with an ice-free port. This was the reasoning that the Canadian owners eventually adopted, but not after considering an offer to sell the railroad outright.

During the Congressional hearings of 1913 on bills authorizing Government construction of railroads, John Ballaine revealed startling negotiations between himself and J. P. Morgan & Company in 1909 and 1910. When the Sovereign Bank failed, Ballaine approached George W. Perkins of the J. P. Morgan & Company through Richard A. Ballinger, who was soon to be appointed Secretary of the Interior. Ballaine wanted the financial assistance of the Morgan interests in taking over the Alaska Northern road. According to his plan, Morgan & Company would assume all of Ballaine's property in

Alaska and all of stocks and bonds in the proj until the road was completed to the Tanana River. At that time, the bonds would probably be marketable and Ballaine could repay the debt. A railroad constructed at $30,000 a mile was of course an attractive proposition. Perkins reportedly agreed to enter negotiations with the owners of the Alaska Central bonds and to send an expert to investigate the Seward-Fairbanks route.

Whether Perkins actually entered negotiations with the Canadian owners of the Alaska Central was unknown to Ballaine; but Perkins did travel to Seward, meeting Ballaine there in July 1909. A. N. Grey, a traffic and tonnage expert with J. P. Morgan & Company, had already started an inspection of the Alaska Central road. Upon receiving Grey's report, Perkins reportedly told Ballaine that the resources along the railroad were better and more varied than expected. Perkins said that he would favor financing the railroad project on Ballaine's terms in the event that the Guggenheim Brothers refused to back the road and if he could make a satisfactory settlement with the owners of the Alaska Central. The consent of the Guggenheim Brothers was necessary, for in forming the Alaska Syndicate in the spring of 1906, J. P. Morgan & Company had agreed with the Guggenheim Brothers not to engage in additional Alaska railroad or mining enterprises without first conferring with the Guggenheim Brothers. Neverthelass, Perkins apparently believed that the transaction would be effected inasmuch as J. P. Morgan & Company held a substantial interest in the Sovereign Bank. By investing in the Alaska Central, J. P. Morgan & Company might be able to recoup its losses in the Sovereign Bank.

In late November 1909, Ballaine met Perkins by appointment in New York, expecting then to close negotiations. However, Perkins informed him that the trustees of the Sovereign Bank were having problems in persuading their bondholders to accept the Ballaine proposal. Although Perkins did not expand on the nature of those problems, he made it clear in a later conference with Ballaine. According to Perkins, the Guggenheim Brothers refused to consent to the plan for "they regarded the Tanana Valley as their field." Furthermore, Morgan interests were not anxious "to encourage any railroad building in Alaska until the Government issued patents to coal claims then pending" in Alaska. When Ballaine questioned Perkins as to whether the Alaska Syndicate would oppose anyone trying to finance a railroad from Seward to Fairbanks, Perkins reportedly answered, "We could not allow a railroad to be built through the Susitna Valley into the Tanana. There will be no more railroad building in Alaska until the coal fields are opened." (US Senate 1913: 37)

Ballaine's account of these negotiations before several Congressional committees in 1913 was a sensational argument for Government-constructed railroads in order to free Alaska from the unfair practices of the Morgan-Guggenheim syndicate. For it was his contention, and Alaska Delegate James Wickersham's conviction, that the Sovereign Bank of Canada, hence the Alaska Northern, was controlled by Morgan-Guggenheim interests. The Alaska Syndicate did not want a rival railroad in Alaska, especially one that would tap the important Matanuska coal fields. Whether in fact the Morgan financiers had any influence over the affairs of the Sovereign Bank and the Alaska Northern is an open question.

Wickersham's evidence was very weak. Representatives of the Sovereign Bank and Alaska Northern emphatically denied that Morgan interests ever controlled or opposed the Alaska Northern; they admitted, however, that J. P. Morgan & Company was a bondholder.

Nevertheless, the Alaska Northern made no immediate effort to continue construction of the road. This did not mean, however, that they were willing to lose their right-of-way. According to the Act of 1898, Alaska railroad companies were to construct a minimum of twenty miles a year which carried a year's extension of rights. Due to financial and construction problems, the Alaska Central Railway Company applied to Congress in 1906 and 1909 for three-year extensions of rights. In both cases, Congress approved the requests without objection. When, however, the Alaska Northern applied for another extension, it met opposition from the Department of the Interior.

After a brief tour of Alaska in the fall of 1911, Secretary of the Interior Walter L. Fisher urged Government construction of a trans-Alaska railroad, and suggested that the Alaska Northern Railway would serve that purpose. In November 1911, F. G. Jemmatt of the Sovereign Bank conferred with Fisher on Alaska transportation problems, and stated that the bondholders would sell the Alaska Northern if a coal-land leasing law was applied in Alaska. Fisher responded favorably to Jemmett's reluctant offer, and proposed that a commission be formed to ascertain the value of the road. Fisher would appoint one member; Jemmett would select another; and the appointees would then select the third member of the commission. Jemmatt agreed.

By February 1912, however, it was apparent that Secretary Fisher could not get his railroad plan adopted. So Jemmett began pressuring the Navy on two fronts: either endorse Government purchase of the Alaska Northern or open a portion of the Matanuska coal fields for the use of the Navy which would provide an incentive for the Alaska Northern to continue construction. Secretary of the Navy George von L. Meyer refused to take a position, believing that it was Fisher's intention to allow the Alaska Northern to build the railroad on its own initiative. If the Alaska Northern demonstrated unwillingness or inability to complete the road, the Government should then take over the property and complete the railroad. (US Senate 1913: 291)

Unable to obtain the Navy's endorsement, Jemmett again conferred with Fisher to persuade him to support a Navy reservation in the Matanuska coal fields. Fisher refused on the grounds that it would increase the value of the Alaska Northern railroad. Jemmatt assured Fisher that, if the Navy reservation was established, the Alaska Northern would construct the road to Matanuska fields and then sell the extension to the Government at actual cost. The existing road from Seward to Kern Creek would, of course, be sold to the Government at a fixed price before the extension. Fisher apparently approved of this idea, requiring a formal letter from the Alaska Northern to the effect that it would not in any event introduce evidence that the Alaska Northern should receive more than the cost and interest in constructing the extension. Jemmet believed that this was an unfair stipulation, but agreed.

Later, however, Fisher reversed himself, claiming that the United States had no power to enter such an agreement with the Alaska Northern.

Although the bo[illegible]f directors of the Alaska N[illegible]rn attempted to assure Fisher by a formal resolution, Fisher did not change his mind. Fearing that Fisher might make public the resolution of the board of directors, the Alaska Northern notified Fisher that negotiations were at an end. (US Senate 1913: 379-80)

In early 1912 the Alaska Northern succeeded in introducing a bill in Congress which extended the time for filing maps of definite location for five years, and an additional year to complete the road after filing the maps. In support of the request, the Alaska Northern demonstrated that their road would bring the Matanuska coal fields, where there was "an unlimited supply of the finest coal in the world," to Resurrection Bay, one of the best harbors on the Pacific coast. Clearly, it was of benefit to the United States to extend the rights of the Alaska Northern since there was no satisfactory coal for the use of the Navy in the Pacific. The Senators agreed; and the bill passed unanimously. (US Senate #2534 1911: 3-5)

When the Alaska Northern bill was reported in the House, Secretary Fisher intervened and requested a hearing. Fisher questioned the Alaska Northern's claim that it would build a road to the Tanana Valley. In view of the fact that in March 1911 a Federal Grand Jury in Chicago had indicted Frost and associates in connection with Alaska coal-land frauds, Fisher believed that the Alaska Northern would build no further than the Matanuska coal fields. If Congress chose to consider the Alaska Northern bill, Fisher insisted upon inserting certain provisions in the bill which, according to G. H. Patrick, an attorney for the Alaska Northern, "practically compelled us in order to get our extension to concede that the Government might buy a portion of our road and not take the other." At any rate, the Alaska Northern bill was passed, reaching the President late in the session. On Fisher's recommendations, President Taft did not sign the bill into law. (US Senate, Committee on Public Lands 1912: 23-24; US Senate 1913: 252-53)

Having failed to reach an agreement with the Government, the Alaska Northern had only one remaining alternative if it intended to retain rights to the road: construct the road on its own initiative. Since the bondholders in the Sovereign Bank refused to invest, the Alaska Northern solicited financial aid from O. L. Dickinson, president and general manager of the Pacific & Arctic Railway & Navigation Company (otherwise known as the White Pass & Yukon Railway) and in charge of the American branch of the Close Brothers, a London financial house. (US Senate 1913: 147) The alliance between the White Pass railroad and the Alaska Northern was not unnatural. If the Government constructed a trans-Alaska railroad, both private railroads would suffer. Unlike the Copper River & Northwestern Railway, which could probably survive Government competition since it relied on the Kennecott copper mines for revenue, the White Pass railway was significantly dependent upon Yukon River traffic. In view of this fact, Jennett interested Dickinson and both presented plans to the Close Brothers, plans that included the financing of the Alaska Northern to the Matanuska coal fields. When, however, President Taft appointed the Railway Commission, these negotiations were immediately suspended, pending the outcome of the investigation of the Railway Commission. (US Senate 1913: 147, 160)

As the Alaska Northern no doubt anticipated, the Taft Commission of 1912 recommended a Government railroad from Kern Creek to the Matanuska coal fields and thence into the Kuskokwim Valley. As the Commission believed the question of Government purchase of the Alaska Northern beyond its purview, the Alaska Northern still had a chance to retain its Alaska property. Thus, in the hearings before the Senate in 1913, representatives of the Alaska Northern attempted to demonstrate that there was no reason for the Government to construct railroads in Alaska, that the Government itself was to be blamed for the situation of the Alaska Northern. According to George W. Patrick, an attorney for the company, "there had not been a corporation anywhere in the United States, anywhere in the known world, that has received the antagonism of a Government like this road, the Alaska Northern." (US Senate 1913: 229) Alaska Northern representatives argued that construction would proceed if certain obstacles were removed. That is: eliminate the Chugach National Forest; suspend the annual license tax of $100 for every operated mile; free the railroad from any further taxation from the Territory of Alaska once a reasonable rate was fixed; and allow the Alaska Northern the right to go before the Interstate Commerce Commission and fix a reasonable tariff for a number of years. (US Senate 1913: 375). In particular, give the Alaska Northern a Navy contract to transport 300,000 to 400,000 tons of coal per year from the Matanuska fields to Seward. Under these conditions, particularly the Navy contract, the Alaska Northern would undoubtedly construct the railroad to the Matanuska coal fields, possibly with the aid of London financiers. When asked, however, if the Alaska Northern would continue the road into the Kuskokwim Valley or to Fairbanks, the representatives could not offer guarantees that such extensions would be made in the immediate future. (US Senate 1913: 259, 301, 360-61)

In the end, the arguments of the Alaska Northern failed to stem the tide of Government construction of a Seward-Fairbanks railroad. On the recommendation of the Alaska Engineering Commission, which had negotiated with the Alaska Northern for a reasonable price for its Alaska property rather than enter into condemnation proceedings, President Wilson ordered, on April 19, 1915, the Secretary of the Interior to purchase the Alaska Northern. The Interstate Commerce Commission evaluated the property, and concluded that the price quoted by the private owners was not in excess of its value. Thus on August 25, 1915, when litigation over the title ceased, the Government paid an initial installment of $500,000 for the Alaska Northern. The final sum of $650,000 was paid on June 30, 1916, the Government coming into full possession of the Alaska Northern at that time. An enterprise which was estimated to have cost the private owners more than $5 million thus became public property. (Alaska Railroad Record May 7, 1918: 203)

Alaska Coal and Trans-Alaska Railroads

The history of Alaska railroads in the decade following the Klondike Gold Rush is a story of failures. From the late 1890's to about 1908 fifty or more corporations were formed to undertake railroad construction projects in Alaska. Some existed only on paper; but most companies did in fact send crews to Alaska at considerable expense to survey preliminary lines and investigate the natural resources along proposed routes. Many companies even began construction, but abandoned the work after a few years. Following the failure of the Alaska Central Railway in 1908, all but one or two railroads stopped construction. By 1910, only three of the eight or nine railroads in Alaska—the Tanana Valley Railroad, the Copper River & Northwestern Railway, and the White Pass & Yukon Railway—were operating on a year-round basis. Excepting the White Pass road, which was mostly in Canadian territory, none of the Alaska railroads linked the navigable waters of interior Alaska with an ice-free port.

Why did so many railroads fail? Unsound policies, poor management, waste of funds, costly engineering mistakes in choice of routes, disputes over rights-of-way, financial panics, and high construction and maintenance costs were constributing factors. One of the most popular explanations which emerged in the mid-1900's was that most railroad companies lacked sufficient financial resources. At least three reasons were cited for this situation. First, many financiers harbored the belief that Alaska was a land mostly of snow and ice, and too distant for capital investments. If capitalists decided to risk an Alaska railroad, they purchased the bonds at a high discount, which imposed an excessive initial indebtedness on the enterprise. Second, financiers such as J. P. Morgan & Company, the Guggenheim Brothers, and the Close Brothers (popularly known as the Alaska Syndicate) had monopolized Alaska navigation companies. In order to sustain that monopoly, the Alaska Syndicate set high transportation rates, making it prohibitively expensive to ship laborers, materials, and equipment to Alaska for railroad construction purposes. In the meantime, the Alaska Syndicate had monopolized the chief railroad routes to interior Alaska. And finally, the conservation policy which the American Government pursued in Alaska, particularly the withdrawal of the coal-lands in 1906 and 1909, undercut most sources of revenue for railroads in Alaska.

There were many other explanations for the failure of private railroads in Alaska. By the mid-1900's, however, it was apparent to many capitalists that Alaska was not developing as expected during the Klondike gold rushes. Indeed, Alaska appeared to be in a period of economic stagnation, which many believed to be the result of high costs of transportation and of course lack of trans-Alaska railroads. Both the Roosevelt

and Taft administrations recommended Government assistance for trunk line railroads. Various bills were introduced in Congress providing for large lands grants, subsidies, relief from taxation, Government credit, and so on. Other than measures which released specific railroads from payment of the license tax for a number of years, Congress refused general Government assistance to Alaska railroads. This policy was due in part to opposition by several Alaska railroad companies, which presented arguments to the effect that a trans-Alaska railroad could be constructed without any Government assistance at all. With, however, the Ballinger-Pinchot controversy and the so-called "Cordova Coal Party" in 1911, the problem of the Alaska economy was thrown into the national spotlight as a conflict between the Government and capitalism over the question of conservation. Without coal, it was argued, a trans-Alaska railroad would not be constructed. The issues of coal and railroads thus entangled in the general conservation controversy of the late 1900's, it became increasingly clear that Alaska needed legislation which would stimulate economic development. Thus, early in the fall of 1911, Secretary of the Interior Walter L. Fisher was sent to Alaska to investigate the problems of Alaska coal and railroads, and to determine a solution.

Accompanied by Dr. A. H. Brooks, director of the Alaska division of the Geological Survey, Dr. J. A. Holmes, director of the Bureau of Mines, several prominent mining and railroad engineers, and a flock of newspapermen, Secretary Fisher arrived in Alaska in August 1911. His tour was brief and limited to southern Alaska, but in that short time he inspected the terminal facilities of the White Pass, Copper River and Alaska Central railroads, interviewed many local residents and studied the literature about Alaska. Dr. Holmes and several of the mining and railroad engineers made personal field investigations of the Bering River and Matanuska coal fields and assessed the feasibility of building railroads to the fields. After his return to Washington, Fisher prepared a memorandum based upon his own observations in Alaska and the reports of Dr. Holmes and others. Presented before the Fourteenth Annual Session of the American Mining Congress in Chicago and later published as a bulletin of the Bureau of Mines entitled Alaskan Coal Problems, this important document included "definite suggestions for a policy under which the Territory may be immediately opened for wise and vigorous development." (Fisher 1912: 32)

In Fisher's view, the economic stagnation of Alaska was largely due to inadequate transportation facilities and coal-land laws. He viewed Alaska as a "country of great mineral and agricultural possibilities; indeed, I should go further and say a country of great mineral and agricultural probabilities, needing development, ready for development, and inviting development, but held back chiefly by inadequate transportation facilities and inadequate laws." However, Alaska railroads were merely "incidents to the exploitation of its (Alaska's) mineral resources." Contrary to the belief of many Alaskans and those with financial interests in Alaska that the development of trans-Alaska railroads was curtailed by the coal-land withdrawals in 1906 and 1909, Fisher retorted that "the coal withdrawals have exerted only an incidental influence upon the development of railroads in Alaska." The coal-land laws as extended to

Alaska in 1900, and amended in 1904, adequately provided against the possibility of coal monopolies. If these laws had been enforced, the effect would have been the same as the withdrawals. In Fisher's mind, then, "the critics of the withdrawals are usually either those who do not realize the prohibitory effect of the coal laws in Alaska or those who have assumed that these laws could be violated with impunity." Reflecting on the damage resulting from "joint or common ownership of coal fields and railroads" in older portions of the United States, Fisher urged that that same mistake should not be repeated in Alaska or elsewhere. However, "this does not mean that Alaska coal should not be developed and developed at once. It means merely that the coal should be developed properly as well as promptly." (Fisher 1912: 9-10) In other words, Alaska should have a liberal coal-land leasing law and a Government-constructed trans-Alaska railroad.

To counter fears that Alaska coal would flood the markets if the coal lands were opened, Fisher stressed the point that Alaska coal would only benefit the industrial development of Alaska. The Matanuska and Bering River coals were valuable, but the extent and character of the coal was too exaggerated. True, there was no anthracite and little high-grade bituminous coal on the Pacific coast except in Alaska. There was little if any high-grade coking coal on the Pacific coast. Nevertheless, considering freight and handling charges necessary to ship coal from Alaska to West American ports, British Columbia and Pacific coal would continue to hold the market on coal for steaming purposes. California oil would remain a serious competitor, although at that time oil was only used experimentally in smelting and steel-making. Except for coking purposes, then, Alaska coal would contend with strong competition. Admitting that even in Alaska there was little market for coal, Fisher predicted that demands for coal would "rapidly increase as the country (was) developed" by a trans-Alaska railroad. If Alaska coal-lands were opened, one or more smelters for copper would probably be established in Prince William Sound. (Fisher 1912: 10-12)

The key to the economic development of Alaska was a trans-Alaska railroad which would tap the coal fields, particularly the Matanuska field. Although Bering River coal had a high thermal value, much of it was crushed and it was unknown how much lump coal existed. Crushed coal could be used for smelting purposes; but it required greater expense in mining. The coal could not support the roof of a mine and, therefore, considerable timbering was necessary which meant high labor costs. The Government need not construct a railroad to the Bering River coal field. Simply enact a coal-land leasing law and Morgan-Guggenheim interests or competitors would build the railroad. (Fisher 1912: 12-13, 17)

The Matanuska coal field was a more attractive proposition from the Government's point of view. The field was extensive and contained coal of the same quality or "slightly superior" as the Bering River field. The coal was in better physical condition and posed fewer obstacles for mining. The field was less broken, faults and pinches were less evident, and the rising process appeared to be less prevalent. Although mining costs may be higher, since igneous rock intruded at places, it was probable that the Matanuska field had more coal of coking quality than the Bering River field. Moreover, fewer claims had been entered in

the Matanuska field, and most of these claims were probably illegal because of dummy entries and other violations of the law. That the field was farther from tidewater than the Bering River field was actually an advantage: "This very distance connects it more intimately with the real problem of Alaskan development--that of adequate transportation from tidewater to the Yukon." (Fisher 1912: 18)

More than anything else, Fisher continued, Alaska needed a trunk line railroad from Seward to Fairbanks in order to develop Alaska's mineral and agricultural resources. Resurrection Bay was the best harbor in Alaska and comparable to that in Seattle. The Susitna Valley contained some of the best farmland in Alaska. Moreover, since the Navy had plans for a coaling station in Resurrection Bay, the Government should take the opportunity to open a mine in the Matanuska coal field, "where it can be made to serve as an example for private mining, where it can furnish information and serve as a check upon excessive profits by lessees under Government leases." Since it was apparent that officers of the Alaska Northern Railway Company were not eager to continue construction, and evidently preferred to sell the road to the Government for the face of outstanding bonds, about $4.6 million, Fisher recommended that the Government purchase the Alaska Northern for the real value of the road. Fisher argued that:

> The adoption of a leasing policy will take away from the promoters of such a road the lure of great gain from the exploitation of the coal fields. This exploitation clearly should be prevented in the public interest. But at the same time the Government must recognize that if it withdraws from private capital this incentive for railroad construction the Government itself must assume the obligation of making that kind of development upon which it insists for the general good. It has been urged that the Government should meet this objection by guaranteeing the payment of bonds or the interest on bonds equal to the cost of the construction of the road. I can see no advantage whatever in this policy. If the Government is to guarantee the cost of construction, I see no reason why the Government should not own the road outright, whether it operates it or leases to an operating company. (Fisher 1912: 18)

Anticipating charges that a Government constructed and owned railroad was nothing less than socialism, Fisher cited various Supreme Court decisions supporting his thesis that the Government was not invading "the legitimate domain of free enterprise," but simply resuming "one of its own proper functions." The Government railroad at Panama was a clear precedent. In any case, a private railroad in the Bering River field and a public road in the Matanuska field would demonstrate by comparison the problems in private versus public ownership of transportation. (Fisher 1912: 20-22)

Not long after Fisher proposed his solutions to the Alaska coal and transportation questions, he left for Panama in order to investigate the

possibility of t equipment of the Panama Ra.. .d in Alaska. On February 2, 1912, President Taft sent a special message to Congress urging that Fisher's recommendations be effected as soon as possible. However, two years were to lapse before Congress succeeded in providing for a Government railroad. In the interval, Congress debated whether in fact a Government railroad and coal-land leasing law was needed in Alaska and where in Alaska the need for railroads was most pressing. In the end, a Democratic administration would implement Fisher's proposals in their entirety.

The Fisher proposals for a coal-leasing law and a Government constructed and owned railroad in Alaska far exceeded the expectations of Congress. Most Congressmen apparently recognized the need to resolve the politically embarrassing problems of Alaska transportation and coal, but were not prepared to abandon the free-enterprise method. Many expected the Government simply to extend its credit or guarantee the interest on bonds to Alaska railroads as was done in the Philippines. While it was true that the Panama railroad was a precedent, it was also true that the railroad was a source of political scandals and, unlike the Alaska railroad, was of international importance. Besides, it was not clear that existing railroads would not be extended to the Yukon River. Private owners claimed that a trans-Alaska line would be constructed if only the Government coal lands were opened or if the Government assisted in some fashion. Moreover, there was no justification for Fisher's claim that the Resurrection Bay-Susitna Valley route was the best possible. In view of these and many other objections to the Fisher plan, President Taft apparently relaxed efforts to aid legislation for Government railroads. Instead, he urged Congress to appoint a commission to investigate the problem of Alaska transportation.

For some Alaskans, namely John Ballaine, this call for a commission was due to the influence of the Guggenheim Brothers, who desired the Government to purchase the Copper River railroad. Considering the debates in Congress, however, it is more probable that Taft decided to compromise the Government's position on the question of Alaska home-rule in order to obtain action on the Fisher plan for Alaska railroads and coal-lands. Few Congressmen knew much about Alaska. A commission would analyze the situation and present their findings to Congress in a readable, objective and balanced report. Since a commission's report did not necessarily mean that a decision would have to be made, Congress allowed a few lines in the Alaska home-rule bill providing for Presidential appointment of a commission to examine Alaska's transportation routes.

A week after the Second Organic Act of August 24, 1912 was signed into law, President Taft announced the appointment of four highly-qualified individuals to the Alaska Railway Commission. Appointed chairman of the commission, Major Jay J. Morrow of the Corps of Engineers, USA, was an expert in fortifications and experienced in river and harbor improvements. Vice-chairman Dr. A. H. Brooks was director of the Division of Alaskan Mineral Resources, Geological Survey, and widely known as a leading authority on Alaska natural resources. Lieutenant-Commander Leonard M. Cox, USN, was experienced in the construction of mining railroads and served in the Bureau of Yards and Docks of the

Navy. Colin M. Ingersoll of New York was a noted railroad and railroad bridge engineer and board chairman of a harbor commission. (Mitchell 1913: 580)

Since President Taft wanted the commission's report in hand before Congress met for its next session, the commissioners ignored the late season and departed for Alaska shortly after their appointments. The purpose of the commission, as Cox explained, was "to report on the best routes from the sea coast to the coal fields and to the navigable river systems of the interior which would best develop the country and its resources. The primary object of the project was...the development of Alaska, not the development of gold mines, for gold mines do not make for permanent prosperity, nor the development of any other particular industry, but the encouragement of settlers and the making of a permanent population. (US Senate 1913: 46)

Leaving Seattle on September 7, 1912, on revenue cutter McCulloch, the Commission intended to begin their inspection at Katalla and Controller Bay. Due to rough seas, however, plans were altered to begin work at Seward. The commissioners traveled over the Alaska Northern on a small gasoline car to Kern Creek, thence by gasoline launch down Turnagain Arm to Knik. After a three-day trip by horse to the Willow Creek mining district, they sailed to Iliamna Bay and Iniskin Bay, both of which were proposed as possible terminals for trans-Alaska railroads. From Cook Inlet the Commission went to Katalla and inspected the abandoned work and shops of the Copper River & Northwestern and the Alaska Pacific Railway & Terminal Company. Another attempt was made to reach Controller Bay by launch but, again, weather conditions prevented their reaching the bay.

Arriving at Valdez on September 26, the Taft Commission spent two days reviewing the records of the Alaska Road Commission, and interviewing local residents. On September 28, they began the 400-mile journey by buckboard and automobile to Fairbanks, arriving there on October 12. The commission spent three days in the Fairbanks district, examining the Tanana Valley Railroad, the Government experimental farm, and various gold mines on Gold Creek and Cleary Creek. From Fairbanks, they traveled to Chitina, and inspected the entire length of the Copper River & Northwestern Railway.

On November 4 the Commission left Cordova for Fort William H. Seward on steamer Alameda. Upon arrival they inspected Haines and Pyramid Harbor, and studied the terminal plans of the Alaska Midland Railroad Company. After a brief excursion to Skagway, the Commission went to Prince Rupert and studied the terminal plans and development of the Grand Trunk Pacific Railway. A "most impressive" trip was made on the railroad to and from Nichols. From Seattle the Commission went to Ottawa and interviewed the Canadian minister for railways and canals. On December 2, 1912, the Commission finally convened at Washington, D.C., to prepare their report to the President. (US Alaska Railway Commission 1913: 18-21)

Less than two months were necessary for the Taft Commission to prepare this report. Entitled Railway Routes in Alaska, the Commission's report included a mass of statistics relative to Alaska economic growth; an account of the tour of Alaska; a discussion of Alaska's agricultural

and mineral potentialities; a description of about fifteen railroad routes with detailed physical descriptions of the Alaska Northern, Copper River, and Tanana Valley railroads; analysis of the kinds of traffic which these railroads would probably handle; estimations of construction costs of the various railroads and terminal facilities; discussions of the various harbors, and so on. In the final analysis, the Commission recommended the construction of two independent railway systems in Alaska, aggregating 733 miles at a cost of $35 million. Both railroads linked important navigable river systems in interior Alaska with ice-free ports; both ensured the development of the Eastern and Western Districts of Alaska; and both would probably be connected some time in the future. One railroad should extend from Kern Creek to Knik Arm, thence to McGrath, the head of navigation of the Kuskokwim River. This line would tap the Matanuska coal field, and the farm lands of the Susitna and Kuskokwim valleys. Another railroad should be constructed from Chitina to Fairbanks with a branch to the Bering River coal field. In the Commission's view, the Copper River route was best for a trunk line railroad. Cordova had "distinct advantanges" as a harbor. The route had easy grades and thus would give the lowest freight rates into the Tanana Valley. The route was already an established commercial route with farms, roadhouses, telegraph services, and the like already established along the wagon road. Finally, the route offered the shortest amount of construction. The Copper River & Northwestern Railway penetrated interior Alaska for a distance of 132 miles before turning easterly at Chitina to Kennicott. Considering the question of public versus private railroads in Alaska beyond their review, the Commission made no recommendations on the subject.

In early February 1913 President Taft submitted the Commission's report to Congress with a message expressing agreement with the recommendations of the Commission and urging early legislation to effect the proposals. As to who should construct and own the Alaska railroads, Taft simply reiterated the Fisher plan of 1911: "If the Government is to guarantee the principal and interest of the construction bonds, it seems clear that it should own the roads, the cost of which it really pays. This is true whether the Government itself should operate the roads or should provide for their operation by lease or operating agreement. I am very much opposed to Government operation, but I believe that Government ownership with private operations under lease is the proper solution of the difficulties here presented." (US Alaska Railway Commission 1913: 11) Government ownership was a radical decision on Taft's part. Government operation, however, was even more radical, as it implied a conscious intent to compete with and eventually control private railroads in Alaska. Moreover, the Government might have to construct branches, if not trunk line roads, throughout Alaska for all time to come.

Bills introduced during the summer of 1913 providing for Government construction of Alaska railroads found a relatively warm welcome in both houses of Congress. Now, with President Wilson in power, the Democrats and Progressives pushed legislation through Congress without much compromise. However, such questions as public ownership and operation of the railroads, as well as where the railroads should be located were carefully avoided in the bills. On January 24, 1914 the Senate passed an

Alaska railway bill with the vote 46 to 16; a majority of Democrats voting in favor of the bill, but the Republicans almost nearly divided. Less than a month later, the House overwhelmingly passed a similar bill. Differences between the Senate and House bills were ironed out and then sent to the President. On March 12, 1914 President Wilson signed the measure into law.

The Alaska Railway Act of 1914 was in many respects similar to the Panama and Philippines railway bills. The President was given broad powers to select any railroad route in Alaska. Not more than 1,000 miles of road were to be constructed, and at a cost not exceeding $35 million. The railroad(s) were to be so located as "to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska."

The President was authorized to purchase or condemn "all real and personal property necessary to carry out the purposes" of the act. In the case of private railroads, the price must not exceed the actual physical value of the railroad. The President was to utilize any machinery, equipment, materials, etc. available in Panama for construction of Alaska railroads. The Isthmian Canal Commission was to deliver such property to the President's designees without charging against the $35 million fund provided by the act. The President was empowered to construct, maintain, and operate telephone and telegraph lines in connection with the railroad(s), and to withdraw, locate, and dispose of areas of the public domain along the road(s) for townsite purposes. The regulations of the Interstate Commerce Commission would apply to the Government railroad(s).

As far as Government ownership of Alaska railroads was concerned, the Act directed the President "in his discretion to lease the railroad(s) or portions thereof, including telegraph and telephone lines, after the road was completed." The only stipulation was that such "no lease shall be for a longer period than twenty years." If the railroad could not be leased, the President was "to operate the same until the further action of Congress."

With the passage of the Alaska Railway Act of 1914 President Wilson faced the task of selecting the railroad routes. Before Congressional hearings and in debates on the floor, the recommendations of the Alaska Railway Commission had come under heavy attack. There were charges that the Commission had overestimated the construction costs of the trunk line railroads; that it had ignored certain harbors such as Passage Canal, Knik Harbor, Orca Bay, and Controller Bay, as possible railroad terminals; that it had misplaced its priorities in recommending a trunk line railroad over an established commercial route rather through some of the finest agricultural lands in the Matanuska and Susitna Valley; and of course that certain members of the Commission, namely Morrow and Cox, were pandering to the Alaska Syndicate, which, according to rumors, wanted to sell the Copper River railroad to the Government. On the other hand, advocates of the Copper River route, such as Alaska Delegate James Wickersham, argued that a Government railroad would at last relieve the strangling hold which Morgan-Guggenheim interests had

on the Copper River region. Another strong advocate of the Copper River route was Falcon Joslin of Fairbanks who wrote an excellent summary of the advantages of the route: Cordova was a day closer to the lower United States than Seward and thus transportation rates were lower; the Cordova-Fairbanks route was shorter in distance by eighteen miles; the Bering River coal could be hauled to tidewater at less than half of the cost required to bring the Matanuska coal to seaboard; the Copper River route would be commercially profitable at once while it would be many years before the Seward-Fairbanks route would pay for a railroad; the Copper river route would tap the rich Chitina copper region and enable private operators to establish copper smelters; the Chitina-Fairbanks road would be less expensive to construct, maintain and operate; Cordova harbor was vastly superior to Seward; and Orca Bay was much better for a military and naval base. (Joslin 1915?: 1-13) There were many other arguments over the relative value of the various railroad routes. To many observers, however, it was clear that a more detailed, less rushed field investigation of Alaska railway routes was necessary.

On May 2, 1914, President Wilson directed Interior Secretary Franklin K. Lane to proceed with the surveying of railway routes in Alaska. A commission designated the Alaskan Engineering Commission (hereinafter referred to as AEC) was created by Presidential appointment. Three persons were selected. W. C. Edes had long experience in locating and constructing railroads for the Santa Fe, Southern Pacific, and other railroad companies. Thomas Riggs, Jr., a future Governor of Alaska, had years of experience in Alaska as a surveyor on the International Boundary Commission. Lieutenant Frederick Mears of the Corps of Engineers, USA, was formerly an engineer on the Great Northern railroad and a construction engineer on the Panama Railroad. Once the AEC was formally organized, Secretary Lane ordered the commissioners to Alaska at the earliest date.

Like its predecessor, the AEC divided Alaska into two districts, East and West, and isolated the routes in those regions which would link the Gulf of Alaska with the navigable river systems in interior Alaska. Within the Eastern District, a railroad could begin either at Cordova or Valdez, thence lead north via the Copper, Tonsina, Delta and Tanana rivers to the vicinity of Fairbanks. In the Western District, a railroad could begin either at Portage Bay or Seward, follow the north shore of Turnagain Arm and Knik Arm, thence north through the Susitna Valley, over Broad Pass, down Nenana River to its junction with the Tanana River. Considering the large amount of information already available on railway routes in the Eastern District, as well as the short time available to the AEC, it was decided to concentrate investigations in the Western District. The AEC was to make a "careful preliminary survey and estimate of the western route, with a branch therefrom to the Matanuska coal fields; to survey from Chitina to the Matanuska coal fields, there being little information on this route and to (make?) a reconnoissance (sic) from the western route into the Kuskokwim and Iditarod districts, as this had never been covered with railroad construction in view." (US AEC 1916: 10) In addition, the AEC was to investigate various harbors proposed for railroad terminals, and examine the feasibility of a road from the Bering River coal field to tidewater or to the Copper River & Northwestern Railway.

Arriving in Seattle in late May 1914, the AEC rented offices, employed men for the survey expedition, purchased supplies and pack animals, and arranged for the transfer of the International Boundary freight boat Midnight Sun for use on the Tanana and Nenana rivers, and for the construction of a boat for use on the Susitna River and tributaries. Eleven survey parties, each composed of fifteen to twenty men, were organized in Seattle. One party was directed to survey and evaluate the Alaska Northern Railway and locate alternative routes along the Kenai Peninsula; one party was to make a careful topographical survey of Passage Canal while another surveyed a preliminary line from Passage Canal to Turnagain Arm; three parties were to locate a route from Turnagain Arm to Broad Pass with a branch to the Matanuska coal fields; another three parties were to locate routes north of Broad Pass; and finally two separate parties were to run preliminary lines from Chitina to the Matanuska coal fields, and from the Susitna Valley to the Kuskokwim and Iditarod country. (US AEC 1916: 10-11) Each party was to map their lines and, as time permitted, marked the line on the ground; take careful topographic notes on both sides of the line; carefully note the physical characteristics of the country, soil, probable resources, "and any other items of interest." The field parties were to relay frequent reports to AEC headquarters at Ship Creek and Fairbanks. (US AEC 1916: 14)

By mid-June 1914 most of the survey parties were in the field. Meanwhile, the members of Commission made investigations of their own. Every member of the Commission visited the harbors of Cordova, Valdez, Portage Bay, Seward, and Knik; two inspected Controller Bay. Three inspections were made of the entire length of the Copper River & Northwestern Railway. Also, the AEC entered into an agreement with the railway company to survey a line from the road to the Bering River coal field via the Lake Charlotte route. Finally, each member of the AEC personally inspected assigned portions of the entire Seward-Fairbanks route. Edes supervised work in the Seward area; Mears, in the Ship Creek region; and Riggs, in the Fairbanks district. (US AEC 1916: 19-19, 76)

Late in the fall of 1914 the AEC and survey parties returned to the lower United States. A few men were left behind to record weather and ice conditions in Passage Canal and Cook Inlet, and one man to observe winter operations of the Copper River road. About three months later, on February 11, 1915, the AEC submitted its report to President Wilson. According to the AEC, the report attempted an "unprejudiced, conservative opinion throughout of present operations and possible development of the country to be traversed by suggested lines of railroads." (US AEC 1916: 62)

In general, the report of the AEC was very similar to the Alaska Railway Commission's Railway Routes in Alaska. Based on personal observations, government reports, data supplied by chambers of commerce, navigation and transportation companies, the report included detailed accounts of work accomplished in 1914; physical descriptions and estimates of necessary improvements on the Copper River, Alaska Northern, and Tanana Valley railroads; descriptions of the resources tributary to

trunk line rai[illegible] and branches in the Eastern and Western Districts; descriptions of the various harbors in the Gulf of Alaska; reports of reconnaissance surveys; maps, photographs, etc. Even the conclusions of the AEC as regards the transportation needs of Alaska were similar to those of the Taft Commission:

> That Alaska is wonderfully rich in minerals has already been proven. That its agricultural resources are at least sufficient to sustain a large population can easily be demonstrated to those willing to listen. There is practically no limit to its coal supply.
>
> The initial need of the Territory is reasonable transportation. With that, a rapid development is probable; without it, the growth will be exceedingly slow... That the high rates of transportation are a leading factor in the high costs of food stuffs and general supplies is self-evident. That there may be a few lean years for a pioneer railroad while the country is building up is possible, in fact quite probable, but that it will eventually be a success can not be doubted. Take the history of many of our western railroads for example; they started through a country in many instances much less promising than Alaska, and now who would dare question their success? (US AEC 1916: 84)

These of course were harmless statements, Congress already having arrived at the same conclusions in passing the Alaska Railway Act. The question was no longer whether the Government should build the railroad, but where the railroad should be built.

It was precisely on this crucial question that the AEC differed with the Alaska Railway Commission. The AEC evaded any explicit recommendations as to where the Government railroad should be constructed. The justification was that "this commission is essentially an engineering one, organized to handle the subject along technical lines. In selecting a route other questions besides strictly engineering ones are to be considered. The commission had understood that their special mission was to collect the evidence and present it in as impartial form as possible." (US AEC 1916: 83) In spite of this disclaimer, however, the evidence presented in the AEC report was heavily weighted in favor of a trunk line railroad in the Western District, and in particular the Seward-Fairbanks route.

From the AEC's point of view, there were only two railroad routes in Alaska worth serious consideration: the Alaska Northern and the Copper River routes. The choice between these two routes did not hinge on the question of harbors. Every harbor which the AEC visited was suitable for a railroad terminal, although each had its particular advantages and drawbacks. As concerns the two railroads, the Copper River road was by far the better. The Alaska Northern was in very poor condition and necessitated considerable repairs and improvements. However, no major line changes were necessary. Contrary to the Taft

Commission's belief, the "Loop District" between Mile 48 and Mile 52 need not be eliminated. While construction work along Turnagain Arm would be heavy, requiring an expense of $77,000 per mile in some places, the line could be pushed rapidly inasmuch as laborers could work from both ends of Turnagain Arm simultaneously and all work was easily accessible by water. Most important, Ship Creek was an excellent site for a construction base and supply camp, for "even the most pessimistic acknowledge that for seven or eight months the shipping conditions would be favorable in Knik Harbor." (US AEC 1916: 82) Construction work north of Ship Creek would present no major difficulties. Numerous streams and rivers would have to be bridged, but the expense would not be great. Most of the line was accessible via the Susitna River. Construction could proceed in two directions simultaneously. Generally on an easy grade, the entire line traversed forested areas and thus local timber could be used for ties and bridge material. All in all, the AEC estimated that the Seward-Fairbanks road would cost about $25.6 million, including improvements (but not purchase) on the Alaska Northern, branch lines to Ship Creek and the Matanuska coal fields, and terminal facilities at Ship Creek and Seward. (US AEC 1916: 90, 169)

In demonstrating the feasibility of the Seward-Fairbanks route, the AEC stressed the fact that "we are building not simply for the present population of Alaska but for the far greater population that is to come." (US AEC 1916: 84) With respect to mineral resources and agriculture potentials, the Western District held a decided advantage over the Eastern District. A Seward-Fairbanks railroad would tap a number of placer and quartz gold mining districts. Many of these districts were undeveloped due to the lack of cheap means of transportation. The agricultural possibilities along the Western route were greater than in the Eastern District, and more than 100 homesteaders had already filed at Knik. The climate in the Cook Inlet area was regarded "the most favorable of any found on the coast of Alaska." (US AEC 1916: 70-73)

Finally, the Western Route offered the greatest effective use of Alaska coal resources. The Western route would tap not only the Matanuska coal field but also the Nenana field. According to the AEC, the Fairbanks district was rapidly being stripped of wood as a source of fuel. Unless cheap means of transporting coal from the Nenana coal field to Fairbanks and vicinity could be immediately furnished, "the production possibilities of a great section of Alaska will become insignificant." (US AEC 1916: 65) Although only lignite coal was probably available in the Nenana field, it could be used for heating and steaming purposes. Also, in view of the Navy tests of the Bering River coal in 1912, and Chickaloon coal in 1913, it was discovered that the latter coal was entirely satisfactory for Naval purposes. Although the Bering River coal was found to be unsatisfactory, the AEC noted that the whole field should not be condemned. Geologists familiar with the field stated that the samples collected by the Navy may not have been representative of other veins in the field. (US AEC 1916: 75) Nevertheless, Chickaloon coal could be brought to Knik Harbor at an expense not much greater than a railroad could transport Bering River coal to Cordova or Controller Bay.

In view of the optimistic reports of the AEC, it is little wonder that President Wilson finally decided upon the Western Route. On April 10, 1915, the President announced his choice of railroad route from Seward to the Tanana River via Broad Pass with a branch line to the Matanuska coal fields. The Secretary of the Interior was directed to purchase the line of the Alaska Northern Railway Company. On the same date, Wilson instructed Interior Secretary Lane by letter to proceed with the construction of the railroad. The AEC was to direct the work under the supervision of the Secretary of the Interior. W. C. Edes was appointed chairman of the AEC and chief engineer of the railroad project; he was to have "immediate charge of the work in Alaska and have power of approval or disapproval of all administrative matters connected with the work in Alaska." Apparently there was some doubt as to the division of authority and responsibility between the President and the Interior Secretary in the affairs of the AEC, for on April 30, 1915, President Wilson declared that all work of the AEC was to be supervised and controlled by the Department of the Interior. With these orders, then, the building of the first (and only) trans-Alaska railroad was formally authorized.

IV

Building the Government Railroad

For nearly a decade Alaska politicians and capitalists with interests in Alaska had complained that the withdrawal of the coal-lands and high transportation rates presented major obstacles in the development of Alaska industries. After nearly three years of debate, Congress finally passed the Alaska Railway Act of May 12, 1914 and the Alaska Coal-Land Leasing Act of October 20, 1914, the former providing for a system of Government-constructed and-owned railways in Alaska, the latter opening up the coal-lands to local miners rather than to corporation giants. Once Alaska coal was on the market, Alaskans would no longer rely on costly foreign coal and California oil. Consequently, the cost of operating gold and copper mines would decline; river and ocean transportation rates would be reduced; and smelters would be established in Prince William Sound. Moreover, the first of the Government railroads, the trans-Alaska railroad, would tap the Nenana and Matanuska coal fields; reduce the distance, time, and cost of transporting supplies and equipment from the coast to Interior Alaska; and finally, penetrate a vast, undeveloped region with high potentials for agricultural and mining industries. Taken together, the trans-Alaska railroad and the opening of the coal-lands promised a bright future for Alaska.

Considering the importance of coal in the Alaska economy, it is not surprising that the Alaska Engineering Commission should first direct its efforts to bring Matanuska coal to tidewater at an early date. The AEC had known for some time that the President would select the Seward-Fairbanks railroad route, and made preparations for the construction season of 1915. In early spring, 1915, an AEC representative at Panama arranged for shipments of machinery, equipment, and materials to Alaska. At Seattle, Lieutenant Mears secured additional railroad equipment and supplies, ordering the first shipment to Alaska in early April. On April 18, 1915, just four days after President Wilson's formal announcement of the selected Government railroad route, Mears left Seattle with engineering and office forces, pile-driver operators, carpenters, and other skilled laborers. Their destination was Knik Harbor, the nearest tidewater point to the Matanuska coal fields, and soon to become Alaska's busiest port.

Upon landing on Knik Arm, the AEC surveyed and cleared land for terminal facilities. A dock was erected on the north bank of Ship Creek. Alaska Northern railroad flat cars were shipped from Seward to Ship Creek by barge for use in transporting equipment and materials from the dock to the storage yard. Cottages, an amusement hall, a tennis court, commissary, and small hospital were constructed for the benefit

of AEC employees. Carpenter shop, lumber shed, magazine shop, small engine house, and a water and pumping plant was built in the freight yard. A temporary telephone and telegraph line was erected from Ship Creek to Seward, the administrative headquarters of the AEC and the nearest town with communication connections with the States.

When it was learned that the AEC would begin railroad construction on Knik Arm and do most of their hiring in Alaska as a matter of policy, many persons gathered at Ship Creek in search of employment. In a few weeks, 2,000 or more people were living in tents and log cabins in the new town of Anchorage. The AEC had not expected this rush to Ship Creek. The newcomers having gathered on land intended for railroad terminal grounds, the AEC decided to lay out a townsite about one-half mile distant. Nearly 1,500 lots were surveyed in 1915, the Government reserving 100 lots for federal and municipal purposes. During the week of July 10, 1915, the first auction of lots was held, each lot selling at an average price of $200. In order to curb the excesses of "boom-town" life, the Government decided to hold title to the lots until the completion of the railroad project. The AEC appointed a townsite manager, under whose direction the land was cleared, streets improved, and water supply, fire protection, and telephone and electrical systems provided. The costs were met from special assessments levied on the lots. Although a number of people left during the winter of 1915, about 1,500 people remained in the new Government town. Heartened by the fact that Anchorage residents accepted Government regulations, the AEC congratulated itself "on the success of its first experiment in town building in Alaska." (US AEC 1916: 191) The AEC later established towns at Wasilla, Matanuska, and Nenana, but none were as successful as Anchorage.

Beside the construction of terminal facilities at Anchorage, the AEC also made considerable progress on the railroad to the Matanuska coal fields. For maximum efficiency and economy, the AEC utilized two construction methods. In the building of snowsheds, culverts, and most bridges, as well as in track-laying operations, the AEC employed laborers on an eight-hour basis. For the more arduous work, such as clearing right-of-way, grubbing, grading, excavation, etc., the AEC utilized "station gangs." A number of men associated as partners, and then accepted an AEC contract calling for a specific type of work at a certain price per cubic yard for grading, or per acre for clearing and and grubbing. Each man signed the contract, and thereby became a contractor; each received a check for his portion of the completed work. The contractor rented equipment from the AEC and purchased supplies from the commissary. An attempt to employ resident Alaskans rather than large construction companies, the "station gang" system proved a success, despite the occasional abuses of commissary privileges and complaints that contracts were let in preferences to foreigners. (US AEC 1916: 186)

Using these two methods, then, the AEC was able to push the end of steel as far as Eagle River, a distance of about thirteen miles from Anchorage, by the fall of 1915. The right-of-way was cleared for about forty miles; and grading, about thirty-five miles. During the winter of 1915, a small AEC force constructed a temporary bridge across Eagle

River. Supplies and materials shipped to Anchorage in USS Crook, which the AEC chartered to avoid rising war-time freight rates, were transported to a large winter camp at Peters Creek and then distributed by sled along the line. In mid-February, 1916, station gangs resumed the work of clearing a right-of-way, and about a month later, began work on some of the rock cuts. Grading and track-laying operations beginning in July, 1916, AEC forces were able to push the end of steel to King River, about sixty-one miles from Anchorage, before severe winter conditions again curtailed work. A large winter camp was then established at the end of steel. (Alaska Railroad Record (hereinafter referred to as ARR) May 7, 1918: 204a-b)

With only fourteen miles remaining before steel reached the important Chickaloon coal mine, a rather large construction force continued work on the Matanuska line through the winter. In February, 1917, station gangs began work and, by mid-August, the entire grade from King River to Chickaloon was ready for steel. With the use of a modern track-laying machine, AEC forces rapidly put down ties and steel. On October 20, 1917, the end of steel was finally pushed to the Chickaloon coal mine. Unable to use Chickaloon coal for construction purposes, the field having been reserved for the Navy, the AEC purchased the privately-operated Eska coal mine for $15,650. Mining operations beginning in June 1917, the AEC was thus ensured of an adequate supply of fuel for locomotives, terminal facilities, and construction purposes. (ARR May 14, 1918: 210; Bernhardt 1922: 20-21)

Following the completion of the road to the Matanuska coal fields, the AEC directed its attention to the Seward-Anchorage line, which, when completed, would provide a year-round outlet for Matanuska coal. Since the beginning of the railroad project, little work had been done in extending the old Alaska Northern line beyond Kern Creek. Although an agreement for the purchase of the Alaska Northern had been concluded in 1915, the transfer of title to the Government was not effected due to certain unexpected suits against the private railroad. Until these suits were resolved, the AEC could only undertake minor projects, such as repairing the road as far as Mile 34 for summer and winter gasoline car traffic, constructing a temporary machine shop at Seward, and repairing Alaska Northern rolling stock. On August 25, 1915, litigation over the Alaska Northern title ceased, and the Government paid $500,000 with interest as an initial installment. The final payment of $650,000 was made on June 30, 1916, the Government then coming into full possession of the railroad. (US AEC 1916: 189-91)

After a careful inspection of the Alaska Northern line in the summer of 1915, the AEC concluded that the entire road needed to be rehabilitated before undertaking any major construction on the line immediately north of Kern Creek. The condition of the railroad was poor. Most of the bridges and ties were decayed, and many trestles in the "Loop District" and lower Placer River valley were washed out. Rock slides had blocked the road in some places, and rivers had made serious cuts into the roadbed. In many cases, the embankments were too low. The tunnels needed enlargement, and snowsheds needed to be constructed. Finally, the entire line needed ballasting and surfacing. (ARR May 7, 1918: 206)

Upon obt[illegible]g possession of the Alaska [illegible]chern, the AEC initiated a massive rehabilitation project. In the summer of 1916, AEC forces constructed many new trestles, while station gangs widened the right-of-way, and reconstructed the grade. Parts of the road were relocated in order to improve alignments. About five miles of bridges were thoroughly inspected and repaired, most of the superstructures generally found to be in good condition for light traffic. By early October, 1916, the Alaska Northern line was sufficiently improved for light trains. In mid-November, however, a large snowslide in Mile 53 interrupted traffic. Since the bridges in the "Loop District" could not support the weight of rotary snowplows, the AEC was forced to await spring before transporting equipment, material, and supplies to the end of steel for the summer construction season.

Considering the unexpected delays and poor condition of the Alaska Northern railroad, the AEC revised their original plans, deciding that the Turnagain Arm road should be built almost entirely from Anchorage. Thus, in early 1916, survey parties were sent to locate a satisfactory line which would pass through Anchorage and connect with the Ship Creek spur, thus becoming part of the main line. A line on an easy grade was soon located, and station gangs began clearing and grading operations. A small track-laying force was spared from work on the Matanuska branch line. Before the onset of winter, steel was laid about ten miles south of Anchorage.

With the Matanuska branch nearly completed in early spring, 1917, the AEC shifted the bulk of its forces and station gangs for heavy work on Turnagain Arm. Despite a lack of men, supplies, and materials resulting from America's entry in the European war, AEC forces managed to push the end of steel to Rainbow Creek (Mile 93) by late 1917. During the winter of 1917, about 1,000 men, or less than half the number really needed, continued working on the Turnagain Arm road, mostly between Bird Point and Rainbow Creek. Construction materials and supplies were shipped by water to various camps on Turnagain Arm which the Alaska Northern had erected in the late 1900's. A dock was built at the Rainbow Creek camp, and large freight warehouses erected at Rainbow Creek and Potter Creek. In the meantime, station gangs and AEC laborers constructed bridges, blasted rock, and graded the line. The work was extremely heavy, Mears later describing the work as the most difficult on the Government railroad:

> Occassionally, for a short distance, a bench occurs, on which the line can be placed with easy construction; but for the greater part of the distance, the line has to be benched in on heavy transfer slopes. The contour of the country is very irregular, making it impossible to secure light work even by the introduction of very sharp curvature. In many cases deep embankments and gulches occur, and in order to save expensive cuts in the precipitous rock bluffs, it was necessary to make heavy fills, the slope extending into the waters of Turnagain Arm, where they are affected by the heavy tides. (ARR May 14, 1918: 210)

By March 1918, most of the grade on Turnagain Arm was ready for steel. For a short time it was feared that AEC forces would have to be cut back due to lack of funds and supplies. On July 1, 1918, however, more than $5 million was made available, permitting the AEC to obtain materials and continue track-laying operations. With AEC forces laying steel north from the Girdwood area and south from Rainbow Creek, rivalry between the two track-laying forces developed as both attempted to extend the steel beyond Mile 79, the line of demarcation between the Seward and Anchorage Divisions.

The Anchorage Division won the race. On September 10, 1918, the ends of steel were joined at Mile 78.75, one-quarter of a mile within the Seward Division. William C. Edes, chairman of the AEC, drove the last spike that finally closed the gap between the Matanuska coal fields and an ice free port. It was a memorable day, only marred by the absence of Mears and Riggs. (Mears resigned from the AEC on January 13, 1918, to re-enter active military service as a colonel of the Thirty-first Engineers. Riggs resigned on April 25, 1918, to accept his appointment as Governor of Alaska). Nevertheless, upon learning of the completed railroad between Seward and Matanuska, Secretary of the Interior Franklin K. Lane wired, on September 12, his congratulations to the AEC: "This is a matter of great gratification and begins a new day in the history of Alaska, which now will be able to reveal to the world more fully her resources, draw new people to the Territory, and become more perfectly an integral part of our Nation." (ARR September 17, 1918: 353)

The AEC had earned the congratulations of Secretary Lane. The Matanuska-Seward railroad had been constructed under the most difficult circumstances. The war had drawn heavily upon the Alaskan labor force. Wages, the price of supplies, materials, and equipment had steadily increased since 1915. Many materials, such as steel products, were difficult to obtain. Yet, in the face of these obstacles, the AEC had not only completed the Seward-Matanuska railroad, but had also established a rail link between the Nenana coal field and the town of Nenana on the Tanana River.

The last member of the AEC to arrive in Alaska, Thomas Riggs, Jr., dispatched survey parties in 1916 to locate a line from Fairbanks directly to the Nenana coal field. When, however, station gangs began clearing and grading a line from Fairbanks which paralleled the Tanana Valley Railroad, Falcon Joslin, president of the private railroad, protested against the work unless some satisfactory arrangement or compensation was made with his company. For a variety of reasons, the AEC chose to purchase the entire Tanana Valley Railroad. In late 1917, negotiations were concluded, the Government securing ownership of the narrow-gauge railroad for $300,000.

As in the case of the Alaska Northern, the Tanana Valley Railroad was in poor condition. The AEC thus initiated a rehabilitation program. Most of the trestles were reconstructed; sections of the line relocated to higher ground; heavier steel rails laid; the roadbed widened; and the entire line surfaced. By late 1920, the Tanana Valley Railroad was sufficiently improved to handle two freight and passenger trains a week from Fairbanks to Chatanika.

In order to incorporate the Tanana Valley Railroad in the Government railroad, and thereby establish a rail link between the Nenana coal field and Fairbanks mining district, the AEC decided to construct a narrow-gauge railroad from Happy Station to North Nenana. In the summer of 1917 about 700 to 800 men began clearing and grading the new Happy line. The work was slow and expensive. Station gangs, mostly one man contractors, could only use wheelbarrows to prepare the grade, the country too marshy to support teams and scrapers. Unable to obtain gravel, station gangs simply used dirt for the grade, which had to be reconstructed after a rainfall or the spring break-up. Thus, it was not until early November 1919 that AEC forces managed to extend the narrow-gauge steel to North Nenana on the Tanana River. The old Chena spur no longer of use, the steel was removed in early 1920.

By the time the railroad between North Nenana and Fairbanks was completed, the AEC had already constructed another road from Nenana to the coal fields. In late May 1916, the first of the AEC employees, office and field forces landed at Nenana and began erecting mess halls, offices, quarters, a commissary, power plant, etc. In July, the AEC began piledriving operations on the Nenana waterfront. Four months later, the Nenana dock was ready to receive freight. Anticipating the hundreds of people who left Fairbanks for Nenana, the AEC surveyed a townsite and sold lots in the summer. By the close of 1916, Nenana was a flourishing town of about 600 people. (The Nenana News November 18, 1916: 4; December 30, 1916: 1)

While AEC forces established a terminal base at Nenana, station gangs cleared and graded a line and disconnected sections as far south as present-day Healy (Mile 358), in the heart of the Nenana coal fields. Considering the high freight rates in interior Alaska, the AEC postponed track-laying operations until a special tariff agreement was negotiated with the White Pass & Yukon Railway Company. In early 1917, the White Pass railroad allowed the AEC a forty percent reduction in commercial rates. While this agreement helped the AEC to avoid high transportation costs, which were then increasing rapidly, it proved to be of little immediate benefit. For it was not until August 1917 that the first large shipment of steel rails arrived at Nenana. Despite the late season, the AEC decided to begin track-laying operations. Station gangs burning brush fires at night to thaw the ground for gravel, AEC forces laid steel day and night in November. By the close of the year, the railroad had not been extended more than several miles beyond Julius Creek, or about fifteen miles from Nenana. However, grade was practically completed as far as Mile 370 (Nenana River crossing), and ties were distributed.

As soon as weather conditions permitted in early 1918, AEC forces resumed laying track in an effort to reach Lost Slough crossing before early summer. In late March, 1918, however, the railroad project suffered a major setback when the Nenana River flooded into Lost Slough for the first time in many years. About twenty miles of grade and many trestles, including a 1,300-foot timber bridge across Lost Slough, was washed out by the flood. Nearly $500,000 of work was ruined.

During the summer of 1918, station gangs and AEC forces worked on the so-called "D-line", which replaced the former line between Mile 387 and Mile 410. By early September, most of the grade on the new line was ready for steel. Steel was laid rapidly; and by late October 1918 the "D-line" was ready for light trains. As the grade south of the "D-line" as far as Lignite (Mile 363) was ready for steel, AEC forces had few difficulties in extending the steel to the Nenana River crossing (Mile 370) by the end of the year. In early April 1919, they pushed the end of steel to Lignite (Mile 363), where an important coal mine operated by Robert E. Burns and Company was located. Several months later, the end of steel was pushed to Healy (Mile 358).

By 1919, then, the AEC had achieved one of its major purposes, that is, the construction of railroads to the Nenana and Matanuska coal fields. Of course, both railroad were far from completed. Most of the bridges were temporary and needed replacement by heavy truss spans. Tunnels in the "Loop District" remained to be enlarged and timbered. Snowsheds needed to be constructed at several points on Turnagain Arm. In the case of the Nenana-Healy railroad, major steel bridges were required over the Nenana and Tanana rivers. The line gap at the Tanana River was filled with ferries in summer and sleds in winter. The Nenana River bridge was only a temporary structure needing reconstruction each spring after the ice break-up. Finally, the North Nenana-Fairbanks railroad needed to be converted to standard-gauge before uninterrupted services could be offered between Healy and Fairbanks. Most of these improvements were to be postponed until the AEC constructed a railroad from Anchorage to Nenana.

The AEC intended of course to incorporate the Nenana-Healy railroad in the trans-Alaska main line. Because of higher wages and transportation rates, as well as the problem of shipping materials during winter months into Interior Alaska, the AEC decided that it was more practical and economical to construct the trans-Alaska railroad mainly from Anchorage. Once the Seward-Matanuska railroad was completed, the AEC would have not only a plentiful supply of coal for construction purposes, but also a means to obtain supplies and equipment throughout the year.

Until 1917, the AEC engaged in little work on the line north of Anchorage. Dissatisfied with the lines located in 1914 from Matanuska Junction (Mile 151) through the Susitna Valley, the AEC sent Frederick D. Browne, a location engineer formerly with the Southern Pacific Railroad, to find a new route in early 1916. The original location was revised from a point ten miles of Matanuska Junction to Montana Creek (Mile 209). As soon a Browne's location was accepted by the AEC, station gangs began clearing and grading the line in sections north and west of Matanuska Junction. Before the onset of winter, the first eight miles of grade was ready for steel. In view of heavy rains, however, the AEC decided to await spring before laying track.

In the meantime, materials and supplies were delivered by water to various camps on the upper Susitna River. Steam-operated, sternwheel river boats navigated the Susitna River as far as the Indian village of Croto. Beyond that point, the AEC required the use of eighty-foot "river tunnel boats," which had a draft of only eighteen inches when loaded. With these boats, AEC forces could supply station gangs clearing and grading the main line as far north as Indian River, or more than 100 miles from Matanuska Junction. (ARR May 14, 1918: 210)

Inasmuch as most AEC funds were channeled into construction of the Matanuska branch and the Seward-Anchorage line, the AEC planned only to push the end of steel within a reasonable distance of the Willow Creek and Cache Creek mining districts for the 1917 season. In April 1917 a small force began laying steel north from Matanuska Junction, managing to push the track as far as Montana Creek (Mile 211) by late 1917. With the exception of a few gaps, the grade was ready for steel as far as Dead Horse Hill (Mile 249). (ARR May 14, 1918: 211)

Having exhausted most supplies and materials on the Matanuska and Anchorage-Seward lines, the AEC virtually halted all work on the road north of Anchorage in 1917 and 1918. By late November 1918, when an influenza epidemic immobilized the workers, steel had not been extended beyond Mile 224, or about two miles south of Talkeetna. A year later, the end of steel was no further than Mile 245.

This slow progress was due to the fact that the AEC had almost expended its $35 million appropriation of 1914. With only $4 million remaining in early 1919, the AEC suspended work on the main line until AEC forces in interior Alaska completed their section of the road to the Nenana coal field. In order to persuade Congress of the need for a supplemental appropriation, the AEC employed J. L. McPherson, a former chief engineer of the Copper River & Northwestern Railway and a prominent member of the Seattle Chamber of Commerce, to compile detailed estimates for work to be completed on the Government railroad. McPherson estimated that more than $20 million was needed to complete the railroad. (US House 1919: 34) In hearings before the House Committee on the Territories, the AEC demonstrated the effects of the war on the Government railroad project. Since 1915, labor wages had increased fifty-nine percent; materials and supplies, 161 percent; and transportation costs, 147 percent. (Bernhardt 1922: 35) In 1915, the cost of labor and material for one mile of track had been $9,860; in 1919, the cost was $14,264. (US Department of the Interior 1922: 213) Clearly, the AEC was a victim of inflation.

William Edes, chairman of the AEC, also admitted that the AEC had underestimated the conditions of railroad construction in Alaska. The railroad along Turnagain Arm, for example, required an expense of $200,000 to $300,000 in some places, and still the railroad was not ready for standard equipment. Further investigations indicated that similar heavy work would be encountered in the Broad Pass country.

War-time conditions and heavy construction costs did not fully explain the slow progress of the railroad project. Congress itself was partly to blame. It was the old problem of irregular appropriations: "If we do not have the money, we can not get to work, and the trouble with our appropriations have been that that feature of it has never been realized—that is, that due to this method of appropriating, always in May or June, when we should be pushing and pushing, we have been waiting around to see what Congress would do on the regular appropriation." (US House, Committee on Appropriations 1920: 1318) Irregular appropriations, Mears argued, interfered with nearly every aspect of the AEC's original program to construct the Government railroad from three points simultaneously. Instead, the AEC was forced to assign priority

to the railroads to the coal fields. More often than not, the AEC lacked sufficient funds to begin large scale construction in the spring; and when the funds were available, it was never enough to sustain intensive work through the brief summer and fall months. By the time winter conditions halted work, the AEC had nearly exhausted its funds, and so could not take full advantage of the favorable winter months to purchase and distribute supplies and materials along the railroad line. Without a continuous appropriation, railroad construction could only proceed in spurts. Apparently Mears' argument was convincing. When, on October 18, 1919, Congress approved a supplemental appropriation of $17 million, three-quarters or $13 million was made available in fiscal year 1920.

During the winter of 1919, Colonel Mears, who was appointed chairman and chief engineer of the AEC upon Edes's retirement, made preparations for the construction season of 1920. Special tariff agreements were concluded with the regular steamship lines—the Alaska Steamship Company and the Pacific Steamship Company—for transportation of freight and AEC employees to Alaska. Army transport South Bend was chartered in early 1920 to ship laborers from the Pacific coast states to Alaska. AEC administrative offices in Alaska were consolidated, and new offices created to handle the supply, purchasing and an accounting aspects of the railroad project. Arrangements were made for the fabrication and erection of large steel structures over Hurricane Gulch, and the Susitna, Nenana and Tanana Rivers; each bridge site was to be inspected by W. E. Angier, "one of the best known bridge engineers in the United States." (ARR April 20, 1920: 191) Finally, the AEC transferred the Chickaloon coal mine, which it had been developing at considerable expense since 1919, to the Navy. The Navy took over the mine on July 1, 1920, when $1 million was made available for mining operations. (US Department of the Interior 1920: 132)

By early 1920, work on the main line north of Anchorage was active. Efforts were made to complete several short unfinished sections of grade between the end of steel at Mile 237 and the crossing of the Susitna River (Mile 264). By July 1920, AEC forces had pushed the end of steel to Susitna River, and began grading the approaches, constructing the falsework and concrete piers for the first large steel bridge on the Government railroad. Two months later, American Bridge Company forces began erecting the steel structure. By January 1921, the bridge was ready for traffic.

In early spring, 1921, the entire line between the ends of steel at Mile 275 in Chulitna Pass and at Mile 355, just south of Healy, was covered by workers. About 4,000 men, many of them imported from Seattle and San Francisco, were clearing and grading the line, and driving tunnels. In early June, 1921, AEC forces pushed the end of steel to Hurricane Gulch (Mile 284). On June 11, 1921, American Bridge Company forces began erecting the second largest bridge on the Government railroad. The steel arch was closed on August 8. One week later, the first train passed over the 920-foot bridge.

As supplies, materials, and men were plentiful, and most of the grade between the ends of steel was completed, Mears decided to force track-laying operations and trestle construction day and night through the fall of 1921. In late December, 1921, the end of steel finally reached the south bank of Riley Creek, where only one month earlier AEC

forces headquarte[illegible] at Nenana and Healy had pushed their end of the steel to the north bank. Upon arriving at Riley Creek, AEC forces began constructing the approaches and piers for the steel bridge. Finally, in early February, 1922, the last steel rail was laid on the new bridge, marking "the practical completion of one of the most difficult engineering projects undertaken by the United States Government." (The New York Times February 3, 1922: 20) For the first time in Alaska history, the navigable waters of Interior Alaska were linked by railroad with an ice-free port.

Nevertheless, a considerable amount of work remained to be done before the railroad was actually completed. During the summer of 1922, AEC forces were engaged in much repair work and ballasting. Numerous station buildings were constructed, and a five-mile spur was built from Healy to the important mines of the Healy River Coal Corporation at Suntrana. Finally, AEC forces constructed the approaches and piers of the Tanana River bridge, the last major gap in the Government railroad. In early September, 1922, American Bridge Company employees began erecting the steel structure. By late November, freight trains were able to pass over the bridge. In late February 1923, the Tanana River bridge, the largest on the railroad, was finally completed for traffic. (US Department of the Interior 1923: 111-12) Shortly thereafter, AEC forces began converting fifty-six mile road between North Nenana and Fairbanks to standard-gauge. On the morning of June 15, 1923, the last rail was laid at Fairbanks, thereby permitting for the first time through traffic from Seward to Fairbanks. (US The Alaska Railroad 1925: 8) The trans-Alaska railroad was finally a reality.

The highlight for the year 1923 was of course President Harding's visit to Alaska to participate in the "Golden Spike" ceremony on the Government railroad, officially designated "The Alaska Railroad" on March 26, 1922. (The New York Times March 26, 1922: 14) Arriving at Seward on transport Henderson on July 13, President Harding, Mrs. Harding, and party toured the entire length of the railroad as far as Fairbanks. Stops were made at Tunnel, Anchorage, Chickaloon, Wasilla, Willow, Curry, Broad Pass, Cantwell, McKinley Park, Healy, and Nenana. On July 15, at the north end of the Tanana River bridge, the train stopped for the "Golden Spike" ceremony. Standing in the center of the track, facing the bridge and a host of cameras, President Harding commented: "I am frank to say that when the enterprise was first proposed I was inclined to oppose it; but, having seen the empire of Alaska and the possibilities which this railway opens up, I am glad a generous government undertook and carried to completion the construction of the Alaska Railroad." (The Nenana News July 17, 1923: 1) With these words, the President then lightly tapped the spike in place.

Throughout his tour of Alaska, President Harding repeatedly assured his audiences that the Alaska Railroad would facilitate the development of Alaska industries. Many Alaskans greeted this news with loud cheers, believing that the Government would operate the new railroad due to, or in spite of, the economic conditions in Alaska. Since 1914, the Government had adhered to the view that the development of Alaska industries would be slow. Few officials, however, had anticipated a worsening of

economic conditions. The fisheries were in poor condition; gold-mining industries were almost at a standstill; farming remained an insignificant industry; no smelters had been established in Alaska, despite the fact that copper production in the Prince William Sound had increased tremendously in the war years; and finally, the white population of Alaska had actually declined by at least 10,000 people in the period 1910 to 1920.

In light of these conditions, the Alaska Railroad came under heavy attack in Congress. According to some politicans, the only interests which benefited from the Government railroad were the Morgan-Guggenheims. Now that the railroad was completed, the Alaska Syndicate could develop the Mayo silver mines in Canada and ship ore at low cost to the coast of Alaska via the Government railroad. Congressmen deplored the fact that the Government had spent $56 million to build a railroad that benefited less than 5,000 people along the Seward-Fairbanks main line; that the railroad was operating under an annual deficit of more than $1 million; that the AEC has wasted money and time in building a modern railroad when it was clear that Alaska needed tens of thousands of miles of pioneer railroads, roads, and trails.

In response to these attacks, the Government urged special legislation designed to stimulate the Alaska economy. In April 1920, Secretary of the Interior John B. Payne created an Alaska Advisory Committee to investigate the economic problems of Alaska, and to make recommendations. On June 11, 1920, the Committee submitted a report of its investigations, recommending, first, that the two regular steamship companies in Alaska be combined into one company. This action would reduce ocean freight and passenger rates and improve transportation and mail service. If the two companies would not merge, the Committee suggested that the Government establish its own steamship line from Seattle to major Alaska ports. Second, an Alaska Development Board should be created to coordinate Federal control of Alaska lands and resources. Until such a board was appointed, the Government should create an Inter-Departmental Alaska Committee from representatives of Federal agencies with responsibilities in Alaska. Third, Federal road construction programs in Alaska should be coordinated, and a plan developed for a comprehensive road and trail system. Fourth, the Government should investigate the commercial feasibility of smelting copper ores within Alaska. Finally, the Government should allow for the development of the Alaska pulp-wood industry, and additional surveys should be made of timber and water power resources.

Many of the Committee's recommendations were eventually implemented, but the one recommendation which Interior Secretary Payne chose to support as "essential for the real development of Alaska," that is, a Government steamship line, failed to receive Congressional action. Secretary Payne thus settled for a special tariff agreement with the regular steamship lines. When, in 1922, the White Pass & Yukon Railway abolished transportation services on the Tanana River, Interior Secretary Albert B. Fall, apparently at Mears' suggestion, authorized the AEC to enter the river transportation business. Thus, in late 1922, the AEC took over steamers General Davis and General Jacobs, as well as a number of barges from the War Department, which was then closing the Fort Gibbon post at Tanana. In the following year, the AEC began opera-

ting steamers from Nenana as far as Holy Cross and Marshall on the Yukon River.

In order to develop traffic for the Alaska Railroad, the Government urged Congress to approve a plan which would develop a road and trail system in Alaska as feeders to the Alaska Railroad. The Government wanted Alaska included in the Federal Highway Act or, at least, be considered for annual direct appropriations of $10 million for road and trail construction. As a first step in this plan, the AEC was placed under the direction of the Alaska Road Commission in the Department of War. On March 24, 1923, Colonel Mears was transferred back to service in the Corps of Engineers. Two days later, Colonel James G. Steese and Major John C. Gotwals assumed active charge of the AEC as chairman and chief engineer, and vice-chairman, respectively. Both officers retained their seats on the Alaska Road Commission. (Steese was president of the Road Commission; Gotwals was the engineer officer.) (US The Alaska Railroad 1925: 5) Congress, however, refused to act on the recommendations of the Secretary of the Interior. Thus, on June 8, 1923, President Harding ordered the operations of The Alaska Railroad returned under the direction of the Department of the Interior. On August 15, 1923, the AEC organization was abolished with the Alaska Railroad.

By 1924, the Government had accepted the fact that it would have to operate the trans-Alaska railroad until economic conditions in Alaska improved. In view of Congress's criticism of the Alaska Railroad deficit, Interior Secretary appointed, on July 7, 1924, Noel W. Smith of the Pennsylvania Railroad as special assistant to investigate the conditions of the Alaska Railroad. Smith was to estimate the cost of completing the railroad, and recommend future policies and methods of operation, organization, etc.

Later appointed General Manager of the Alaska Railroad, Noel Smith established policies which set the tone of subsequent Alaska Railroad operations for the next thirty-five years. Adopting a policy of economy and business methods, Smith eliminated many employee positions, consolidated the work of departments, restricted train service to the "actual necessities," loaded trains and cars to capacity, etc. Smith claimed that additional measures of economy could be effected, but they would be small due to the lack of funds; he estimated that about $12 million was needed to put the railroad in condition for efficient and economical operations. As far as the future of the Alaska Railroad was concerned, Smith predicted that the railroad would not be on a paying basis for many years:

> While no rapid development of the resources of the Territory can be looked for in the next few years, there is every indication of a gradual and healthy growth in traffic for the railroad as a result of the development of the resources which is now taking place in a more business-like and substantial manner than in the past. So that, while there is no prospect that the operation of the railroad can be continued for some years to come without substantial appropriations being made to meet the deficit in operations incurred, there is every reason to believe that eventually the railroad may be operated without such appropriations. (US The Alaska Railroad 1926: 2)

Contrary to Smith's predictions, the Alaska Railroad has seldom operated without a large appropriation to meet the annual deficit. Through the years, additional measures of economy were effected in the operation and maintenance of the railroad. In the early 1930's, the Chatanika branch was finally abandoned due to automobile and truck competition. The Chickaloon branch soon followed. In the late 1930's and early 1940's, the hopes of the Alaska Railroad were revived with increasing military activities in Alaska. An eleven-mile branch to the Whittier military post was constructed at tremendous expense. In the post-war slump, however, the value of the Alaska Railroad was again questioned, and inevitably found wanting. Despite repeated efforts to lease, and later to sell the railroad, the Government (1975) remains the owner and operator of the only trans-Alaska railroad.

That the Alaska Railroad has not been abandoned or converted into a highway testifies in part to the lingering effects of the Progressive mood which spawned the Government railroad. The Government railroad was to perpetuate a Progressive ideal, an innocent, naive belief in the honest and hardworking nature of the small, independent businessman and farmer. According to many Progressives, Alaska was to be industrialized, but not in the same manner as the United States. Too often, American railroad companies had monopolized the coal-lands, acquired the best agricultural and grazing lands, and set freight rates which often exasperated the farmer who depended on the railroad to transport his products to the market. Alaska was to be spared of these avaricious practices. By owning the railroad, the Government would set low freight rates to facilitate the development of Alaska industries. An anti-monopoly measure, the coal-land leasing law would put Alaska coal on the Alaska market at cheap prices. With Government regulation of coal mining and public railroads, the economic development of Alaska would remain in the hands of the small entrepreneur rather than the big corporations.

And that, to now, in the story of the Alaska Railroad. What is the future? Has the Railroad Era closed in Alaska, as elsewhere in the United States or will it again experience rejuvenation and expansion as a result of oil, gas, minerals, timbers, further need for coal, and greatly expanded economic and population growth?

TABLE I

Principal Railroads in Alaska, 1913

Name	Mileage
Copper River & Northwestern	195.0
White Pass & Yukon	102.0 (20.4 in Alaska)
Seward Peninsula (Nome-Shelton)	80.0
Paystreak Branch	6.5
Alaska Northern	71.6
Tanana Valley	44.7
Council City & Solomon River	32.5
Yakutat Southern	12.0
Cook Inlet Coal	8.5 (not operated)
Katalla	6.0 (abandoned)
Wild Goose (Council-Ophir Creek)	5.0

The Act of March 12, 1914,
38 Stat. 305

CHAP. 37.—An Act To authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes.

March 12, 1914.
[S. 48.]

[Public, No. 69.]

Alaska.
President authorized to operate, etc., railroads in.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of this Act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this Act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this Act; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under this Act; to fix the compensation of all officers, agents, or employees appointed or designated by him; to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand

Location and purpose.

miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain in acquiring property for such use, which use is hereby declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this Act; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease shall be for a longer period than twenty years, or in the event of failure to lease, to operate the same until the further action of Congress: *Provided*, That if said railroad or railroads, including telegraph and telephone lines, are leased under the authority herein given, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him: *Provided*, That the price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this Act; to utilize in carrying on the work herein provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this Act.

Construction, etc.

Rights of way, terminals, etc.

Transportation rates, etc.

Common carrier duties.

Lease after completion.

Provisos.
Subject to interstate commerce laws if leased.

Purchase of existing lines.

Price.

Joint agreements with other carriers.

Use of Panama Canal machinery, etc., for construction.

Operation of telegraph and telephone lines.

The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone lines for hire.

Full powers vested in President.

That it is the intent and purpose of Congress through this Act to authorize and empower the President of the United States, and he is hereby fully authorized and empowered, through such officers, agents, or agencies as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this Act to enable him to accomplish the purposes and objects of this Act.

Townsites authorized.

The President is hereby authorized to withdraw, locate, and dispose of, under such rules and regulations as he may prescribe, such area or areas of the public domain along the line or lines of such proposed railroad or railroads for town-site purposes as he may from time to time designate.

Public lands subject to reservations for terminals, rights of way, etc.

Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this Act, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road and twenty-five feet on either side of the center line of any such telegraph or telephone lines, and the President may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

Construction materials.

Limit of cost.

SEC. 2. That the cost of the work authorized by this Act shall not exceed $35,000,000, and in executing the authority granted by this Act the President shall not expend nor obligate the United States to expend more than the said sum; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $1,000,000 to be used for carrying out the provisions of this Act, to continue available until expended.

Appropriation.

Specified receipts to be paid into Treasury.

SEC. 3. That all moneys derived from the lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under this Act, above maintenance charges and operating expenses, shall be paid into the Treasury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

Reports to be made.

SEC. 4. That the officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided for shall be by the President transmitted to Congress.

Approved, March 12, 1914.

Calendar No. 862

97TH CONGRESS 2d Session } SENATE { REPORT No. 97-479

ALASKA RAILROAD TRANSFER ACT

JUNE 22 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1500]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1500) to provide for the transfer of the Alaska Railroad to the State of Alaska, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, provides for the orderly transfer of the Alaska Railroad from the Federal Government to the State of Alaska. Specifically, the Secretary of Transportation is authorized to transfer the railroad by one deed of conveyance upon ensuring that the State will continue rail service; assume certain liabilities and obligations; and protect the interests of the employees during a specified transition period, and thereafter. The legislation would facilitate the transfer of the railroad lands by providing for the conveyance of the track right-of-way in fee and an expedited process for adjudicating Native and other third party claims of valid existing rights to other railroad lands. Also, the legislation is intended to ensure that upon transfer the State will essentially operate the railroad as any other railroad in interstate commerce. This legislation represents an appropriate balance of interests intended to ensure that the transfer takes place equitably and expeditiously, and with minimal disruption to those affected.

BACKGROUND AND NEEDS

Congress authorized the construction of the Alaska Railroad pursuant to the Alaska Railroad Act of 1914 in order to provide for the

RECEIVED
JUN 29 1982

FILE COPY
DOCUMENT NO. 152

transportation and development needs of the Territory of Alaska. The 525-mile railroad has been in operation since 1923, and is administered by the Secretary of Transportation. Today, the railroad serves as a vital element of the transportation system of the State of Alaska. The railroad links Fairbanks and Anchorage, the State's two major metropolitan centers, with freight and passenger service and connects the interior of the State with Pacific Ocean ports on the southern coast. During the last decade when the Alyeska Pipeline was being constructed from Prudhoe Bay to Valdez, the railroad played a critical role in transporting pipe, heavy equipment and other vital construction materials. The railroad connects Alaska with the "lower 48" and Canadian rail systems via float barges operating to and from Whittier.

The continued desirability of Federal ownership and administration of the Alaska Railroad has been a subject of considerable debate for many years. There are several reasons for this.

First, it is clear that while the railroad served the interests of the Federal Government in the past by opening up the Territory of Alaska and providing transportation for government cargo, today it exists primarily for the benefit of residents and shippers in the State of Alaska, and tourists who visit the State. In fact, nearly three-fourths of the present traffic volume on the railroad moves internally in Alaska.

Second, since Alaska became a State in 1959, its ability and interest in providing for its own transportation needs have changed considerably. Since 1959, other Federal transportation facilities, such as airports and highways, have been transferred to the State. Further, the State is expected to experience a period of further growth in the future as newly discovered deposits of oil, natural gas, coal, and other natural resources are developed. In order to ensure that the railroad plays an essential role in sustaining this growth, the railroad's operations should be improved and expanded. Such improvement and expansion are matters primarily of State concern.

Third, there is a consensus that the Federal Government should not continue to control those activities which might better or more appropriately be controlled by State and local governments or the private sector. This is especially true today when extreme budgetary constraints are forcing the Federal Government to scrutinize all of its activities. In this regard, it should be pointed out that while the Alaska Railroad is structured to operate on a self-sustaining basis to the greatest extent possible, it has not been a profitable enterprise, except for those periods when freight traffic levels have been especially high. As a result, Federal appropriations of over $200 million have been provided since 1923 primarily for capital and maintenance purposes. Over $50 million of this has been appropriated in the last 7 years to continue the railroad as a viable entity during a period of declining traffic following the completion of the Alaska Pipeline. Transfer of the railroad to the State would reduce Federal spending by eliminating such appropriations. In addition, the Committee believes that such a transfer would be consistent with the pending transfers of Conrail's freight and passenger operations as provided for in legislation passed last year. It is also in line with past acquisitions of intrastate railroads by States, such as Vermont and West Virginia.

For all of the above reasons, the Committee believes it is appropriate for the Federal Government to transfer the Alaska Railroad to the State of Alaska. Further, the Committee believes that such a transfer should be completed on an expedited basis and should encourage the State to establish a suitable framework to continue operating the railroad and to assume the Federal Government's rights and obligations for the railroad. The transfer should also undertake to resolve a number of outstanding questions concerning land claims to the Alaska Railroad.

In this regard, a number of claims have been pursued on the railroad properties through the land disposal laws of the United States, and particularly through the Alaska Native Claims Settlement Act of 1971 (ANCSA). Further, there are differing interpretations regarding the nature of the Federal interest in the right-of-way created under the March 14, 1914 Alaska Railroad Act.

Congress sought to resolve Alaska Native claims through ANCSA in 1971 and subsequent perfecting amendments in each Con[illegible] since 1971. The act set up private Regional and Village Corporations and transferred selection rights to approximately 44 million acres of Federal and State lands in satisfaction of aboriginal claims. Section 3(e) of the act defines "public lands" to be selected as "all Federal lands and interests therein located in Alaska except . . . the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation." Regulations interpreting the provision were promulgated and finalized on October 22, 1980.

Pursuant to the act and the regulations, six Alaska Native Village Corporations have sought selections on the railroad right-of-way and attendant properties. Out of approximately 38,000 acres of railroad lands, roughly 3,000 acres have been claimed by the villages on over 180 miles of right-of-way and upward of 3,700 acres of additional railroad properties.

Further, Cook Inlet Regional Corporation (CIRI) has sought extensive railroad acreage pursuant to a "Terms and Conditions Agreement" with the Federal and State governments codified under its 1976 amendment to ANCSA. Other Native claims could conceivably arise through amendments to ANCSA housed in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Although these latter claims are deemed by the Committee to have little likelihood of validity, they still present potential difficulties in arranging this transfer due to a likelihood of protracted administrative and judicial review. After reviewing these various claims to railroad properties created by amendments, to ANCSA, the Committee believes they should be barred in any legislation dealing with the transfer of the Alaska Railroad.

The problem of Native claims to Alaska Railroad properties has been of continuing concern to the Committee and the Department of Transportation (DOT). In October of 1979, Chairman Howard W. Cannon wrote Senator Henry Jackson Chairman of the Energy Committee, expressing the view of the Committee that protection of important Alaska Railroad properties from Native claims must be

assured. Moreover, the past three Secretaries of Transportation have all gone on record opposing conveyances of railroad properties to Alaska Native Corporations.

To ensure these issues are adequately addressed in the transfer process, the Committee believes that any transfer legislation should seek to balance the competing interests in the railroad properties. The fundamental objective of such legislation must be to transfer all lands required for current and future operation of the Alaska Railroad, and these lands should be transferred as free of claims as possible. At the same time, the Committee recognizes the need to protect valid existing rights on railroad lands that may not be crucial to railroad operations, and these outstanding claims should be resolved while fully protecting the operation of the future State-owned railroad. The procedural mechanisms and the substantive requirements of any such legislation should be designed to provide clarity in land status and to facilitate a smooth transition to State ownership. The Committee is persuaded that the highest interest to be protected in any transfer legislation is the delivery of an economically viable railroad to the State, which can be accomplished with adequate protection for the valid existing rights of Native Corporations or other parties claiming an interest in railroad properties.

With respect to the matter of the continued operation of the railroad, the Committee believes it is appropriate to point out that attempts have been made during past administrations to sell the Alaska Railroad to private buyers on the condition that it continue to be operated as a rail carrier. However, such buyers have only been interested in purchasing the railroad for the purpose of liquidating it. The Committee believes that it is essential that the railroad be operated as a rail carrier after its transfer in order to avoid disruption to employees, shippers and others, and to protect the Federal Government's past investment in the railroad. Further, it is apparent that the State is the only likely taker that shares this interest in the continued operation of the railroad. Under the circumstances, the Committee believes it makes sense to provide for a transfer of the railroad to the State at no cost, provided the State agrees to operate it as a rail carrier and to assume certain liabilities for the railroad's employees and shippers. Such a no-cost transfer would also help compensate the State for the fact that in taking over the railroad it would have to assume substantial financial obligations in the form of employee protection, deferred maintenance, and the cost of subsidizing passenger services. These obligations have been estimated at at least $100 million. Further, such a no-cost transfer would be consistent with the pending transfer of Conrail's commuter and intercity rail passenger operations, and with the past transfer to the State of Alaska of other federal transportation facilities, including highways and airports.

LEGISLATIVE HISTORY

On July 7, 1981, Senator Stevens introduced on behalf of himself and Senator Murkowski S. 1500, a bill to provide for the transfer of the Alaska Railroad to the State of Alaska. On August 10th and 11th, the full Committee held hearings on the bill in the State of Alaska. The full Committee met in open executive session on May 11, 1982 to discuss and mark up S. 1500. On the same day, the Committee by unanimous vote ordered S. 1500, as amended, favorably reported.

SUMMARY OF BILL

TRANSFER

As stated earlier, the Committee believes that the transfer of the Alaska Railroad from the Federal Government to the State is appropriate and has approved legislation which would implement the transfer with minimal disruption. The railroad is of primary benefit to the State, and the Committee believes that a transfer would provide the State with the opportunity to ensure that the railroad remains responsive to the needs of Alaska. Furthermore, a transfer would realize certain savings for the Federal Government and would remove its involvement in the operation of the railroad, which is no longer essary or appropriate.

The legislation, as reported, provides for a transfer to the State or a State-designated entity. This provision is intended to afford the State with the flexibility to decide how the railroad is to be managed and operated once it is transferred.

The transfer is to occur without any direct monetary compensation by the State. Instead, the legislation provides for a transfer subject to certain conditions relating to continued operation as a rail carrier; assumption of its liabilities and obligations; and protection of affected employees. As previously stated, the Committee believes that direct compensation by the State would be inappropriate for several reasons. First, the Committee believes that the State is the only entity that is likely to take over the railroad and operate it as a rail carrier. Second, the state is being required to assume substantial financial obligations in taking over the railroad. Third, a no-cost transfer is consistent with past transfers of transportation facilities to the State and the transfer of Conrail's passenger operations to the public sector.

The Committee supports the above-mentioned transfer conditions as representing a sufficient protection of the prior federal investment in rail service while at the same time ensuring that Fede ownership and operation are terminated. In this regard, the Comm tee wants to ensure that important rail service is maintained, and has provided for a reversion to the Federal Government, or payment by the State, in the event that continued operation of the railroad is prevented. Also, the legislation provides that if the Secretary of Transportation is not able to certify a transfer to the State of Alaska, the rail properties would be otherwise disposed of, with preference being given to a prospective owner committed to continuing rail service.

In addition, the Committee believes that the conditions for transfer would ensure continued service with minimal disruption to shippers, employees, and affected areas. Thus, the Committee deems it appropriate for the State to assume certain liabilities, including employee obligations and small tort claims. The Committee notes that these conditions are consistent with the approach taken in prior legislation approved by Congress relating to the transfer of Conrail's freight operations to the private sector and its passengers operations to the public sector.

EMPLOYEE PROVISIONS

In approving this legislation, the Committee wants to ensure that a change in ownership is smooth and equitable for the employees. The status of current Alaska Railroad employees presents special problems in the face of state ownership; they are Federal employee, with rights and benefits not necessarily equaled under the State employment system. To ensure that such accrued rights and benefits are not unjustly lost, the Committee believes that the State, as owner of the railroad, should assume responsibility for assuring the protection of those employees transferred to the State-owned railroad until new employee arrangements can be made. Furthermore, retention of the employees is vital to the continuation of the railroad, and thus it is in the interest of the State to provide the protections included in the reported bill to create a climate in which the employees would be willing to transfer to the State-owned railroad.

The legislation provides for a transition period of 2 years following the date of transfer, during which time the status-quo is to be essentially maintained. Those employees who choose to work for the State-owned railroad would be retained at their present salary levels and positions under existing collective bargaining agreements. In addition, the State during this period would be obligated to give credit for certain Federal benefits, and would be responsible for severance pay to those transferred but terminated during this period. The Federal Government, of course, would continue to be responsible for those employees who choose not to transfer. The Committee believes that a 2-year period is sufficient to minimize any uncertainties which the employees might fear, and also to allow time to incorporate the transferred employees into the State-owned railroad.

At the same time, the Committee believes that it is important for the State to have control over the shaping of its work force. Thus, the State would be able to reassign employees during this 2-year period. Also, the legislation provides that existing collective bargaining agreements would be inoperative at the end of this transition period: the Committee expects that these agreements would be renegotiated during this 2-year period and that employee benefits, excepting retirement, would thereafter be determined through contract negotiations. In addition, under this legislation, the railroad officers would be treated somewhat differently than the employees: the current top five officers would not have to be retained in their present positions. The Committee believes that the State should have the flexibility to choose its own management as soon as possible after the transfer, and to begin to tailor its work force and employee benefits to the needs of the railroad under its direction.

To further protect the interests of the employees, the reported bill ensures the continuation of some type of retirement system after the transfer for those currently covered by the Federal program. Significant monetary contributions have been made into the Federal program on behalf of these employees, and the legislation ensures that accrued benefits are kept alive. For those employees who transfer to the state-owned railroad, whether or not they are terminated during the 2-year transition period, the Federal program would continue to cover them,

but the State would become the contributing employer and would remain responsible for dispensing the benefits. Those who do not transfer would be entitled to the Federal benefits, the payment of which would remain the obligation of the Federal Government.

However, to allow the State flexibility and consistency in dealing with the employees transferred to its railroad, the legislation provides the State with the option during the 2-year transition period of placing these employees under an equivalent state retirement program. Under this scenario, the contributions made into the Federal fund would be transferred to the State fund. This option, however, would not apply to those transferred employees who are to retire within 5 years of the transfer, if they choose to remain under the Federal system.

The Committee believes that this legislation provides certainty important to the employees: it maintains essentially a status-quo for a specified time and ensures the retention of accrued Federal benefits. At the same time, it affords the State the flexibility which it needs to ensure an efficient rail operation under its leadership.

TRANSITION

The Committee understands the concerns of the State about the uncertainties surrounding the transfer. Accordingly, the legislation directs the State and the DOT to compile a report within 6 months of enactment, setting forth the lands to be transferred and the obligations to be assumed. The information on the lands would form the basis for the identification of the rail properties in the deed of conveyance, and an assessment of the obligations would assist the State in preparing for ownership.

In further preparation, the State would have access during this period to railroad properties and records, and the DOT would be required to ensure that the railroad accounting practices are adequate to provide the necessary information to the Interstate Commerce Commission (ICC). To ensure that there is no material change in the assets which the State expects to acquire, the legislation also provides that between enactment and transfer the railroad would not take certain actions affecting its properties without concurrence of the State. It is intended that these requirements facilitate an orderly and expeditious transfer.

DISPOSITION OF RAILROAD LANDS

Throughout its deliberations on this legislation, the Committee has given careful consideration to the many complex issues surrounding the status of the Alaska Railroad lands. As indicated earlier, the Committee deems it essential that the legislation ensures a smooth and timely transfer of the railroad to the State and the continued operation of the railroad. At the same time, the Committee remains concerned about a fair and expeditious resolution of Native and other third party claims to portions of the railroad properties. The Committee believes that the reported legislation strikes an appropriate balance of these interests.

Under the transfer provisions of this bill, the Federal Government upon certification would transfer to the State all the rail properties by

one deed of conveyance, subject to certain statutory exemptions. This deed is to convey legal title and possession to the State, subject to valid existing third-party rights and reconveyance in satisfaction of those rights. The Committee wants to ensure that the State is able to assume operation of the railroad immediately upon transfer.

This deed is to include a description of the properties to be transferred. The Committee understands the concern of the State in knowing the status of the properties it is acquiring. The Committee is also aware that survey descriptions of the railroad right-of-ways are unavailable and that less specific descriptions would have to be included in the deed. The Committee expects the Departments of Interior and Transportation to work closely with the State to identify as fully as possible all rail properties and prepare appropriate legal descriptions for inclusion in the deed.

A transfer by one deed of conveyance presupposes the parties' ability to identify and agree upon the contents of the rail properties. The preparation of the report required during the transition period is intended to provide a mechanism for reaching a mutual understanding on this matter. If, however, the parties are not able to identify all the rail properties or disagree on whether certain properties are to be included in the deed, the deed and report requirements are not to stand as impediments to timely transfer. Transfer could be made subject to a latter reformation of the deed by appropriate means if additional property should need to be transferred or more specific descriptions required. This legislation is intended to facilitate a timely and orderly transfer, and its implementation is to be understood in light of this objective.

Under the reported bill, the deed would convey to the State a fee interest in the 200-foot strip comprising the railroad track right-of-way, amounting to roughly 12,000 acres. This fee estate is recognized by the Committee to be the current interest of the Alaska Railroad derived from common practice and authorized under section 1 of the March 12, 1914 Alaska Railroad Act. The other rail properties would be conveyed subject to valid existing third-party rights,

In this regard, earlier legislation considered by the Committee included provisions which would have extinguished third-party property claims for which title has not vested, including those made by Native Corporations under the Alaska Native Claims Settlement Act (ANCSA). These provisions were based on the legal position as set forth in a letter to the Committee from the Department of Justice dated December 16, 1981, which states that such extinguishment would not be an unconstitutional taking under the Fifth Amendment since no property rights have vested. During the hearings on this original legislation, the Committee received testimony raising concerns about these provisions as frustrating the intent of ANCSA, and also disputing their constitutionality.

The Committee considered these concerns in light of its continuing interest in ensuring that the State receive properties which are compatible with continued operation of rail service. The reported bill is the result of these deliberations and strikes a sound balance of interests. It ensures conveyance of the track right-of-way in fee so that the State can continue to operate the railroad. At the same time, the legislation allows for a determination of the validity of Village Corporation claims on other rail properties.

To ensure that valid existing claims to railroad properties are adjudicated and satisfied as soon as possible, the legislation would provide for an expeditious determination by the Department of Interior (DOI) and the courts of such claims, and for subsequent reconveyance of properties for claims proven valid through the expedited determination. The Committee notes that this process is similar to that adopted in Section 906 of the Alaska Lands Act to expedite conveyance to the State of its land entitlement under the Alaska Statehood Act. The process provided in the reported bill reaffirms the ongoing responsibility which DOI has under ANCSA to expeditiously adjudicate these claims.

In this regard, the reported legislation specifically directs the agency within 1 year of date of enactment to make determinations under section 3(e) of ANSCA, which identifies public lands available for selection by Alaska Natives. That section provides that with respect to Federal installations, of which the railroad is one, the Secretary of Interior is to determine the "smallest practicable tract" actually being used for the administration of such an installation. If certain properties are determined to be part of this tract, they are not public lands as defined under the Act and thus not subject to third-party claims.

The reported bill directs DOI to make the determination of the smallest practicable tract within this 1-year period and also provides for expedited judicial review of any such decision. The Committee believes that such claims can be adjudicated by the Secretary of Interior within 1 year. It has been over 10 years since the passage of ANCSA and nearly a year and a half since the promulgation of the final 3(e) regulations. Considering the concentrated effort by State and Federal agencies and by affected Native Corporations to determine the land status of the railroad properties, 1 year is not an unreasonable time frame. Further, it is the belief of the Committee that immediate discussions among the Departments of Interior and Transportation, the State of Alaska and Native claimants should go forward to assist in the ultimate settlement of this issue.

The Committee expects DOI to apply the section 3(e) regulati in making determination of smallest practicable tract. The Committee notes that during the deliberations on these regulations, concerns were raised about their impact on the ability of the railroad to continue to operate as envisioned and authorized by its enabling legislation. Letters were written by the Committee and the DOT voicing such concerns.

The reported legislation would not change the section 3(e) regulations as finally promulgated by DOI. However, the legislation does reflect the continuing concern of the Committee that those lands important to the operation of the railroad remain part of the railroad. Specifically, the legislation directs the Secretary of the Interior to consider its findings and policies, including the belief of the Committee that a transfer of the railroad right-of-way in fee simple is essential to the continued operation of the railroad, and that the actual physical characteristics of the railroad (e.g., the right-of-way and reserves) be

maintained to the extent required to assure the transfer of an economically viable railroad operation.

The Committee believes that title to the railroad lands must be cleared and that the State should be able to assume operation of the railroad at the earliest date allowed under this legislation. In approving the legislation, the Committee anticipates this result without any inappropriate infringement upon the valid rights of the Natives and other third parties.

STATE OPERATION

Section 8 of the bill governs the application of various Federal and State laws to the State-owned railroad after its transfer to the State. The Committee believes that it is necessary to clarify the application of these laws, because as a federally owned and operated entity, the Alaska Railroad is now exempt from many of these laws. In general, the Committee believes that in the future, the State-owned railroad should be treated like all other railroads subject to Federal and State laws. However, at the same time, we are aware of the need on the part of the State to have flexibility in setting up and operating the railroad. Section 8 reflects these concerns.

This section specifically provides that the State-owned railroad shall be subject to the jurisdiction of the ICC and to other Federal laws. Currently, the Alaska Railroad is subject to limited ICC jurisdiction, which was invoked pursuant to a 1963 Presidential Executive order.

During the Committee's consideration of S. 1500, some of the Alaska Railroad's competitors recommended that in addition to normal ICC procedures, special subsidy and pricing limitations be applied to the State-owned railroad to protect its competitors from unfair subsidized competition. The Committee rejected these recommendations for several reasons.

First, ICC studies of Alaska Railroad rates submitted to Congress in 1981 showed that all of its interstate rates were fully compensatory and covered all of the railroad's costs, including an imputed cost of capital. Since these studies indicate that Federal support has not been used to compete unfairly with other carriers, the Committee does not expect any state support of the railroad to be used to compete unfairly with its competitors.

Second, the Committee believes that the State has the greatest interest in fostering competition among the carriers serving the State. This includes encouraging all carriers to provide services to shippers and consumers at the lowest possible cost. It would not be in the interest of the State to take actions that would result in the loss of competition.

Third, the Committee believes it would be inappropriate for the Federal Government to dictate to the State how it should set up and operate the railroad beyond what generally applies to all rail carriers under existing law.

The Committee believes that existing ICC regulations provide sufficient recourse to the railroad's competitors if they wish to challenge the railroad's rates as too low or to challenge proposed exemptions from the Interstate Commerce Act and regulations. The Committee also rejects any notion that a special regulatory regime or scheme, beyond that normally applied by the ICC, ought to be imposed on the state-owned railroad. In this regard, the Committee notes that whatever the outcome of pending ICC proceedings regarding the exemption from regulation of trailer-to-flatcar (TOFC) and container-on-flatcar (COFC) service provided by the Alaska Railroad, we question the holding in *American Trucking Associations* v. *I.C.C.*, ——— F.2d ——— (5th Cir. 1981), as it may apply to the State-owned railroad.

During the Committee's consideration of the bill, questions were raised regarding the application of the Federal antitrust laws to the State-owned railroad. During markup, the Committee agreed to an amendment offered by Senator Stevens that clarified this matter.

At present, the Alaska Railroad may not be sued under the Federal antitrust statutes because federal instrumentalities cannot be sued under those statutes. *Sea-Land Service, Inc.* v. *Alaska Railroad*, ——— F.2d ——— (D.C. Cir. 1981). Senator Stevens' amendment to the section 8 provision making the State-owned railroad subject to the jurisdiction of the antitrust laws recognizes that the transfer of the rail to the State will terminate the railroad's status as a Federal instrumentality and thereby subject the railroad to the jurisdiction of those statutes. This provision is not intended to modify existing law relating to the availability of exemptions from the antitrust laws. *Parker* v. *Brown*, 317 U.S. 341 (1943). It expressly provides that the State may invoke any exemption from the antitrust laws that may be available to the State-owned railroad. In this regard, the provision requires such state action invoking an exemption to be explicit, as is required by recent court decisions. *Community Communications Co., Inc.* v. *City of Boulder*, ——— U.S. ——— No. 80–1350 (January 13, 1982); *City of Lafayette* v. *Louisiana Light & Power*, 435 U.S. 389 (1978).

In the process of clarifying the application of the antitrust laws, the Committee rejected a recommendation that the State not be permitted to invoke any exemption authority that it has pursuant to the State government action doctrine. The Committee's rejection is based on several reasons. First, we believe that the bill, as reported, clearly favors the application of the antitrust laws without unduly restricting the State's ability to set up and operate the railroad as it deems most appropriate. Second, we think it would be unfair to limit the S of Alaska's actions when other States, such as Vermont and West Virginia, are free to invoke this exemption for their state-owned railroads. Finally, in view of the State's interest in fostering competition among the carriers serving the State, we seriously doubt that the competitors have reason to fear this exemption authority.

The Alaska Railroad currently is treated as subject to the Federal safety laws and regulations administered by the Federal Railroad Administration (FRA). However, the FRA has sanctioned noncompliance with its regulations in some limited areas by issuing "waivers of compliance." After the transfer, the Committee expects the same situation to prevail. In this regard, section 8 specifically provides that any waivers of compliance in effect on the date of transfer shall continue in effect. It is the Committee's understanding that any cases of noncompliance by the Alaska Railroad are currently contained in waiver memoranda. However, if this is not so, then the Committee

strongly urges the FRA to officially note these cases of noncompliance in waiver memoranda to the maximum extent possible prior to the transfer. In accepting the continuance of waivers of compliance, the Committee expects that the Alaska Railroad will be operated at an optional level of safety.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 26, 1982.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1500, the Alaska Railroad Transfer Act of 1982, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, May 11, 1982. The bill would allow the Secretary of Transportation to transfer the Alaska Railroad to the State of Alaska without monetary consideration to the United States.

Section 7 of the Alaska Railroad Transfer Act of 1982 allows the State of Alaska the option of providing retirement benefits to transferred federal employees through a retirement system maintained by the State. Should the state elect the option, as anticipated by the Federal Railroad Administration (FRA), all Alaska Railroad contributions and employee withholdings on deposit with the Civil Service Retirement Trust Fund would be transferred to the State of Alaska. Based on information provided by the FRA, this would equal approximately $20 million, if the transfer of the railroad were to take place on July 1, 1983. CBO estimates that the total cost impact of transferring the retirement contributions would be slightly greater than $20 million, to reflect contributions made by other federal agencies that previously employed Alaska Railroad employees.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

The purpose of S. 1500, as reported, is to provide for the transfer of the Alaska Railroad from the Federal Government to the State of Alaska. As a condition of the transfer, the State is required to assume certain liabilities and obligations of the railroad, make arrangements

to protect employee interests, and agree to continue operating the railroad as a rail carrier. Prior to the transfer, the Secretary of Transportation and the Governor of Alaska must prepare a report for the U.S. Congress and the State legislature, which details the rail properties to be transferred and the rights, liabilities, and obligations to be assumed by the State. After the transfer, the State-owned railroad is to be subject to the same federal laws as are other rail carriers regulated by the ICC. The ICC is required to promulgate a procedure for providing an operating certificate to the state-owned railroad.

The requirements outlined above will result in some increase in economic regulation of what is now the Alaska Railroad. As a federal entity, the Alaska Railroad has not been subject to complete ICC jurisdiction. Once it is transferred to the State, it will have to file the same reports with the ICC as the other carriers do, and file an application for an operating certificate. The State will also be subject to limited paperwork requirements and costs associated with the proposed transfer of the railroad. This includes the one-time report to Congress and the State legislature. The Secretary of Transportation will be subject to similar paperwork requirements and costs.

While the state-owned railroad and the State will be subject to some increased costs and paperwork as a result of the reported bill, the Committee believes these should be weighed against the savings to the Federal Government of eliminating the DOT's responsibility for administering the Alaska Railroad and eliminating subsidies for its operations. The Committee does not believe that the reported bill will have any impact on the privacy of any individual or business.

Section-by-Section Analysis

Section 1.—Title

This section provides that the legislation may be cited as the "Alaska Railroad Transfer Act of 1982."

Section 2.—Findings

This section states the reasons why the Committee believes that the Alaska Railroad should be transferred to the State of Alaska. An important consideration is the fact that while the railroad has served the interest of the Federal Government in the past, today it primarily serves residents and businesses in the State. Further, the transfer is consistent with the Federal Government's efforts today to transfer programs to the States whenever appropriate. Finally, the transfer is necessary in order to ensure that in the future the railroad will be operated and its services expanded to meet the needs of the State and the railroad's users.

Section 3.—Definitions

This section defines the major terms used in the legislation. Among those defined is "rail properties of the Alaska Railroad." This definition is important because it describes the rail properties that will be transferred to the State. As defined by the legislation, the term rail properties means all right and title to real and personal properties

held by or for the Alaska Railroad as of the date of enactment with some limited exceptions. The exceptions are specified in the definition as follows: (1) the unexercised reservation to the United States in all patents for lands in Alaska as provided for the construction of future railroad rights-of-way; (2) the right of the Secretary of Transportation to exercise the power of eminent domain; (3) any money in the Alaska Railroad Revolving Fund that the Secretary and the State agree is needed to pay certain Federal obligations arising from the operation of the railroad, which are not assumed by the State; (4) certain properties that the Secretary determines with the consent of the State to be necessary to carry out Federal functions after the transfer; and (5) certain properties near McKinley Park Station that are used by the National Park Service.

The Committee believes that the definition of rail properties should be broadly construed so as to ensure that all properties used or useful for continued railroad operations, which are not expressly excluded from the definition, are transferred to the State. This includes properties that the Federal Government has removed from the unappropriated public domain for the benefit of the railroad and that are being held for railroad needs.

In view of the broad interpretation the Committee expects to be given the term rail properties, it should be noted that the exclusion specified in paragraph (D) is a narrow one. In is intended to cover only property necessary to carry out Federal functions, such as those related to Federal employment or the national defense.

This section also defines the terms "State" and "State-owned railroad." The definitions are broadly worded to give the State maximum flexibility in designating an appropriate organization for state ownership, operation and management of the railroad after the transfer.

SECTION 4.—TRANSFER AUTHORIZATION

This section relates to the transfer process itself. Under subsection (a)(1), the Secretary of Transportation shall transfer the Alaska Railroad to the State without monetary consideration as soon as possible after four specified certifications are made. The transfer is to be made by one deed of conveyance, and the date of transfer is to be the date the deed is delivered to the State.

Subsection (a)(2)(A) sets forth the specifics of the deed of conveyance. The deed is to convey possession and legal title to the State of all the railroad properties. The track right-of-way is to be transferred in fee simple. In addition, the other railroad properties later determined not to be equitably owned by a third party are to be transferred in fee.

The deed is to include a warranty from the Federal Government as to the interests being transferred. This warranty in essence operates as title insurance: the Federal Government is to reimburse the State for its loss if there is a conflicting claim which diminishes the State interest in rail properties. The warranty applies to the fee interest transferred in the rights-of-way, and also in those properties determined by the DOI to be free of third-party claims but later determined by a court to be subject to a valid claim.

This subsection also requires that the deed expressly transfer to the State all reservations for the Alaska Railroad withheld from Federal patents or other title documents under authority of the March 12, 1914 Alaska Railroad Act, other than unexercised reservations for the expansion of the railroad. For example, the reservation for a railroad right-of-way in a homestead patent is to be transferred to the State, thereby creating the same title in the State as that currently held by the United States for the railroad. It is intended that these reservations pass to the State even if by ministerial error they are not expressed in a particular titled document—such reservations are nevertheless effective by direct operation of the March 12, 1914 act.

Under subsection (a)(2)(B), the Park Service will be able to continue to use and occupy, through the Secretary of Interior, a small tract at Talkeetna, Alaska. The tract is currently used for certain park activities, including those related to hiking and climbing. The Committee believes that the Secretary of Interior should continue to employ these lands for this use so long as railroad operations are unimpaired. In this unlikely event, it is incumbent upon the State to demonstrate interference with railroad operations in order to obtain a right of re-entry.

The deed, under subsection (a)(2)(C), is also to reserve to the Secretary of Interior a right-of-way and easement in the Denali National Park and Preserve in order to administer the Park and carry out attendant responsibilities. Again, these rights are granted so long as they do not unreasonably interfere with the operation of the railroad.

With respect to the required certification, the Secretary of Transportation is to find under subsection (b)(1) that the Senate will operate the railroad as a rail carrier in intrastate and interstate commerce. In addition, the Secretary is to certify under subsection (b)(2) that the State will assume the rights, liabilities and obligations of the railroad. However, the State will not be responsible for claims and causes of action accruing on or before the date of transfer, or judgments rendered before the transfer, except those tort actions which result in claims of less than $2,500.

Under subsection (b)(3) of this section, the Secretary must find that the State has established specified employee protection arrangements to apply during the 3-year period after the date of transfer. For those employees who choose to transfer to the State-owned railroad, the State must ensure their retention in their same positions, and unless otherwise agreed to, at least at the same level of compensation in effect at the time of the transfer.

These provisions are not to apply to those employees who are reassigned, retired, or separated for cause or lack of work. Nor are these provisions to apply to the officers of the railroad, defined as the general manager, assistant general manager, assistant to the general manager, chief of administration, and chief counsel, whom the State is not required to retain in their present positions. However, unless there has been a reassignment, the State is required to pay compensation to them equivalent to the level in effect on the day before the transfer, and such sum is to be in the form of a one-time severance payment.

Also under this subsection, the State is to continue existing collective bargaining agreements during this 2-year period unless otherwise agreed to. This section further provides that these agreements are to be renegotiated during this period unless otherwise agreed to, and that they are to expire at the end of the 2-year period.

Finally with respect to the employees, the State is to ensure that certain Federal benefits are retained. These include accrued leave, insurance, seniority rights, and cost-of-living increases. Also, those employees who are transferred to the State-owned railroad but terminated or laid off during the 2-year transition period shall be entitled to priority of reemployment in the railroad, and prior Federal service is to be counted in determining seniority for such purposes.

The fourth certification requirement is provided in subsection (b)(4). It ensures that the State will allow the Secretary of Transportation access to the employees and records of the railroad as needed to carry out the remaining Federal responsibilities connected with the transfer.

SECTION 5.—TRANSITION PERIOD

This section sets forth the activities which are to occur, or are not to occur, during the period between the enactment of this legislation and the date of transfer. Subsection (a) of this section provides for joint submission by the Secretary of Transportation and the Governor of Alaska, no later than 6 months after enactment, of a report which describes in appropriate detail the rail properties of the railroad, the liabilities and obligations to be assumed by the State, and the sum of money, if any, in the Alaska-Railroad Revolving Fund to be used by the Federal Government in carrying out its remaining responsibilities. With respect to real property, the Committee understands that the type of description contained in the mandated report will be dependent on available title information.

Under subsection (b), the State shall have access to properties of, and records pertaining to, the railroad in order to evaluate and prepare for the transfer. Also, the Secretary is directed not to take certain actions relating to the transfer, sale, or lease of the railroad properties, or to the obligation of railroad monies, without the consent of the State.

Finally, subsection (c) directs the Secretary prior to transfer to ensure that the railroad's accounting practices and systems are capable of reporting the required data to the ICC. This action will facilitate the transition of the railroad to its status as a regulated rail carrier in intrastate and interstate commerce.

SECTION 6.—LANDS TO BE TRANSFERRED

This section sets forth the status of the rail properties to be transferred and provides for the orderly adjudication of valid existing rights to those properties. Subsection (a) establishes that the rail properties are to be transferred to the State subject to valid existing rights and are to be reconveyed in order to satisfy such claims. This subsection clarifies the current law with respect to satisfaction of these claims under the ANCSA: rail properties which under this act are determined to be part of the "smallest practicable tract" under section 3(e) are not public lands and not subject to any claims. The properties transferred are specifically excluded from selection or conveyance provided under amendments to ANCSA relating to the Cook Inlet Regional Corporation, the Chugach Native Regional Corporation, and certain Eklutna Village Corporation selections provided for in the ANILCA.

Subsection (b) reinforces the Department of Interior's existing responsibility to adjudicate third-party claims and to issue written opinions and appropriate documents of title. Specifically, the Secretary of Interior is directed to complete the determination of smallest practicable tract under Section 3(e) of ANCSA within one year of the enactment of this legislation. In making this determination, the Secretary of Interior is directed to consider the findings and policies of this legislation, including the importance of transferring the right-of-way in fee to the continued operation of the railroad and the need for existing and future rights-of-way to conform to the existing physical characteristics of the railroad. The Committee believes that this determination is critical to the future of the railroad and must be made expeditiously.

Under subsection (c), any decision by the Secretary of Interior pursuant to this section is reviewable but only by a naction brought in the Federal District Court for Alaska, and is to be expedited. The State is allowed to participate in such an appeal, as well as in any agency proceeding. To ensure that the goals of this legislation are not frustrated, this section further provides that no injunctive or other relief can delay the transfer of the railroad or impede its operations. The Committee intends that relief to protect claims be fashioned so as to permit the railroad to substantially maintain its operations.

Lands among the rail properties are expressly excluded by subsection (d) from selection by Cook Inlet Region, Inc. (CIRI) and Chugach Natives, Inc. under 43 U.S.C. § 1611 and sections 1425 and 1430 of Public Law 96-487. The Committee has reviewed these provisions and finds no intent by Congress to create claims against the Alaska Railroad through the provisions of these acts. Thus, the Committee in this section deals with the claims of CIRI by affirming CIRI's inability to validly select railroad properties while ensuring that CIRI's overall ANCSA selection rights are expedited. Similarly, any conceivable interest in railroad properties that could be drawn from ANILCA amendments to ANCSA for Chugach Natives, Inc. and the Eklutna Village Corporation are extinguished in this legislation. The intent of the language in this subsection is to keep all railroad properties out of the pool of selection established for CIRI in a January 2, 1976 amendment to ANCSA.

Since the passage of Public Law 94-204 in 1976, incorporating the Cook Inlet Land Exchange Agreement (exchange agreement), the Secretary of Interior and the State of Alaska have been attempting to ensure that the land entitlement of CIRI under that complex provision is fulfilled in a manner consistent with the interests of the State, environmental concerns and concerns of other public and private entities.

In one of the integral parts of the exchange agreement, the "in-region pool" provision, the Secretary of Interior, in conjunction with the General Services Administrator, was charged with promptly identifying and creating a selection pool of federal lands within Cook Inlet Region. The transfer of the Alaska Railroad through this legislation would remove the properties from possible placement in the "in-region pool".

The Committee finds that the transfer of the railroad to the State can be made so that the equities remain for each of the parties to the exchange agreement. In order to accomplish this, the provisions in this section are necessary.

Transfer of the Alaska Railroad to the State potentially increases pressure on all participants to fulfill the entitlement embodied in the exchange agreement.

ANILCA amended ANCSA to allow for "in-region pool" selections to occur out of state. Since the existing exchange agreement already allows the Secretary of Interior the discretion to enlarge the "in-region pool" using out-of-region entitlement, the objective of this section is to reaffirm this secretarial discretion and make clear that out-of-state properties can be placed into the "in-region pool" as stated in the existing ANILCA amendments. Placement in the pool allows CIRI to negotiate with local governments to obtain the properties being surplused.

Utilization of CIRI's current statutory rights to obtain federal surplus property wherever located will be essential for fulfillment of its entitlement. Therefore, a more detailed provision is needed to ensure that properties will be made available. This section adjusts CIRI's current statutory right by specifically requiring that both the Secretary of Interior and CIRI obtain early notice of potentially available properties. Without such sections, properties are presently almost through with the General Service Administration's disposal process before CIRI even becomes aware of their existence for possible negotiation. The amendments also clarify the Secretary of Interior's authority to offer properties under his jurisdiction to CIRI as partial fulfillment of CIRI's entitlements.

Additionally, the amount of property within the "in-region pool" has been for various reasons far less than the agreed upon minimum amount required. On three separate occasions, the original deadline of January 15, 1978 has had to be extended to recognize this fact. To ensure fulfillment, section 6 lifts the deadline until the pool is complete but in no event later than July 15, 1987. This section recognizes the possibility that removal of the Alaska Railroad could slow completion of the pool on time.

Also, to increase the properties within Alaska that can be placed into "in-region pool", section 6 extends CIRI's present in-region surplus property priority statewide. The State and Federal interests here are protected by conclusive objection if an out-of-region property represents a demonstratable public purpose.

CIRI's out-of-region selection provision of the agreement prohibited CIRI's nominations of areas that in 1976 were the best estimate of those lands which were in the national interest to retain in public

ownership either under Federal or State control. Since that time, ANILCA has been enacted designating the national interest lands, and state selection interests areas have changed. This section would remove these outdated proscriptions for nominations and replace them with a prohibition for nomination with the four-systems' areas described in ANILCA. Veto rights of the Secretary and the State embodied in the exchange agreement would remain unchanged.

Furthermore, the Committee finds CIRI has been working closely with the State and Federal government fulfilling its out-of-region entitlement. Eventual fulfillment will probably involve an exchange whereby the State would convey title back to the Federal Government for reconveyance to CIRI. This section gives the Secretary authority to accept State title, reconvey it to CIRI, and to credit Alaska's statehood entitlement with an equivalent acreage total.

Finally, this section in subsection (e) provides that there shall be no claim to compensation for use of lands among those rail properties either ultimately conveyed by the United States to any person received by the State and later reconveyed in satisfaction of valid existing rights. This provision is not designed to prevent any administrative or judicial action necessary to protect pending claims for waste during adjudication but prior to reconveyance of the lands.

SECTION 7.—EMPLOYEES OF THE ALASKA RAILROAD

Subsection (a) of this section provides that those employees who transfer to the State-owned railroad and who presently participate in the Federal Civil Service System, may continue to participate in this system so long as they continue to work for the State-owned railroad. However, as an alternative, the State-owned railroad may provide such employees with retirement benefits either in, or substantially equivalent to those benefits the State provides its employees under, the State retirement system. The reason for the alternative is to permit the State-owned railroad to avoid having to administer two separate retirement systems. At the same time, it ensures that employees will continue to have benefits equivalent to or better than what they are entitled to now. The section provides an exception the state alternative program for those transferred employees w. are entitled to retire under the federal retirement system within five years of the date of the transfer. These employees may elect to remain participants in the Federal system, even if the State chooses to provide other benefits.

Subsection (b) of this section provides that those Federal employees who choose not to transfer to the State-owned railroad at the time the railroad is transferred from the United States to the State shall be entitled to all of the normal rights and benefits under Federal law for discontinued employees.

Subsection (c) provides for similar protections for transferred employees whose employment with the State-owned railroad is involuntarily terminated during the 2-year period following the transfer. However, these employees are to look to the State at the time of such termination to cover the benefits that these employees

would have had under Federal law had they elected not to transfer to the State-owned railroad.

SECTION 8.—STATE OPERATION

Subsection (a) of this section provides that after the transfer, the State-owned railroad shall be subject to the same Federal laws, with some limited exceptions, as are other railroads, including the Interstate Commerce Act, the Federal antitrust laws, and the railroad safety laws. The limited exemptions are the Railroad Retirement Act, the Railway Labor Act, the Federal Employers' Liability Act, and the Railroad Unemployment Insurance Act. The reason for excluding the railroad from the application of these latter acts is that the Alaska Railroad is not now subject to them, and the State has in place similar statutes that would appropriately apply to the State-owned railroad. All FRA memoranda which sanction non-compliance with Federal railroad safety regulations in effect on the date of transfer shall continue in effect according to their terms as "waivers of compliance."

In addition, subsection (a) exempts the State-owned railroad from any State or local statute specifiying a minimum number of crew members that must be employed in connection with the operation of its trains.

Subsection (a) specifies that the state-owned railroad shall retain and manage its own revenues. The purpose of this provision is to avoid the need for annual appropriations by the State for the railroad.

Subsection (b) of this section requires the ICC to promulgate an expedited, modified procedure for providing the State-owned railroad a certificate of public convenience and necessity. The Committee expects the ICC to employ as a model the procedure used in granting certificates to publicly owned railroads created out of the Milwaukee and Rock Island railroad abandonments. The circumstances there were substantially the same as the case here with respect to the proposed disposition of the Alaska Railroad. This subsection also exempts ICC actions under this subsection from the National Environmental Policy Act and the Energy Policy and Conservation Act in order to ensure an expeditious process.

Subsection (c) of this section provides that the State-owned railroad shall be eligible to participate in Federal assistance programs on the same basis as other railroads, including that provided for by the Railroad Revitalization and Regulatory Reform Act (4–R Act).

Subsection (d) of this section provides that the railroad properties within the Denali National Park and Preserve shall as determined by the Secretary of the Interior be subject to Federal laws and regulations established for the protection of fish and wildlife and other park values. In making this determination, the Secretary is to consult with the Governor of Alaska. Moreover, any determination by the Secretary must be designed to avoid substantial interference with railroad operations. The Committee believes the Secretary must fully exercise his duty to preserve the resource values of Denali, and that this can be achieved without significant detriment to the State-owned railroad's use of its right-of-way through the Park and Preserve.

SECTION 9.—FUTURE RIGHTS-OF-WAY

This section contemplates future rights-of-way for expansion of the railroad. The Committee believes that expansion is important if the State is to develop the railroad into a transportation system fully responsive to the needs of its growing economy. The Committee strongly encourages the Secretaries of Transportation, Interior and Agriculture to facilitate expansion of the State-owned railroad to the greatest extent possible.

Subsection (a) provides that the State or State-owned railroad may request, pursuant to existing law, a right-of-way over Federal lands from the Secretary of Interior or the Secretary of Agriculture, as appropriate, in consultation with the Secretary of Transportation. The Committee intends that the Secretary of Transportation will provide the State with assistance in this endeavor.

Notwithstanding the requirements of existing law, rights-of-[way] must be granted pursuant to the conditions specified in this sub[section] tion relating to size, use, and payment. These specifications are derived from the historical characteristics of rights-of-way and incidental rights authorized under the 1914 Alaska Railroad Act. Thus, future rights-of-way are thereby made equivalent to the pretransfer rights-of-way of the Alaska Railroad. The Committee notes that the authority herein granted is not to be construed as foreclosing the State from establishing that easements by necessity or rights of access across Federal lands have been implicitly granted with the transfer of lands under this legislation.

Subsection (b) specifies that any rights-of-way granted under this section is subject to reversion as are the other transferred rail properties in the event that it is converted to a use preventing continued operation of the railroad within 5 years of the grant of such right-of-way.

SECTION 10.—REVERSION

This section provides for the reversion to the United States of the properties of the Alaska Railroad, if within 5 years of transfer [such] properties are converted to a use that would prevent the State-[owned] railroad from continuing to operate. As an alternative to the actual reversion of the properties, the State at its option may pay the United States an amount determined to be the value of the properties at the ime they were convered to a use preventing the railroad from operating. If the State-owned railroad abandons rail service over those rail properties located within the boundaries of Denali National Park, these properties shall become part of the National Park.

The purpose of this section is to protect hte Federal Government's financial investment in the Alaska Railroad, and its interest in the continued operation of the railroad in the future.

SECTION 11.—OTHER DISPOSITION

To ensure that the railroad is transferred from Federal ownership, this section authorizes the Secretary of Transportation to otherwise dispose of the railroad if satisfaction by the State of the four conditions under section 4 cannot be certified within a year [of] of the delivery of the report mandated under section 5. Consistent [with] h the concern

for continued rail service, this section directs the Secretary to give preference to a prospective owner who will continue to operate rail service.

SECTION 12.—M'KINLEY PARK STATION LANDS

This section deals with the disposition, upon transfer, of certain rail lands currently used in the administration of the Denali National Park and Preserve. Under subsection (a), certain specified land close to the McKinley Park Station is to be transferred to the Department of the Interior for administration of the Park. However, subsection (b) provides that certain land on either side of the track near the station shall not be so transferred as it is needed to continue certain rail-related operations.

SECTION 13.—APPLICABILITY OF OTHER LAWS

This section exempts actions taken under the legislation from the requirements of a number of Federal statutes, including the National Environmental Policy Act and those provisions of the Administrative Procedure Act not pertaining to judicial review. The reason for these exemptions is to ensure that the transfer porcess is not delayed.

This section also clarifies that actions taken under this legislation do not constitute a disposal of surplus Federal property or a revocation of withdrawals made from or confirmed for the Alaska Railroad under a number of specifically named and generally referenced land laws, including the Federal Land Policy and Management Act. These clarifications are necessary in order to ensure that the rail properties do not become available for entry or selection by third parties as a result of actions taken under the legislation.

SECTION 14.—CONFLICT WITH OTHER LAWS

This section provides that the provisions of this legislation shall govern in the event of any conflict between this legislation and any other law.

SECTION 15.—REPEAL AND AMENDMENT OF EXISTING

This section repeals the Alaska Railroad Enabling Act and other related laws, and makes conforming changes to other federal laws that mention the Alaska Railroad. These changes would become effective at the time of the transfer or at the time of any other disposition of the railroad pursuant to section 11 of this legislation.

SECTION 16.—SEPARABILITY

This section provides that if any section is held invalid, other sections shall not be affected.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF JANUARY 2, 1976 (PUBLIC LAW 94-204)

SECTION 12 OF THAT ACT

SEC. 12. (a) * * *

(b)(1)–(6) * * *

(7)(i) Until the obligations of the Secretary and the Administrator of General Services under [subsection 12(b)(6)] *section 12(b)* of this Act are otherwise fulfilled: (a) Cook Inlet Region, Incorporated, may, by crediting the amount established in subsection 12(b)(7)(ii), bid, as any other bidder for surplus property, wherever located, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. sec. 484), as amended. No preference right of any type will be offered to Cook Inlet Region Incorporated, for bidding for General Services Administration surplus property under this subparagraph and no additional advertising shall be required other than that prescribed in title 40, United States Code, section 484(e)(2) of the Federal Property and Administrative Services Act; (b) the Administrator of General Services may, at the discretion of the Administrator, tender to the Secretary any surplus property otherwise to be disposed of pursuant to 40 U.S.C. 484(e)(3) to be offered Cook Inlet Region, Incorporated for a period of 90 days so as to aid in the fulfillment of the Secretary's program purposes under the Alaska Native Claims Settlement Act: *Provided*, That nothing in this subsection 12(b)(7)(i)(b) shall be construed to establish, enlarge or diminish authority of the Administrator or the Secretary within the State of Alaska. If the Region accepts such property, it shall be in exchange for acres or acre-equivalents as provided in subparagraph I(C)(2)(e) of the document, referred to in subsection (b) of this section. Prior to any disposition under subsection 12(b)(7)(i)(b), the Administrator shall notify the governing body of the locality where such property is located and any appropriate State agency, and no such disposition shall be made if such governing body or State agency, within ninety days of such notification formally advises the Administrator that it objects to the proposed disposition.

(ii) Notwithstanding subsection (i) of this paragraph and any other provision of law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under this subsection are otherwise fulfilled:

(A) Before reporting any real property, wherever located, under his control to be excess to the needs of the Department of the Interior, the Secretary shall notify Cook Inlet Region, Incorporated, that such property is available at such time for conveyance to Cook Inlet Region, Incorporated, upon negotiated sale or change, and the Secretary is authorized to convey such property;

(B) Concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall notify the Secretary and Cook Inlet Region, Incorporated, that such property is available for conveyance to Cook Inlet Region, Incorporated, upon negotiated sale or exchange pursuant to this subsection. Within thirty days of the date of such notice, Cook In-

let Region, Incorporated, may advise the Secretary, and the Secretary may advise the Administrator, that there is a tentative need for the property to fulfill the obligations established under this subsection. Upon receipt of such notice from the Secretary, the Administrator shall suspend any disposition of the property for 60 days, to permit the Secretary and Cook Inlet Region, Incorporated, to negotiate terms of sale of the property to Cook Inlet Region, Incorporated. If such terms are agreed upon, the Secretary shall promptly request that the Administrator of General Services transfer the property to the Secretary for such disposition. Such request shall be considered by the Administrator, along with any other requests by Federal agencies. If the Administrator determines that the property should be so disposed of, the Administrator shall promptly transfer the property to the Secretary for such disposition.

(C) No disposition or conveyance of property under this subsection to Cook Inlet Region, Incorporated, shall be made unless the Administrator, after such consultation with State and local officials as is customary in the disposition of excess property, shall determine that there is no State and local priority for such property recognized by law.

(D) As used in this subsection, "real property" means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

(E) If Cook Inlet Region, Incorporated, accepts any conveyances under subclauses (A) or (B) of this subsection, it shall be in exchange for acres or acre-equivalents as provided in subparagraph 1(C)(2)(e) of the document referred to in this section.

[(ii)] *(iii)* The Secretary of the Treasury shall establish a Cook let Region, Incorporated [surplus] property account, which shall available for the purpose of bidding on Federal surplus property *paying for the conveyance of property pursuant to subsection (i) l (ii)*. The balance of the account shall be *the sum of (I)* the acre- uivalent exchange value established by paragraph [I(C)(2)(e)] *C)(2)(e)(iii)(A)* of the document referred to in this subsection, the unfulfilled entitlement of Cook Inlet Region, Incorporated, the ective date of this subsection to acre or acre-equivalents under para- aph [I(C)(2)(g)] *I(C)* of the document referred to in this subsec- n [and shall be] *and (2) ½ the acre or acre-equivalent exchange ue under such paragraph of the unfulfilled entitlement of Cook et Region, Incorporated, on the same date to acres to be conveyed der paragraph (5) of this subsection* adjusted to reflect transfers or cessful bids under [subsection 12(b)(6)] *section 12(b)* of this tion.

[(iii)] *(iv)* The amount charged against the Treasury account es- lished under [subsection (ii)] *subsection (iii)* shall be treated as ceeds of dispositions of surplus property for the purpose of deter- ning the basis for calculating direct expenses pursuant to 30 U.S.C. (b), as amended.

[(iv)] *(v)* The basis for computing gain or loss on subsequent sale or other disposition of lands or interests in land conveyed to Cook Inlet Region, Incorporated, under this subsection, for purposes of any Federal, State or local tax imposed on or measured by income, shall be the fair value of such land or interest in land at the time of receipt. The amount charged against Cook Inlet's entitlement under I(C)(2)(e) of the document referred to in subsection (b) of this section shall be prima facie evidence of such fair value.

[(8) Cook Inlet Region, Incorporated, the Secretary and/or the Administrator shall have until July 15, 1982, to complete the nomination of lands for the pool described in subsection 12(b)(6): Provided, however, That the Secretary shall report to Congress on January 15, 1982, as to:

[(i) Such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies, to determine what lands, within the exterior boundaries of the Cook Inlet Region, or elsewhere can be made available to the Cook Inlet Region, Incorporated, to the extent of its entitlement;

[(ii) The feasibility and appropriate nature of reimbursement to Cook Inlet Region, Incorporated, for its unfulfilled entitlement as valued in paragraph I(C)(2)(e) of the document referred to in this subsection;

[(iii) The extent to which implementation to the mechanisms established in subsection 12(b)(7) promise to meet said unfulfilled commitment; and

[(iv) Such other remedial legislation on administrative action as may be needed.

[Any provision of law to the contrary notwithstanding, if the Region, the Secretary, and/or the Administrator of General Services do not complete the nomination of lands referred to in subparagraphs (5) and (6) of this subsection by the dates set in subparagraphs I(C)(1)(b) and I(C)(2)(a) of the document referred to in this subsection, then, and in that event, these dates shall hereby automatically be extended by operation of this subsection for thirty-six months beyond the period set in section 3(a of Public Law 95-178.]

(8) Notwithstanding any provisions of law or implementing regulation inconsistent with this section:

(i) The deadlines in subparagraphs 1(C)(2)(a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under this section are fulfilled: Provided, That: (A) the obligation of the Secretary under subparagraph 1(C)(2)(a) of such document shall terminate on such date, after July 15, 1984, as the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g) of that document; and (B) the authority of the Secretary under subparagraph 1(C)(2)(b) of such document to contribute to the pool created under subparagraph 1(C)(2)(a) of such document shall terminate: (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g), or (b) if not, on such date after July 15, 1984 as such obligation is fulfilled, or (c) if such obligation remains unfulfilled, on July 15, 1987. Nothing in this sub-

section shall affect such obligation as the Secretary may have under subparagraph 1(C)(2)(a) of such document with respect to any military reservation within the boundaries of Cook Inlet Region, Incorporated, and such obligation shall continue until the Secretary's obligations under this section are fulfilled: Provided, however, That the Secretary may not include any property of the Alaska Railroad in the pool of lands made available for selection as a result of the extension unless and until such inclusion is agreed to by the State of Alaska or the State-owned railroad.

(ii) In addition to such other reviews of Federal installations as may be required under existing law, the Secretary shall identify for inclusion in the pool all public lands, as described in subparagraph 1(c)(2)(a)(v) of the document referred to in this section, and shall, in so doing, review all Federal installations within the boundaries of Cook Inlet Region, Incorporated, whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act or by the Secretary acting under authority contained in that section: Provided, That no such additional review under such subparagraph shall be required of the property of the Alaska Railroad, of military installations, or of such other installations as may be mutually excluded from review by Cook Inlet Region, Incorporated, and the Secretary.

(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph 1(C)(2)(b) of the document referred to in this section shall be deemed obtained unless the State provides the Secretary and Cook Inlet Region, Incorporated, within 90 days of the date of notice a written finding that the parcel is required by the State for a public purpose.

(iv) On or before January 15, 1984, the Secretary shall report to Congress with respect to:

(A) Such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies, to determine what lands, except for lands held by the Alaska Railroad, within the exterior boundaries of the Cook Inlet Region, Incorporated, whether within or without an area ever withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act or by the Secretary acting under authority contained in that section, or elsewhere can be made available to the Cook Inlet Region, Incorporated, to the extent of its entitlement;

(B) The feasibility and appropriate nature of reimbursement to Cook Inlet Region, Incorporated, for its unfulfilled entitlement as valued in subparagraph 1(C)(2)(c) of the document referred to in this section;

(C) The extent to which implementation of the mechanisms established in section 12(b)(7) promise to meet such unfulfilled commitment;

(D) Such other remedial legislation or administrative action as may be needed; and

(E) The need to terminate any mechanism established by law through which the entitlement of Cook Inlet Region, Incorporated, may be completed.

(9) No conveyance resulting from any sale or exchange pursuant to this section shall be considered to result in any revenues for any purpose set out in this Act.

(10) For the purpose of its incorporation into this section, paragraph 1(C)(1) of the document referred to in this section is amended as follows: (1) by striking "withdrawn under sections 11(a)(1), 11(a)(3), or 17(d)(1)"; (2) by adding after the first period the following: "Federal public lands, as used herein, shall include lands tentatively approved for patent or patented to the State under the Alaska Statehood Act or the Mental Health Enabling Act of 1956 if such lands are reconveyed to the United States. Land selected by the State not otherwise eligible for inclusion in the pool under the document referred to in this section may be nominated by Cook Inlet Region, Incorporated, for inclusion in the pool, and may be conveyed to Cook Inlet Region, Incorporated, upon relinquishment of the selection by the State."; and (3) by striking the last sentence of subparagraph 1(C)(1)(a) and inserting in lieu thereof the following: "Co Inlet Region, Incorporated, shall not nominate any lands within t... boundaries of any conservation system unit, national conservation area, national recreation area, national forest or defense withdrawal. Any lands nominated by Cook Inlet Region, Incorporated, that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972 cannot be conveyed to Cook Inlet Region, Incorporated, without the consent of the the State.".

(11) Notwithstanding the provisions of section 906 of this Act, the State is hereby authorized to convey to the United States for reconveyance to Cook Inlet Region, Incorporated, and the Secretary is directed to accept (i) lands tentatively approved for patent or patented to the State, or (ii) relinquished State selections of lands selected prior to July 18, 1975, if either such category of lands are nominated by Cook Inlet Region, Incorporated, under paragraph 1(C)(1) of the document referred to in this section. The acreage of lands conveyed to the United States under this provision shall be added to the State's unfulfilled entitlement pursuant to section 6 of the Alaska Statehood Act (Public Law 85-508).

* * * * * * *

On the date of transfer of rail properties or other disposition pursuant to the provisions of the bill, the following changes to existing law will occur:

THE ACT OF MARCH 12, 1914

[That the President of the United States is empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of this Act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this Act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this Act; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under this Act; to fix the compensation of all officers, agents, or em-

ployees appointed or designated by him; and, notwithstanding any other provision of law or regulation, to fix relocation, travel and transportation expenses for the General Manager of the railroad designated under this Act to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain in acquiring property for such use, which use is declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this Act; and except also that the issuance of passes to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, and persons exclusively engaged in charitable and eleemosynary work when engaged in their work in Alaska; to indigent, destitute, and homeless persons, inmates of hospitals and charitable and eleemosynary institutions, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportations; to newsboys on trains, persons injured in wrecks and physicians and nurses attending such persons; the interchange of passes for the officers, agents, and employees of common carriers, and their families; and the carrying of passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation is permitted; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease of s[illegible] railroad or railroads shall be for a longer period than twenty year[illegible]d no other lease authorized in this act shall be for a

longer period than fifty-five years or in the event of failure to lease, to operate the same until the further action of Congress: Provided, if said railroad or railroads, including telegraph and telephone lines, are leased under the authority given then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or local by him: Provided, The price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any o[illegible] the purposes of this Act; to utilize in carrying on the work here[illegible] provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this Act.

[Any security officer employed to protect life and property on the railroad is authorized to maintain law and order, to carry firearms, and to make arrests on railroad property with a warrant for any offense committed against the laws of the United States, and to make arrests without a warrant for any offense committed upon property of the railroad if there is reasonable ground to believe that the offense constitutes a felony under the laws of the United States and the person to be arrested has committed or is committing the felony.

[The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone lines for hire.

[Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are granted for the construction of railroads, telegraph and telephone lines authorized by this Act [43 USCS §§ 975–975g], and the President may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

[In all patents for lands taken up, entered, or located in Alaska hereafter taken up, there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road and twenty-fiv[illegible]et on either side of the center line of any such telegraph or telephon[illegible]lines.

Exhibit "C"
Page 15 of 18

[All moneys derived from hte lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under authority of this Act, above maintenance charges and operating expenses, shall be paid into the Treasury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

[It is the intent and purpose of Congress through this Act to authorize and empower the President of the United States, and he is fully authorized and empowered through such officers, or agencies as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this Act to enable him to accomplish the purposes and objects of this Act.

[The officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided shall be by the President transmitted to Congress.]

The Act of June 24, 1946

[That funds available for the operation of the Alaska Railroad shall be available for maintenance and operation of river steamers and other boats on the Yukon River and its tributaries in Alaska; for purchase of stores for resale; and for payment of claims for losses and damages arising from operations, including claims of employees of the railroad for loss and damage resulting from wreck or accident on said railroad, not due to negligence of the claimant, limited to clothing and other necessary personal effects used in connection with his duties and not exceeding $100 in value.]

The Act of July 19, 1932

[That in order to prevent monopoly and to insure the continuance of two or more operating coal mines in the Territory of Alaska adjacent to the Alaska Railroad, the general manager of the Alaska Railroad with the approval of the Secretary of the Interior is hereby authorized to purchase coal annually for the railroad from two or more operating companies in that area at such reasonable price or prices as may be fixed and determined by said Secretary.]

The Department of Transportation Act

SECTION 6 OF THAT ACT

SEC. 6. (a)-(h) * * *

[(i) The administration of the Alaska Railroad, established pursuant to the Act of March 12, 1914, as amended (38 Stat. 308), and all of the functions authorized to be carried out by the Secretary of

the Interior pursuant to Executive Order Numbered 11107, April 25, 1963 (28 F.R. 4225), relative to the operation of said Railroad, are hereby transferred to and vested in the Secretary of Transportation who shall exercise the same authority with respect thereto as is now exercised by the Secretary of the Interior pursuant to said Executive order.]

TITLE 5, UNITED STATES CODE

SECTION 305 OF THAT TITLE

§ 305. Systematic agency review of operations

(a) For the purpose of this section, "agency" means an Executive agency, but does not include—

(1) a Government controlled corporation;
(2) the Tennessee Valley Authority;
[(3) The Alaska Railroad;]
[(4)] (*3*) the Virgin Islands Corporation;
[(5)] (*4*) Atomic Energy Commission;
[(6)] (*5*) the Central Intelligence Agency;
[(7)] (*6*) the Panama Canal Commission; or
[(8)] (*7*) the National Security Agency, Department of Defense.

(b)-(c) * * *

SECTION 5102 OF THAT TITLE

§ 5102. Definitions; application

(*a*) For the purpose of this chapter—

(1) "agency" means—
(A) an Executive agency;
(B) the Administrative Office of the United States Court;
(C) the Library of Congress;
(D) the Botanic Garden;
(E) the Government Printing Office;
(F) the Office of the Architect of the Capitol; and
(G) the government of the District of Columbia;
but does not include—
(i) a government controlled corporation;
(ii) the Tennessee Valley Authority;
[(iii) The Alaska Railroad;]
[(iv)] (*iii*) the Virgin Islands Corporation;
[(v)] (*iv*) the Atomic Energy Commission;
[(vi)] (*v*) the Central Intelligence Agency;
[(vii)] (*vi*) the Panama Canal Commission;
[(viii)] (*vii*) the National Security Agency, Department of Defense, or
[(ix)] (*viii*) the General Accounting Office;

(2) "employee" means an individual employed in or under an agency;

(3) "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions" includes all positions which are sufficiently similar, as to—

(A) kind or subject-matter of work;
(B) level of difficulty and responsibility; and
(C) the qualification requirements of the work;
to warrant similar treatment in personnel and pay administration; and

(5) "grade" includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—
(A) level of difficulty and responsibility; and
(B) level of qualification requirements of the work;
to warrant their inclusion within one range of rates of basic pay in the General Schedule.

(b)–(d) * * *

SECTION 3401 OF THAT TITLE

§ 3401. Definitions

For the purpose of this chapter—

(1) "agency" means—
(A) an Executive agency;
(B) a military department;
(C) an agency in the judicial branch;
(D) the Library of Congress;
(E) the Botanic Garden; and
(F) the Office of the Architect of the Capitol; but does not include—
(i) a Government controlled corporation;
(ii) the Tennessee Valley Authority;
[(iii) the Alaska Railroad;]
[(iv)] (*iii*) the Virgin Island Corporation;
[(v)] (*iv*) the Panama Canal Company;
[(vi)] (*v*) the Federal Bureau of Investigation, Department of Justice;
[(vii)] (*vi*) the Central Intelligence Agency; and
[(viii)] (*vii*) the National Security Agency, Department of Defense; and

(2) "part-time career employment" means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

SECTION 5342 OF THAT TITLE

§ 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency; but does not include—
(A) a Government controlled corporation;
(B) the Tennessee Valley Authority;
[(C) the Alaska Railroad;]
[(D)] (*C*) the Virgin Islands Corporation;
[(E)] (*D*) the Atomic Energy Commission;
[(F)] (*E*) the Central Intelligence Agency;
[(G)] (*F*) the Panama Canal Commission;
[(H)] (*G*) the National Security Agency, Department of Defense;
[(I)] (*H*) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title; or
[(J)] (*I*) the General Accounting Office;

(2)–(3) * * *

(b)–(c) * * *

SECTION 7327 OF THAT TITLE

§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a)(2) of this title does not apply to an employee of the Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.]

[(b)] The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

SECTION 102 OF THAT ACT

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise indicates, the term—

(1) "Association" means the United States Railway Association;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation;

(4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.)

(5) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(6) "Office" means the Rail Services Planning Office of the Commission;

(7) "railroad" means a common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.S. 1(3)), and includes the National Railroad Passenger Corporation [and the Alaska Railroad]; and

(8) "Secretary" means the Secretary of Transportation or his designated representative.

TITLE 49, UNITED STATES CODE

SECTION 10749 OF THAT TITLE

§ 10749. Exchange of services and limitation on use of common carriers by freight forwarders

(a) * * *

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may use a carrier, including a carrier referred to in this subsection, to transfer, collect, or deliver in a terminal area. However, to provide other services, a freight forwarder may only use—

(1) a rail, express, motor, or water common carrier, or motor contract carrier of property, providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title including—

(A) a motor common carrier providing exempt transportation under section 10525 or 10526(a)(8) of this title; or

(B) a water common carrier, or motor contract carrier of property, providing exempt transportation under section 10542(a) of this title or transportation between places in Alaska or Hawaii and between those places and other places in the United states; *or*

(2) an air carrier subject to the jurisdiction of the Civil Aeronautics Board under chapter 20 of this title [; or].

[(3) the Alaska Railroad.]

The Public Health Service Act

SECTION 324 OF THAT ACT

Sec. 324. (a) The Surgeon General is authorized to provide at institutions, hospitals, and stations of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under the United States Employees' Compensation Act and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) [employees of the Alaska Railroad and] employees of the Federal Government for retirement purposes;

(2) employees in the Federal classified service, and applicants for appointment, as requested by the Civil Service Commission for the purpose of promoting health and efficiency;

(3) seamen for purposes of qualifying for certificates of service; and

(4) employees eligible for benefits under the Longshoremen's and Harbor Workers' Compensation Act, as amended (U.S.C., 1940 edition, title 33, chapter 18), as requested by any deputy commissioner thereunder.

(b) * * *

The Alaska National Interest Lands Conservation Act

SECTION 202 OF THAT ACT

Sec. 202. The following units of the National Park System are hereby expanded:

(1) * * *

(2) * * *

(3) Denali National Park. (a) Mount McKinley National Park, by the addition of an area containing approximately two million four hundred and twenty-six thousand acres of public land and approximately one million three hundred and thirty thousand acres of additional public land is hereby established as Denali National Preserve, both as generally depicted on map numbered DENA-90,007, and dated July 1980 and the whole is hereby redesignated as Denali National Park and Preserve. The park additions and preserve shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities. [That portion of the Alaska Railroad right-of-way within the park shall be subject to such laws and regulations applicable to the protection of fish and wildlife and other park values as the Secretary, with the concurrence of the Secretary of Transportation, may determine.] Subsistence uses by local residents shall be permitted in the additions to the park where such uses are traditional in accordance with the provisions in title VIII.

(b)-(c) * * *

O

The problem that arises when the poorest land is taken out of production and receives Government payments must be alleviated by making the payment only on the basis of what the crop yields would be if it were farmed. The average yield for the entire farm would be higher than on the poorest land on that farm. The payment on the poorer land on a farm must be adjusted to the actual rate of the production from the land that is idled.

PIK can be used to subsidize foreign sales in agricultural products. Actual stocks of grain or other agricultural products produced in this country and owned by the Government in the Commodity Credit Corporation could be a method of encouraging and expediting foreign sales.

Bonus payments to exporters of U.S. grain or other commodities could be made available free to make U.S. products at prices competitive in the world market with countries who are already subsidizing their agricultural exports.

This is a policy that must be determined by Congress itself. It is a policy that deviates from the present U.S. practice and it deserves adequate and thorough consideration by all of the people and then action by Congress if we implement such a policy.

On these points that I raise, there has not been sufficient attention allowed for this quickly-conceived legislation. There certainly has not been evidence of general agreement here in the Senate on all of these points and perhaps some will never receive a majority vote in the Senate or in the House, but they are certainly legitimate considerations in the legislative process of enacting the PIK bill. They are certainly legitimate considerations for the agricultural community and for the public at large. I hope that we can have prompt action over the next 6 to 8 weeks with input, with advice, and with suggestions from the millions of Americans who are affected directly by a major shift in U.S. agricultural policies. Beyond that, all Americans are impacted by success or failure of our agricultural economy.

The recession has been aggravated by the decline in agricultural prices followed by the decline in purchasing power by agricultural producers. If the Department of Agriculture and the administration can quickly formulate their proposals to fill the gaps that I have mentioned or other gaps that others find in the PIK proposal, I believe we can act promptly next year for passage of the program into law and make it available for farmers for their 1983 crops.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum called be rescinded.

. The PRESIDING OFFICER. Without objection, it is so ordered.

EXPRESSION OF APPRECIATION TO THOSE WHO WORK ON CAPITOL HILL

Mr. WARNER. Mr. President, there is a strong likelihood that the Congress will recess sine die before the close of this day, and each year it is my privilege to say a few words as one Member of the Senate in heartfelt appreciation to all of those who work on Capitol Hill and make our life more comfortable and more safe. That ranges from the guards, to the cafeteria workers, to the elevator operators, and, of course, the Senate staffs, plus many others.

I wish to express my heartfelt appreciation to these many people and wish them a Merry Christmas and a Happy New Year. I look forward to resuming our activities the beginning of the new year.

RECESS UNTIL 6:30 P.M.

Mr. BAKER. Mr. President, it does not appear that there is any business that can be transacted at this time that has been cleared on both sides. The conferees on the highway bill are still in conference. As long as that is so, I think we should wait and find the result of that effort.

I ask unanimous consent, therefore, that the Senate now stand in recess until the hour of 6:30 p.m., this evening.

There being no objection, the Senate, at 5:28 p.m., recessed until 6:30 p.m., whereupon the Senate reconvened when called to order by the Presiding Officer (Mr. RUDMAN).

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WARNER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRADY). Without objection, it is so ordered.

DR. MARTIN LUTHER KING, JR.

Mr. NUNN. Mr. President, I am pleased that the Senate has approved legislation providing for the placement of a bust or statue of the late Dr. Martin Luther King, Jr., in the Capitol Building.

Dr. King's lifelong devotion to the civil rights movement made an indelible imprint upon our Nation and the world. This Georgian's courageous leadership broke down legal barriers which separated our Nation's citizens. His principles of nonviolence set a clear example for all those who wish to bring about change through nonviolent means and earned for Dr. King a Nobel Prize for Peace.

I hope that the placement of a bust or statue in the Capitol will recall for all Americans Dr. King's dreams for an equal, just and peaceful society.

When the history of this century is written, Dr. King will be recorded as a great leader of our people. It is fitting that his image stand in our Capitol along with other great Americans who, throughout history, have shared this man's courage, wisdom, and commitment to equal justice for all.

PIPELINE SAFETY ACT

Mr. BAKER. Mr. President, I have a stunning announcement to make. I do not believe my colleagues will believe it on first reading, so I may have to repeat it. I wish to say that it gives me a great deal of pleasure to say—and it gives me a great deal of pleasure to say it—that apparently, the differences between my friend, the assistant majority leader, TED STEVENS, and my friend, the Senator from Ohio, HOWARD METZENBAUM, with respect to the Alaskan railroad have been worked out. I have to confess that I shall believe that when I see it. But hoping that that will be the case——

Mr. ROBERT C. BYRD. Will the Senator pause for a moment?

Mr. BAKER. Yes.

Mr. ROBERT C. BYRD. Mr. President, so do we take a deep, deep breath.

Mr. BAKER. Now, Mr. President, before anything else happens, I ask that the Chair lay before the Senate a message from the House on H.R. 3420, the Pipeline Safety Authorization Act of 1982.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 3420) entitled "An Act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes", with an amendment; it insists upon its amendments to the amendments of the Senate to the bill (H.R. 3420) entitled "An Act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes", asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference.

Ordered, That Mr. JONES of North Carolina, Mr. BIAGGI, Mr. RODINO, Mr. SNYDER, and Mr. MCCLOSKEY be the managers of the conference on the part of the House for title I of the amendment of the House to the text of the bill.

Ordered, That Mr. DINGELL, Mr. FLORIO, and Mr. LENT be the managers of the conference on the part of the House for titles II through VIII of the amendment of the House to the text of the bill and modifications committed to conference.

(The amendment of the House is printed in part II of the RECORD of December 20, 1982.)

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendment with the further Senate amendment.

I yield to the Senator from Ohio that he may offer that amendment.

Mr. METZENBAUM. Mr. President, the amendment that I send to the desk is the result of untold number of hours of work on behalf of the Senator from Alaska, as well as the junior Senator from Alaska, and my own staff.

UP AMENDMENT NO. 1586

Mr. President, I send an amendment to the desk in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1586.

Mr. METZENBAUM. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate engrossed amendment to the text of H.R. 3420, insert the following: That titles II through VII of this Act may be cited as the "Rail Safety and Service Improvement Act of 1982".

Mr. METZENBAUM. The issue has had to do with the question of the State of Alaska purchasing the Alaska Railroad and the question of what price would be paid for it. The amendment that I sent to the desk will provide a means of determining what that value is, based on fair market value. Thereafter, the parties in the State of Alaska and the Federal Government would be in a position to conclude a transaction on the basis of that price.

The determination of the value would be made by the U.S. Railway Association and I think that it is a move that satisfies the concerns of the Senator from Ohio and, I believe, satisfies the concerns of the Senator from Alaska.

I should further point out that this is the same measure that was pending at the desk. That language having to do with the exemption of the shipping industry from the Antitrust Act would be deleted in its entirety.

There are a number of other provisions in the measure having to do with benefits for approximately 10,000 railroaders. Without this legislation, those 10,000 railroaders would be unemployed, and this will preserve their rights. Therefore, I am pleased to join with the Senator from Alaska, whose staff has worked zealously in an effort to bring this about, in offering this amendment, and I think that the Senator from Alaska and I are in accord on it.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I want to thank the Senator, and I know that he has returned from dinner, once our respective staffs and the staff of the Commerce Committee worked this bill out, in order that the matter could be handled expeditiously and sent to the House in time for action prior to sine die adjournment.

The Senator is correct that the Northeast corridor improvement project is included in the bill and affects some 10,000 people in New Jersey. It has been in the railroad bill all along, and it is quite important that it be passed before the end of the year.

I think that we are indebted to the people who have kept pressing us on all sides of that project in order to reach this point.

I am grateful to the Senator and his staff. I want to thank Doug Lowenstein, David Springer, Peter Harris, and Marge Baker, for working with our staff; the Commerce Committee staff: Kevin Curtin, Pamela Garvey, Linda Morgan, and Mary McAuliff, who have now been working for 2 years on this bill.

They have been working around the clock this last week with my staff: Bill Phillips, and Mark Schneider. In addition, Lynn Sutcliffe has added his able assistance to the State of Alaska along with a young man that many people have just gotten to know, Dave Walsh. He has been a friend of mine for years and he has had a distinguished record as a member of the Anchorage City Council. Dave has been here representing our new Governor, Bill Sheffield, and has been here working with the staff, in an attempt to insure passage of this legislation.

I have to say to the Senator that this is a matter of faith. Neither one of us has had time to make certain that the understandings that he and I expressed are in this document. I have absolute confidence in the staff that has worked on it, though, and I believe the statements made by the Senator are correct. The shipping act is not in this bill. It is in the position of a privileged matter when it returns to the House, so by virtue of the action that has been taken I am confident that we should be able, if the House stays in session long enough, to take care of the problem of the Northeast corridor improvement project, after this appraisal making the railroad available to my State on what seems to be a reasonable proposition. They will have no obligation to take it, of course, but, assuming the price is right, we may be in the railroad business soon.

Since this bill was reported by the committee, the committee has modified it in a number of important respects relating to the procedure used to convey the real property of the Alaska Railroad to the State and the nature of the interest the State is to receive in the Denali National Park and Preserve. In the committee-reported bill, the State received, on the date of transfer, all right, title and interest to the rail properties of the Alaska Railroad, including the real property. Adjudication of pending claims of valid existing rights would follow with the State being required to reconvey interests adjudicated in favor of other parties. The substitute provides a different process which involves withholding fee title to lands subject to unresolved claims of valid existing rights pending expedited adjudication. On the date of the transfer, the State would be granted fee title to lands not subject to such claims and, with respect to lands so subject, an operating license to insure that operations of the railroad are not affected in any way by the new process.

The concept of an exclusive use easement also is introduced in the substitute. This defined interest represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process. Of course, completion of the process may also result in the conveyance of more than just the easement. It also is the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State.

Because the exclusive use interest is a new concept, further description of its characteristics seems warranted. Essentially, it is defined to insure that the State-owned railroad will receive exclusive and complete control over land traversed by the right-of-way. Except as specifically qualified in provisions regarding the easement through the Denali Park, the exclusive use easement, at minimum, vests in the State-owned railroad the following rights:

First. To have complete freedom to add to or delete from the land any structures, roadbeds, adjacent rocks, or gravel or to recontour the land as necessary;

Second. To move track within the right-of-way or to add or delete track;

Third. To provide loading and unloading facilities for railroad customers or for railroad purposes;

Fourth. To add structures as may be necessary for operation;

Fifth. To remove any vegetation which may be required to operate or expand the railroad's services;

Sixth. To fence the right-of-way;

Seventh. To operate any and all trains over the right-of-way;

Eighth. To restrict or grant access to persons or vehicles as it sees fit;

Ninth. To construct and maintain any drainage facilities necessary to preserve the right-of-way;

Tenth. To make any provisions necessary to protect the perational capability of the right-of-way even if this requires access to and control of lands

beyond the normal right-of-way limits (for example, avalanche, flood control);

Eleventh. To take such action as may be necessary to safely operate in situations where conflicts with other transport modes may exist; and

Twelfth. To place all necessary communications and signal devices within the right-of-way or to maintain separate rights-of-way for these items where necessary.

Where appropriate the State may also use its police power to regulate activities on the right-of-way and other rail properties.

Other related changes have been made in the substitute which are self-explanatory. I note that a definition of right-of-way has been included to insure that the State receives at least the minimum width necessary to continue to operate the railroad. Modifications have been made in the future rights-of-way section to clarify that current law governs processing of applications for future rights-of-way subject to a description of the interest the State is to receive which is based on the act of March 12, 1914, the Alaska Railroad's organic statute and conforms, that a minimum, to the new definition of an exclusive use easement contained in this bill. As I mentioned, the rail properties within the Denali Park have been treated differently and although the State now receives an exclusive use easement rather than title, this interest is defined to be sufficient to sustain unimpaired, continued operation of the State-owned railroad through the park.

The reversion section also has been changed to provide for reversion in the event the State discontinues use of the railroad for a continuous 18-year period. "Use" is carefully described in the section to include any purpose authorized under the transfer legislation. In addition to special treatment of lands within the Denali Park, the substitute reversion section also specifically deals with lands in the Chugach National Forest. Another provision has been added to provide for Federal recapture of "profits" from the sale of all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State. The proceeds of any such sale are to be reduced by liabilities and obligations assumed in the transfer of the railroad to the State and subsequent State investment in the railroad.

Mr. President, I ask unanimous consent to have printed in the RECORD, a pertinent table.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Alaska Railroad—Estimated deferred maintenance and delayed capital projects

	Millions[1]
Roadbed and track:	
Tie replacement (assuming 37 yr life cycle)	$12.0
Ballast	10.8
Subgrade	1.3
Bank widening	8.0
Turnout renewal	3.8
Rail replacement, repair	24.0
Block work	.5
Subtotal, roadbed and track	60.4
Structures:	
Tunnels	2.7
Bridges, culverts	6.8
Yards	7.9
Healy Canyon reroute	50.4
Subtotal, structures	67.8
Total	128.2

[1] 1982 dollars.
Source: ARR general manager.

Mr. STEVENS. I would like to clarify the basic intent of the new provision requiring a value determination of the Alaska Railroad by the United States Railway Association that my staff has worked out with the Senator from Ohio.

It is my understanding that the USPA will perform an independent determination of the fair market value of the Alaska Railroad as an operating railroad, including full consideration of the terms and conditions of the transfer legislation. The relevant standard is a determination of what a prospective buyer would compensate the United States, if at all, were they to acquire the Alaska Railroad for purposes of continuing operations.

This provision specifically requires the USPA to include consideration of all obligations imposed by this title and other applicable law upon the operation and ownership of the Alaska Railroad. The outstanding claims against railroad, including those land entitlement selections filed by Alaskan Native Corporations, should very definitely be factored into any determination of fair market value. It is conceivable that a significant portion of the railroad's more valuable undeveloped holdings could be lost to these groups. Furthermore, the specific provisions contained in the reversion clause should be considered in any land appraisal since they greatly restrict the State's options with respect to using rail properties for nonrailroad related purposes.

It is my understanding this includes a complete accounting of all deferred maintenance, delayed capital reinvestment requirements, employment protection obligations, passenger service subsidies, OSHA compliance requirements, real value of fixed assets, and potential cash flows. There should also be some consideration of intangibles such as the railroad coming under full jurisdiction of the Interstate Commerce Commission, Federal antitrust statutes, and potential tax liabilities. The USRA should work closely with the Alaska Railroad, the Federal Railroad Administration, and the State in order to utilize the most accurate financial information on the railroad, much of which is to be generated during the concurrent 9-month period for preparation of the closing report. I would further point out that this latter point is reflected within the amendment language.

I thank the Senator from Ohio, and I thank the leadership.

Mr. METZENBAUM. I should point out, Mr. President—and I think the Senator from Alaska has stated it well—neither of us has had a chance to read the language that our staffs have been working on. We both have an understanding that should there be in error in draftsmanship, we know the intent of what we are trying to do.

If it is necessary to provide some clarification or provide some correction in the next session, we will work together on that action.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (UP No. 1586) was agreed to.

The PRESIDING OFFICER. The question is on the motion to concur in the amendment of the House with a further amendment.

The motion was agreed to.

Mr. BAKER. I move to reconsider the vote by which the motion was agreed to, Mr. President.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

the PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I am very pleased, as is I am sure, the distinguished Senator who is presiding in the chair, with the resolution of the Alaskan railway issue, because, as the Senator knows, there is also in that provision a rail link between Philadelphia and Atlantic city. So on this eve of Christmas and in the depths of a recession, that railway offers hope to thousands who will travel to that mecca of the East, Atlantic City, expecting they will return across that causeway to the mainland of New Jersey a wealthy and successful tourist.

I appreciate the resolution of this issue. I thank the Senator from Ohio and the Senator from Alaska for opening the horizons again to thousands who in recent history had to leave the country or travel west to seek their fortune and who now have that opportunity just a short train ride away from Philadelphia. We all know what W. C. Fields said about Philadelphia.

Mr. President, let me again express appreciation to my colleagues and the Chair for presiding over this historic act for the Senate as an institution and for the State of New Jersey.

Mr. D'AMATO. Mr. President, I am very pleased that my very good friend from Alaska has been able to reach an accomodation with the Senator from Ohio, and I am hopeful that this accord will result in viable rail service in Alaska.

Let me only add that this measure also contains some funds—$2 million—for the rehabilitation or relocation of the present Amtrak rail passenger station at Syracuse, N.Y. The Syracuse station served over 79,000 passengers in the first 9 months of fiscal year 1982 and in fiscal year 1983, Syracuse expects a 9.3-percent increase over the previous year. The funds in this bill will be used to improve this station, which serves as a vital link in the upper New York State Empire Service.

Mr. President, I commend the Senate Commerce Committee members and staff who have worked so tirelessly on this measure.

Mr. WEICKER. Mr. President, included in this bill is $75 million in new authorization for Conrail Commuter Transition Assistance. I commend Senator PACKWOOD and the Commerce Committee staff for their efforts on this important matter. This new authority will provide the necessary funding to effect a smooth and effective transition of Conrail's Commuter Rail obligations to the Northeastern Commuter Rail Authorities. This provision is particularly appropriate in light of recent action by the Senate Appropriations Committee to provide $75 million in fiscal year 1983 Transportation Appropriations for the Conrail Commuter Transition. This additional funding, which I had requested, has been approved by the committee and the administration and is now included in H.R. 7019, a bill making appropriations for the Department of Transportation and Related Agencies for fiscal year 1983.

In an effort to make Conrail an efficient rail freight system, Congress in the Northeast Rail Service Act (NERSA) directed that Conrail be relieved of its commuter rail operations by January 1, 1983. Congress provided assistance to insure that either commuter agencies or the Northeast Commuter Services Corporation (NCSC), formerly Amtrak Commuter Services Corporation, could take over existing operations without disrupting service to the many communties and cities in the Northeast that depend on commuter operations. To effect this transition, Congress authorized $50 million in transition assistance for costs incurred by either the commuter agencies or NCSC. However, earlier this year, the Connecticut Department of Transportation (ConnDOT) and the Metropolitan Transportation Authority (MTA) as well as other authorities expressed their grave concern that funding made available under the Northeast Rail Service Act would be insufficient to meet the many administrative costs of the transition. MTA and ConnDOT also have a unique contract agreement under which ConnDOT and MTA currently lease service from Conrail. Congress made special recognition of this contract with Conrail in stating under section 1139(b) of NERSA.

> In providing for the distribution of such funds, the Secretary shall consider any particular adverse financial impact upon any commuter authority that results from the termination of any lease or agreement between such commuter authority and Conrail.

In addition to costs associated with Connecticut's contract with Conrail, commuter agencies must also purchase inventories, supplies, equipment, and certain facilities currently owned by Conrail, as well as computer systems to handle payroll, materials, and service contracts. Total costs alone for Connecticut and MTA's takeover of service from Conrail is about $70 million. The Federal Government should provide the $75 million in addition to $50 million already made available thus far to insure that these mandated costs to Connecticut and New York, as well as the other three States, will be adequately met.,

Mr. President, insuring a smooth transition of Conrail's commuter activities to the respective commuter agencies is vitally important to my State of Connecticut; 40,000 commuters daily rely on commuter rail service on the New Haven line between New Haven, Conn., and New York City. This translates into an annual ridership of 23 million—more than the entire Amtrak System! Although no disruption in service is anticipated during the transition process, this continual shifting of rail service in this country between the private and public sector cannot help but create uncertainty in the minds of commuters. For the last two decades Connecticut commuters have seen commuter service vacillate between Penn Central, Conrail, and now the authorities themselves. ConnDOT Commissioner William Burns, in testimony before the House Energy and Commerce Committee, summarized the instability of commuter rail operations in saying:

> During the late 1960's, the Connecticut Department of Transportation worked very closely with the Metropolitan Transportation Authority (MTA) to develop a plan to save the Commuter Rail Service on the New Haven, Harlem, and Hudson lines. The service agreement was developed with the Trustees of the Penn Central Corporation to assure the viability of the service for the long term. Not only was the right-of-way in Connecticut leased by the Department for 60 years, but a service agreement was developed which was renewable each five years for the 60 year term. This assured the stability of this vital commuter service in the long term. When the Penn Central properties were merged with other Northeastern Railroads to form Conrail in 1976, a smooth transition occurred because the railroads were being merged. Today we see that organization being torn apart requiring new relationships to be developed.

Establishing new relationships does not happen overnight. ConnDOT and MTA have chosen to take over this service, but must complete labor negotiations, administrative transitions, and implementing operations, like computer systems by January 1, 1983. All of this is supposed to happen on top of daily frustrations which commuters in Connecticut and New York currently experience: Equipment that does not always work, an antiquated generating power source, and other uncertainties that prevail in the commuter rail business. Therefore I will not accept any additional uncertainty placed on the backs of the commuters of my State. I hope this transfer of operations will be the beginning of dependable rail service provided by a stable authority.

Since Congress and the Federal Government are responsible for initiating this transfer of commuter rail's obligations, the Congress and the Federal Government are responsible for providing adequate funding to cover the costs of the transition. Therefore, I urge my colleagues to approve this essential authority for commuter rail transition costs, and I thank my colleagues on the Commerce Committee for addressing this important issue.

Mr. BRADLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair thanks the Senator from New Jersey for his kind words.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(During the quorum call Mr. BRADY occupied the chair.)

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. MATTINGLY). Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent that Randy Nuckolls of my staff be accorded the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REDUCTION, SUSPENSION, AND EXTENSION OF CERTAIN DUTIES

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4566.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 4566) entitled "An Act to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Rostenkowski, Mr. Gibbons, and Mr. Frenzel be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendment to the Senate amendment and agree to the request for a conference with the House and that the Chair be authorized to appoint conferees on the part of the Senate.

Before the Chair makes the appointment, I want to respond to a question of the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, I appreciate the consideration of the chairman of the Finance Committee of a request for a conclusion of this legislation on a tariff relating to surgical gowns and drapes. It is very important in my State and I know the Senator from Georgia (Mr. NUNN) has a very keen interest in this matter as well.

We understand that, at this point, if this is correct, the tariff relating to those items is not included in this measure.

Mr. NUNN. Mr. President, could we have order? I am trying to listen to this. I cannot hear the Senator from Mississippi and this is a very important matter in my State and in the Senator's State.

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

Mr. COCHRAN. Mr. President, I wonder if the chairman of the committee can assure us that in spite of the fact that this item may not be included in the report of the conferees and may not be acted upon in the Senate tonight, this could be the subject of early hearings and some action be the Senate Finance Committee or the House Ways and Means Committee so we do have this before the two bodies early next year.

Mr. DOLE. In response to the question of the Senator from Mississippi, I might say to both the Senator from Mississippi and the Senator from Georgia that we have had an informal meeting on this because there was an objection to appointment of Senate conferees. That particular amendment was discussed. Senator ROTH, who is on the other side of the issue, indicated that he would be willing to try to work out something early next year.

Representative GIBBONS, who is chairman of that subcommittee of the Ways and Means Committee, promised it will be the first order of business in his subcommittee. It will come to the Senate, will come to the Finance Committee where it will be in the International Trade Subcommittee. I am going to do the best I can to promise that we will have hearings.

The tariff bill has about 49 provisions in it, affecting about 25 of our colleagues favorably. I know it affects two unfavorably, and also the Senator from Hawaii will want to ask questions when the conference report comes back concerning the tuna provision. I can give that assurance.

Mr. COCHRAN. Mr. President. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to and the Chair appointed Mr. DOLE, Mr. ROTH, Mr. DANFORTH, Mr. LONG, and Mr. BENTSEN conferees on the part of the Senate.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE

Incomplete record of Senate proceedings. Senate proceedings for today will be continued in the next issue of the Record.

ALASKA
2006-056190-0
Recording Dist: 301 - Anchorage
8/18/2006 11:19 AM Pages: 1 of 4

The United States of America

To all to whom these presents shall come, Greeting:

Patent

AA-55129-9

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 400 Seventh Street S.W., Washington D.C., 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201 et seq.(hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way), and other railroad lands (railroad parcels). A portion of the lands are under the Exclusive License issued on January 5, 1985, and recorded in the Anchorage Recording District Book 1212, Pages 297-352. Title to the remaining lands was vested by Interim Conveyance on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 260-277. This patent is hereby issued for the real property described below:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

Lots 1 to 8, inclusive, U.S. Survey No. 9015, Alaska.

Containing 163.10 acres as shown on plat of survey officially filed December 14, 1994.

U. S. Survey No. 9016, Alaska.

Containing 74.45 acres as shown on plat of survey officially filed February 7, 1990.

Aggregating 237.55 acres.

Patent No 50-2006-0363

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA, does give, grant, and convey, unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to said real property, subject to the reservations and conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive-use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

1. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

   any interest in the Seward/Anchorage highway transferred to the State of Alaska by the quit claim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70, 73 Stat. 141, as to Secs. 19, 20, 29, and 30, T. 12 N., R. 3 W., Seward Meridian.

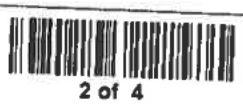
2 Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

3. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

Definitions:

1. "Real property", as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603(6) of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:



a. "exclusive-use easement", as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

1. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

3. subjacent and lateral support of the lands subject to the easement; and

4. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

b. "right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:

1. area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 9th day of August, 2006.

UNITED STATES OFAMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: P K Gamble

Title: Pres/CEO

Dated: 8/14/06

District of Columbia

Subscribed and sworn to before me, in my presence,
this 9th day of August, 2006
by Evelie Stubbs

Notary Public
My Commission Expires 3-14-08

Location Index for Recording Information:

Lots 1 to 8, inclusive, USS 9015 located in Secs. 6, 7, 18, 19, 20, 29, 30, 32, 33, and 34, T. 12 N., Rs. 3 and 4 W., SM; USS 9016 located in Secs. 23, 25, 26, and 36, T. 13 N., R. 4 W., SM.

Return Recorded Document to:

Alaska Railroad Corporation
Mr. James Blasingame
Vice President, Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500

EVELIE H. STUBBS NOTARY PUBLIC DISTRICT OF COLUMBIA

Patent No 50-2006-0363

4 of 4
2006-056190-0

Interim Conveyance

Anchorage Recording District

WHEREAS, pursuant to Sec. 604(b)(1)(B) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq.; hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to an interim conveyance for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this interim conveyance is hereby issued for the real property described below:

Railroad Parcels:

Seward Meridian, Alaska

Tps. 8 and 9 N., R. 3 E. (Portage)

(PLO 571/835) - all right, title and interest: A tract of land 1420 feet wide and 3.30 miles long, 1320 feet on the east side of and parallel to and 100 feet on the west side of and parallel to the centerline of the present main line of The Alaska Railroad between mileage 61.30 and 64.60, bounded on the south by the southerly boundary line of the Turnagain Arm Townsite Reserve, established by E.O. 8480, dated July 12, 1940, the north boundary being a line at right angles to the centerline of the railroad at mileage 64.60.

Containing approximately: 575.00 acres.

(PLO 571/835) - all right, title and interest: A tract of land 1/2 mile wide and 1.81 miles long, 1/4 mile on each side of and parallel to the centerline of The Alaska Railroad Passage Canal Connection, between mileage F-10.12 and F-11.93, bounded on the southeast by the easterly boundary line of the Turnagain Arm Townsite Reserve, established by E.O. 8480, dated July 12, 1940, and bounded on the northwest by the easterly boundary line of the parcel described above.

Containing approximately: 579.00 acres.

T. 9 N., R. 3 E.

(PLO 1425) - all right title and interest: A tract of land approximately 3,200 feet long and 720 feet wide, lying easterly of the main tract of the Alaska Railroad near Portage, Alaska, and more specifically described as follows:

Beginning at a point on the easterly side of the Alaska Railroad Reserve, Parcel No. 1, PLO 571 which bears N. 09°15' W., 600 feet from the northwesterly corner of Parcel No. 2, PLO 571; thence northwesterly, 1,250 feet along the easterly boundary of Parcel No. 1 to the southeasterly bank of Twentymile River; northeasterly, 2,800 feet along the southeasterly bank of Twentymile River; S. 49°21'15" E., 720 feet; S. 40°38'45" W., 3,200 feet to the point of beginning.

Containing approximately: 46.00 acres.

(PLO 5576) - all right, title and interest: In the SW4 Sec. 28, T. 9 N., R. 3 E. (unsurveyed), beginning at what will be, when surveyed, the section corner common to Sections 28, 29, 32 and 33; thence east 759.00 feet; thence north 721.00 feet to a point which is the true point of beginning; thence north 220.00 feet; thence east 495.00 feet; thence south 220.00 feet; thence west 495.00 feet to the point of beginning.

Containing approximately: 2.50 acres.

T. 8 N., R. 4 E., (Whittier)

U.S. Survey No. 2559 - all right, title and interest:

Excluding lot 2, Block 2;

Also excluding the following described lands:

Beginning at the point for corner No. 1, located on line 2-3, U.S. Survey No. 2559, and on the westerly right-of-way of Midway Avenue; thence N. 17°30' E., on the westerly right-of-way of Midway Avenue, approximately 22.57 chains (1,489.70 feet) to corner No. 2, identical with the northeast corner of Lot 17, Block 1, U.S. Survey No. 2559; thence S. 78°51' E.,

approximately 9.31 chains (614.43 feet) to corner No. 3; thence N. 11°09' E., approximately 1.14 chains (75.00 feet) to corner No. 4; thence S. 78°51' E., approximately 2.35 chains (155.00 feet) to corner No. 5; thence N. 11°09' E., approximately 0.61 chains (40.00 feet) to corner No. 6, located on line 1-9, U.S. Survey No. 2559, and approximately 9.09 chains (600.00 feet) N. 89°51' W., of corner No. 9, U.S. Survey No. 2559; thence S. 89°51' E., on a portion of line 1-9, U.S. Survey No. 2559, approximately 9.09 chains (600.00 feet) to corner No. 7, identical with corner No. 9, U.S. Survey No. 2559; thence N. 76°29' E., 0.64 chains (42.18 feet) to corner No. 8; thence N. 55°39' E., approximately 21.60 chains (1,425.77 feet) to corner No. 9; thence N. 34°21' W., approximately 0.23 chains (15.00 feet) to corner No. 10, on line 9-8, U.S. Survey No. 2559, approximately 1.52 chains (100.00 feet) S. 55°39' W., of corner No. 8, U.S. Survey No. 2559; thence N. 55°29' E., on line 9-8, approximately 1.52 chains (100.00 feet) to corner No. 11, identical with corner No. 8, U.S. Survey No. 2559; thence S. 34°21' E., on line 8-7, U.S. Survey No. 2559, approximately 6.67 chains (440.00 feet) to corner No. 12, identical with corner No. 7, U.S. Survey No. 2559; thence S. 55°39' W., on line 7-6, U.S. Survey No. 2559, approximately 18.56 chains (1,224.97 feet) to corner No. 13, identical with corner No. 6, U.S. Survey No. 2559; thence S. 81°19' W., on line 6-5, approximately 14.14 chains (933.47 feet) to corner No. 14, identical with corner No. 5, U.S. Survey No. 2559; thence S. 48°00' W., on line 5-4, U.S. Survey No. 2559, approximately 14.21 chains (937.68 feet) to corner No. 15, identical with corner No. 4, U.S. Survey No. 2559; thence S. 36°00' W., on line 4-3, U.S. Survey No. 2559, approximately 7.73 chains (510.04 feet) to corner No. 16, identical with corner No. 3, U.S. Survey No. 2559; thence N. 78°50' W., on a portion of line 3-2, U.S. Survey No. 2559, approximately 6.55 chains (432.10 feet) to corner No. 1, the point of beginning.

Containing approximately: 27.05 acres.

PLO 1410 - all right, title and interest:

Beginning at Corner No. 2 of PLO 1056, dated January 18, 1955, which bears N. 02°29.75' E., 630.60 feet thence N. 11°09' E., 337.20 feet from U.S.L.M. No. 2559, Whittier Townsite; thence, from the point of beginning N. 11°09' E., 375.00 feet; thence S. 68°00'17" E., 713.43 feet to Corner No. 4 of PLO 1056; thence S. 56°09' W., 500 feet to Corner No. 3 of PLO 1056; thence N. 60°51' W., 365.00 feet to Corner No. 2 of PLO 1056, the point of beginning.

Containing approximately: 4.88 acres.

PLO 1056 - all right, title, and interest:

Beginning at the point of intersection of the line of mean high water of Passage Canal with the easterly boundary line of Parcel No. 6 as described in PLO 587 of May 23, 1949, which is located N. 11°09' E., 372.57 feet from a point in the center line of the main track of the Alaska Railroad at Survey Station "B" 15 plus 68.00. From the point of beginning, U.S.L.M. No. 2559, Whittier Townsite, bears S. 2°29.75' W., 630.69 feet; thence from the point of beginning N. 11°09' E., 337.20 feet; S. 60°51' E., 365.00 feet; N. 56°09' E., 500.00 feet; S. 61°21' E., 280.00 feet; S. 56°09' W., 809.73 feet to a point on line of mean high tide. Northwesterly, 405.00 feet approximately along line of mean high tide to point of beginning.

Containing approximately: 6.52 acres.

PLO 1113 - all right, title and interest:

Beginning at a point which bears S. 88°39' W., 200 feet from the most southerly corner of Parcel No. 7 of Public Land Order No. 587 as withdrawn on 23 May 1949; thence N. 88°39' E., 200 feet to said most southerly corner of Parcel No. 7; thence N. 34°21' W., 77.20 feet to the most westerly corner of Parcel No. 7; thence N. 55°39' E., along the northwest line of Parcel No. 7 a distance of 1,746.18 feet to a point on said northwest line whih is S. 55°39' W., 25.95 feet from the most northerly corner of Parcel No. 7; thence S. 70°09' W., 1,846.96 feet to a point; thence N. 60°51' W., 300 feet to a point; thence S. 56°09' W., 525 feet more or less to a point on the

south line of the West Camp access road; thence in a southeasterly direction along the south line of said access road 885 feet more or less to the point of beginning, excluding any lands above the mean high water mark of Passage Canal.

Containing approximately: 15.93 acres.

Seward Meridian, Alaska

T. 13 N., Rs. 3 and 4 W. (Anchorage)

Certificate of Approval in accordance with the conditions set forth in the Tideland Agreement entered into by the Alaska Railroad and the City (Municipality) of Anchorage, on March 3, 1975, as depicted on the map recorded in the Anchorage Recording District - Book 691, page 135.

Containing approximately: 350.00 acres.

Parcels aggregating approximately: 1606.88 acres.

Railroad Right-of-way as defined by Section 603(11) of ARTA:

U.S. Survey No. 4597, Tract A excluding PLO 835 - all right, title and interest.

Containing approximately: 2.33 miles or 56.48 acres.

Seward Meridian, Alaska

Potter Hill (located within T. 12 N., R. 3 W.) - all right, title and interest:
All that portion of Tract One (1) Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160 included within a parcel of land in the Anchorage Recording District, Third District, State of Alaska, described as follows: Beginning at the most Westerly corner of said Tract 1, and running thence N. 49°59'50" E. along the Northwesterly boundary of said Tract 1 for a distance of 78.02 feet; thence S. 42°57'00" E. 123.90 feet; thence S. 30°34'00" W. 78.38 feet to a point on Southwesterly boundary of said Tract 1; thence in a Northwesterly direction along the Southwesterly boundary of said Tract 1 for a distance of 150.00 feet, m/l, to the point of

beginning; all bearings being based on the Alaska State Plane Coordinate System Zone 4; said parcel of land being situated in the Northeast one-quarter (NE 1/4) of the Southeast one-quarter (SE 1/4) of Section 32, T. 12 N., R. 3 W., Seward Meridian.

Containing approximately: 0.24 acre.

All that portion of Tract Two (2), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160 lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.29 acre.

All that portion of Tract Three (3), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160 lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.22 acre.

All that portion of Tract Four (4), Block One (1), TURNAGAIN PARK SUBDIVISION, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-108 in the Office of the Recorder, Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.40 acre.

All that portion of Tract Five (5), Block One (1), TURNAGAIN PARK SUBDIVISION, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-108 in the Office of the Recorder, Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.26 acre.

All that portion of Tract Six (6), Block One (1), TURNAGAIN PARK SUBDIVISION, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-108.

Containing approximately: 0.26 acre.

All that portion of Tract Seven (7), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160, lying Southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108, in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.25 acre.

All that portion of Tract Eight (8), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160 lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.29 acre.

All that portion of Tract Nine (9), Block One (1), TURNAGAIN PARK SUBDIVISION, according to the recorded plat thereof, lying Southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-108, in the Office of the Recorder, Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.28 acre.

All that portion of Tract Ten (10), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160 lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.28 acre.

All that portion of Tract Eleven (11), Block One (1), TURNAGAIN PARK SUBDIVISION, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.23 acre.

All that portion of Tract Twelve (12), Block One (1), TURNAGAIN PARK SUBDIVISION, according to Plat P-160, lying Southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as Plat 64-108 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.02 acre.

All that portion of the Southwest one-quarter (SW 1/4) of Section 29, T. 12 N., R. 3 W., Seward Meridian, Alaska, included within a tract of land described as follows:

BEGINNING at the most westerly corner of Lot Twenty-One (21) in Block Three (3), SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof, and running thence N. 89°51'30" E. 47.81 feet along the northerly line of said Lot 21; thence N. 46°45'00" W. 233.84 feet; thence N. 43°15'00" W. 392.94 feet; thence N. 39°45'00" W. 294.74 feet; thence N. 36°35'00" W. 294.73 feet; thence S. 36°26'20" E. 525.41 feet; thence S. 40°35'00" E. 455.00 feet; thence S. 46°28'00" E. 204.81 feet to the point of beginning, all bearings being based on the Alaska State Plane Coordinate System, Zone 4.

Containing approximately: 0.441 acre.

Lots Six (6), Eleven (11), and Twelve (12) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof recorded July 17, 1961, under Plat No. P-600 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 1.08 acres.

Lot Ten (10) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof recorded July 17, 1961, under Plat P-600 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.355 acre.

Lot Five (5), in Block Three (3), of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat No. P-600 in the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.45 acre.

Lot Seven (7), Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat No. P-600 in the Office of the District Recorder for the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.35 acre.

Lot Eight (8), Block Three (3) of the SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961 under Plat No. P-600 in the Office of the District Recorder for the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.35 acre.

Lot Nine (9) in Block Three (3) of SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed July 17, 1961, under Plat No. P-600 in the Office of the District Recorder for the Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.35 acre.

All that portion of Lot Nineteen of Block Three, SUNSET HILLS WEST SUBDIVISION, according to the recorded plat thereof, lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-105 in the Office of the Recorder, Anchorage Recording District.

Containing approximately: 0.35 acre.

All that portion of Lot Twenty-One (21), Block Three of the SUNSET HILLS WEST SUBDIVISION, according to the official plat thereof filed October 9, 1964, under Plat P-600, lying southwesterly of the line designated as "Take Line", on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document #64-105 in the Office of the District Recorder, Anchorage Recording District, Third District, State of Alaska.

Containing approximately: 0.51 acre.

T. 10 N., R. 2 E.

That portion of Tract A more particularly described as protracted:

Secs. 19, 20, 29, 32 and 33 - not less than an exclusive use easement.

Containing approximately: 4.00 miles or 96.96 acres.

T. 11 N., R. 2 W.

Secs. 30 to 33, inclusive - not less than an exclusive use easement.

Containing approximately: 3.24 miles or 78.54 acres.

T. 11 N., R. 3 W.

Secs. 4, 9, 10, 15, 22, 23, 25 and 26 - not less than an exclusive use easement.

Containing approximately: 6.42 miles or 155.62 acres.

T. 12 N., R. 3 W.

Secs. 6 and 7 - not less than an exclusive use easement;

Sec. 18, and the West seventeen feet of that portion of lots 6, 7, 8 and 9, WILSON SUBDIVISION, according to the official plats thereof on file in the Office of the District Recorder, Anchorage Recording District, Alaska, located East of the Alaska Railroad right-of-way - not less than an exclusive use easement;

And the West seventeen feet of that portion of the N2SE4SE4 located East of the Alaska Railroad right-of-way - not less than an exclusive use easement;

And a strip of land located within Tract 13A, NIGH SUBDIVISION, according to the official plat thereof on file in the Office of the District Recorder, Anchorage Recording District, Alaska, described as follows:

Beginning at the Southwest corner of Tract 13A; thence S. 62°03'36" E., 18.50 feet; thence N. 10°37'16" W., 150.78 feet; thence S. 04°41'22" E., 140.00 feet to the point of beginning - not less than an exclusive use easement;

Sec. 19, and the West seventeen feet of that portion of Block 3, lots 1-10, inclusive, TURNAGAIN SUBDIVISION No. 2, and lot 3, JUNCTION SUBDIVISION, according to the official plats thereof on file in the Office of the District Recorder, Anchorage Recording District, Alaska - not less than an exclusive use easement;

And the West seventeen feet of that portion of the NE4NE4 located East of the Alaska Railroad right-of-way - not less than an exclusive use easement;

Sec. 20, 29, 30 and 32 - not less than an exclusive use easement.

Containing approximately: 5.83 miles or 146.66 acres.

T. 12 N., R. 4 W.

Sec. 1 - not less than an exclusive use easement.

Containing approximately: 0.40 mile or 9.69 acres.

T. 13 N., R. 4 W.

Secs. 23, 24, 25 and 26 - not less than an exclusive use easement;
Sec. 34, lot 12, SE4NE4, SE4NW4 - not less than an exclusive use easement;
Sec. 35, lots 3 and 4, NE4, N2S2 - not less than an exclusive use easement;
Sec. 36 - not less than an exclusive use easement.

Containing approximately: 6.99 miles or 139.14 acres.

T. 15 N., R. 2 W.

Sec. 24 - not less than an exclusive use easement;
Sec. 25, NW4 - not less than an exclusive use easement.

Containing approximately: 1.50 miles or 36.36 acres.

T. 15 N., R. 1 W.

Sec. 5, lots 3, 14, 17, 25, 26, 31, 53 and 65 - not less than an exclusive use easement;
Sec. 7, lots 8, 19, 24, 25, 34, 35, 40, 41, 63, 70, 71, 91, 92 and NE4NE4 - not less than an exclusive use easement;
Sec. 18, lots 11, 27, 28, 42, 57, 76, 88, 108, 118, 138, 144, 162, 164, 185 and 200 - not less than an exclusive use easement;
Sec. 19, lot 4 - not less than an exclusive use easement.

Containing approximately: 2.534 miles or 42.844 acres.

T. 16 N., R. 1 W.

Sec. 24, lot 4, SE4NE4, SW4SW4 and S2NW4SE4 - not less than an exclusive use easement;
Sec. 25, W2NW4 - not less than an exclusive use easement.

Containing approximately: 0.93 mile or 22.54 acres.

T. 16 N., R. 1 E.

Sec. 19, lots 4, 5, NE4SW4 and W2NW4SE4 - not less than an exclusive use easement.

Containing approximately 0.545 mile or 13.21 acres.

Aggregating approximately: 34.72 miles or 805.30 acres.

Total aggregate for parcels and right-of-way: 2412.18 acres.

NOW KNOW YE that the United States of America has given and granted, and by these presents in conformity with ARTA does give, grant and convey unto the Alaska Railroad Corporation, its assigns and successors the real property described above to have and to hold forever. The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title and interest of the United States in and to said real property, subject to the Reservations and Conditions

set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall not be less that an exclusive-use easement as defined in Sec. 603(6) of ARTA.

The force and effect of this interim conveyance is to vest in the Alaska Railroad Corporation exactly the same right, title and interest in and to the real property described above as the Alaska Railroad Corporation would have received had it been issued a patent for said real property.

Upon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the Alaska Railroad Corporation pursuant to Secs. 604(b)(2) and (3) of ARTA.

Reservations and Conditions

1. Pursuant to Sec. 610 of ARTA, this conveyance is subject to the following conditions:

   a. Pursuant to Sec. 610(a) of ARTA, if, within ten years after the date of transfer, the Secretary of Transportation finds that all or part of the real property transferred to the State of Alaska under said Act is converted to a use that would prevent the State-owned railroad from continuing to operate, the real property (including permanent improvements to the real property) shall revert to the United States, or at the option of the State (as defined in Sec. 603(14) of ARTA), the State shall pay to the United States an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

   b. Pursuant to Sec. 610(b) of ARTA, if, after January 5, 1985, the State discontinues use of any land within the right-of-way, the interest hereby conveyed in such land shall revert to the United States when:

      (1) The Governor of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) The State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Pursuant to Sec. 610(b)(2) of ARTA, notice of such discontinuance shall promptly be published in the Federal Register by the Secretary of Transportation, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review of the final judgment in that action or termination of the right to seek such review, whichever first occurs.

2. Pursuant to Sec. 604(c)(2) of ARTA, the following existing easements for administration are reserved to the United States under the jurisdiction of:

Secretary of Agriculture:

Portage Creek Trail which is a 25-foot wide trail within U.S. Survey 4597, Tract A (PLO 835) (AA-953).

Secretary of Defense:

An easement for a pipeline within T. 10 N., R. 2 E., Tract A, Seward Meridian (A-067518).

Such easements and the use of such easements shall not interfere with railroad operations or support functions of the State-owned railroad, as defined in Sec. 603(14) of ARTA.

3. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

a. The granted license under Power Project 2170 as to those lands herein conveyed within U.S. Survey No. 4597 (PLOs 571/835), Tract A (Tps. 8 and 9 N., R. 3 E., Seward Meridian); T. 10 N., R. 2 E., Tract A, Seward Meridian.

b. Any interest in the Anchorage International Airport Road transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Secs. 34, 35 and 36, T. 13 N., R. 4 W., Seward Meridian.

c. Any interest in the Glenn Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Sec. 19, T. 16 N., R. 1 E., Seward Meridian.

d. Any interest in the Seward/Anchorage Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to U.S. Survey No. 4597, Tract A (Tps. 8 and 9 N., R. 3 E., Seward Meridian); T. 10 N., R. 2 E., Tract A; Secs. 30 to 33, inclusive, T. 11 N., R. 2 W.; Secs. 10, 15, 22, 23, 25 and 26, T. 11 N., R. 3 W.; Secs. 19, 20, 29 and 30, T. 12 N., R. 3 W., Seward Meridian.

e. Any interest in the Spenard Road transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Sec. 25, T. 13 N., R. 4 W., Seward Meridian.

f. There is excepted and reserved any element of ownership from Secs. 24 and 25, T. 16 N., R. 1 W., and Sec. 19, T. 16 N., R. 1 E., Seward Meridian, conveyed by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (40 U.S.C. 771-792) (AA-6187).

g. A right-of-way, AA-8095, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Sec. 19, T. 16 N., R. 1 E., Seward Meridian, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

h. A right-of-way, A-021429, for a transmission line, issued to the Matanuska Electric Association, Inc. within Sec. 5, T. 15 N., R. 1 W., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

i. A right-of-way, A-029885, for an electric distribution line, issued to the Chugach Electric Association, Inc., within T. 10 N., R. 2 E., Tract A; Sec. 25, T. 11 N., R. 3 W., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

j. A right-of-way, A-059784, for a transmission line issued to Chugach Electric Association, Inc. within PLO 835 (T. 8 N., R. 3 E., Seward Meridian) under the Act of February 15, 1901 (43 U.S.C. 959).

k. A right-of-way, A-051647, for a natural gas pipeline, issued to the Alaska Pipeline Company, within Sec. 10, T. 11 N., R. 3 W., Seward Meridian, under the Act of February 25, 1920 (30 U.S.C. 185).

l. A right-of-way, A-064192, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within U.S. Survey No. 4597, Tract A (T. 9 N., R. 3 E., Seward Meridian), under the Act of August 27, 1958, as amended (23 U.S.C. 317).

4. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

Definitions

1. "Real property," as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, lease-holds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603 of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

a. "Exclusive use easement," as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

(1) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(2) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(3) subjacent and lateral support of the lands subject to the easement; and

(4) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

b. "Right-of-way," as used herein, means as provided in Sec. 603(11) of ARTA:

(1) an area extending not less than one hundred feet on both sides of the centerline of any main line or branch line of the Alaska Railroad; or

(2) an area extending on both sides of the centerline of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated January 5, 1985

BOOK 1212
ALASKA RAILROAD COI RATION

PAGE 0278

Pouch 7-2111
Anchorage, Alaska 99510-7069

January 9, 1985

Dear District Recorder,

After recording please return the attached documents to:

Alaska Railroad Corporation

Pouch 7-2111

Anchorage, Alaska 99510-7069

Attention: James O. Campbell, Chairman

Board of Directors

Thank you.

85-001597
N.C

RECORDED-~~FILED~~
ANCHORAGE REC.
DISTRICT

JAN 8 2 19 PM '85

REQUESTED BY ALASKA RAILROAD CORP.

ADDRESS _____

BOOK 1212
ALASKA RAILROAD CO. ORATION

PAGE 0296

Pouch 7-2111
Anchorage, Alaska 99510-7069

January 9, 1985

Dear District Recorder,

After recording please return the attached documents to:

Alaska Railroad Corporation

Pouch 7-2111

Anchorage, Alaska 99510-7069

Attention: James O. Campbell, Chairman

Board of Directors

Thank you.

85- 001599

NC

RECORDED-~~FILED~~
ANCHORAGE REC.
DISTRICT

JAN 8 2 20 PM '85

REQUESTED BY ALASKA RAILROAD CORP.

ADDRESS _____

COPY

Exclusive License

Anchorage Recording District

WHEREAS, pursuant to Sec. 604(b)(1)(C) of the Alaska Railroad Transfer Act of 1982 (96 Stat. 2556 et seq; hereinafter referred to as "ARTA"), the Alaska Railroad Corporation is entitled to an exclusive license for real property of the Alaska Railroad including both the right-of-way of the Alaska Railroad (railroad right-of-way) and other railroad lands (railroad parcels); this exclusive license is hereby issued for the real property described below:

Railroad Parcels:

PLO 396 (Whittier)

Beginning at Corner No. 1 identical with Corner No. 1 of U.S.S. No. 2559, Whittier Townsite, Alaska, from which survey station 24 plus 44.45 in the center line of The Alaska Railroad, Passage Canal Connection bears N. 11°09' E., 250.65 feet, and U.S.L.M. No. 2559 bears S. 78°51' E., 971.83 feet, latitude 60°46'30" N., longitude 148°43'20" W.

From the initial point,

South, 1625.78 feet to Corner No. 2, identical with Corner No. 2 of U.S.S. No. 2559;

West, 200.00 feet to Corner No. 3;

North, 615.38 feet to Corner No. 4;

N. 28°00' W., 1393.46 feet to Corner No. 5, from which survey station 33 plus 25.00 in the center line of the main track of the Alaska Railroad bears N. 11°09' E., 200.00 feet;

Northwesterly 1275.80 feet, 200 feet from, and parallel to, the center line of the main track, to Corner No. 6, from which a point in the center line of the main track at the station equation 46 plus 28.75 equals 46 plus 43.25 bears N. 3°09' E., 200.00 feet;

COPY

N. 3°09' E., 100.00 feet, to Corner No. 7;

Southwesterly, 2504.26 feet, 100 feet from, and parallel to, the center line of the main track, to Corner No. 8, from which survey station 70 plus 00 bears N. 55°14' E., 185.95 feet;

S. 55°14' W., 692.06 feet to Corner No. 9;

N. 71°18' W., 640.00 feet to Corner No. 10;

S. 78°42' W., 1760.00 feet to Corner No. 11;

N. 38°16' W., 825.46 feet to Corner No. 12, from which survey station 104 plus 00 bears N. 18°42' E., 980.00 feet;

N. 18°42' E., 3116.27 feet to Corner No. 13;

East 1320.00 feet to Corner No. 14; S. 73°00' E., 860.00 feet to Corner No. 15, a point on the mean high water line, Passage Canal;

Southeasterly, 3500 feet, along the line of mean high water, Passage Canal, to Corner No. 16, from which survey station 66 plus 00 in the center line of the main track, Alaska Railroad, bears S. 16°33' E., 100.00 feet;

Northeasterly 1991.22 feet, 100 feet from, and parallel to, the center line of the main track, to Corner No. 17, from which a point in the center line of the main track at the station equation 46 plus 28.75 equals 46 plus 43.25 bears S. 3°09' W., 100.00 feet;

N. 3°09' E., 100.00 feet to Corner No. 18;

Southeasterly 1467.64 feet, 200.00 feet from, and parallel to, the center line of the main track, to Corner No. 19, a point on the mean high water line, Passage Canal, from which survey station 31 plus 89.00 bears S. 11°09' W., 200.00 feet;

Easterly, 4050.00 feet, along the line of mean high water, Passage Canal, to Corner No. 20, from which survey station 3 plus 00.00 in the center line of the main track bears S. 3°52' E., 115.00 feet, and 100.00 feet from the center line of No. 1 Dock Track;

Northeasterly, 3913.29 feet, 100.00 feet from, and parallel to, the center line of No. 1 Dock Track and a prolongation thereof, to Corner No. 21, a point on the mean high water line, Passage Canal;

Northeasterly and southerly, 940.00 feet, along the line of mean high water, around a point of land and across the mouth of Cove Creek, to Corner No. 22, a point on the east boundary of Passage Canal Townsite withdrawal described in Executive Order No. 1919 1/2, April 21, 1914, from which Corner No. 7, U.S.S. No. 2559 bears south 1204.88 feet and west 2032.85 feet;

South 1370.00 feet, along the east boundary of townsite withdrawal, to Corner No. 23;

COPY

West 1920.00 feet to Corner No. 24, from which Corner No. 7, U.S.S. No. 2559 bears N. 34°21' W., 200.00 feet;

N. 34°21' W., 640.00 feet to Corner No. 25, identical with Corner No. 8, U.S.S. No. 2559, from which survey station minus 11 plus 96.34 in the center line of the main track, bears N. 34°21' W., 200.00 feet;

S. 55°39' W., 1565.74 feet to Corner No. 26, identical with Corner No. 9, U.S.S. No. 2559;

N. 78°51' W., 2298.48 feet to Corner No. 1, the point of beginning.

Excluding from the above description the following described lands:

PLO 587:

A portion of Parcel 3 - Beginning at a point on line 12-13 of Alaska Railroad Terminal Reserve, withdrawn by PLO 396, from which the main line of the Alaska Railroad is located southerly 100 feet distant at right angle, and from which USED Station A, a standard disc set in concrete, marked "103-00" (coordinate position being N. 9944.44 E. 142565.70) bears S. 26°18' E., 141.42 feet, (Station A being on the center line of the Alaska Railroad main line just outside south portal of Whittier Tunnel, 112.50 feet from face of snowshed), thence by metes and bounds:

S. 71°18' E., 1,950.50 feet parallel to and 100.00 feet distant from the center line of the Alaska Railroad main track to a point opposite Station 84:49.5;

N. 55°56' W., 783.29 feet to the NE corner of area under permit to CAA for Fan Marker;

S. 27°03' W., 100.00 feet to SE corner of CAA permit area;

N. 62°57' W., 100.00 feet to SW corner of CAA permit area;

N. 27°03' E., 100.00 feet to NW corner of CAA permit area;

N. 62°57' W., 157.94 feet;

N. 62°00' E., 1,331.68 feet;

N. 28°00' W., 155.35 feet;

N. 36°27' E., 473.13 feet;

Due west, 1983.165 feet; S. 18°42' W., 1128.88 feet along line 12-13 of PLO 396 to point of beginning.

COPY

Parcel 4 - Beginning at corner No. 8, U.S.S. 2559, Whittier Townsite, thence by metes and bounds:
S. 55°39' W., 100.00 feet along Townsite boundary;
N. 34°21' W., 178.00 feet to dock access road right-of-way;
N. 55°39' E., 420.00 feet along right-of-way to dock approach;
S. 34°21' E., 618.00 feet;
S. 55°39' W., 320.00 feet to corner No. 7, U.S.S. 2559;
N. 34°21' W., 440.00 feet to point of beginning.

Parcel 8 - Beginning at a point at the southwest corner of the enlarged approach to Whittier Wharf, from which corner No. 8, U.S.S. 2559, Whittier Townsite, bears S. 32°04'20" W., 356.25 feet, thence by metes and bounds:

The following 14 courses run along the new wharf extension contiguous to and south of the original wharf approach and along the south and east confines of the Whittier Wharf to the northeast corner on the seaward face of the wharf:
N. 55°39' E., 120.00 feet;
N. 63°59' E., 116.00 feet;
N. 73°19' E., 80.00 feet;
N. 78°24' E., 802.00 feet;
N. 11°36' W., 24.00 feet;
N. 78°24' E., 48.00 feet;
N. 11°36' W., 66.00 feet;
N. 78°24' E., 214.00 feet;
S. 11°36' E., 41.00 feet;
N. 78°24' E., 25.00 feet;
N. 11°36' W., 12.00 feet;
N. 78°24' E., 24.00 feet;
N. 36°54' E., 63.00 feet;
N. 11°36' W., 41.00 feet to NE corner of seaward face of wharf;
N. 78°24' E., 350.00 feet along prolongation of the line of the seaward face of the wharf to a point on the mean high tide line on south shore Passage Canal;
Northeasterly 300.00 feet along mean high tide line to corner No. 21, PLO 396;
Northeasterly and Southerly 940.00 feet along mean high tide line, which is the boundary of PLO 396, across Cove Creek to corner 22, PLO 396;
South 1,370.00 feet to corner 23, PLO 396;
West 1,920.00 feet to corner 24, PLO 396;
N. 34°21' W., 200.00 feet to corner No. 7, U.S.S. 2559;
N. 55°39' E., 320.00 feet;
N. 34°21' W., 590.00 feet to point of beginning.

COPY

PLO 1088

Beginning at a point which bears S. 18°42' W., 100.00 feet from the center line of the main track of The Alaska Railroad, Passage Canal Connection, at Survey Station "B" 79 plus 65.00, Mileage F-2.07. From the point of beginning, Location Monument Station "A," established by the U.S. Army, Alaska, District Engineer, at coordinate point N. 9,944.44 E., 142,565.70 marked by a concrete monument set at subgrade in the center line of the main track at Survey Station "B" 103 plus 00, bears N. 68°50'52" W., 2,237.14 feet.

From the point of beginning, thence S. 8°45' W., 456.87 feet to a point on the line between Corner No. 9 and Corner No. 10 of Public Land Order No. 396; thence along the said line N. 71°18' W., 297.72 feet; thence S. 78°42' W., 1,760.00 feet; thence N. 38°16' W., 825.46 feet; thence N. 18°42' E., 880.00 feet to a point which lies S. 18°42' W., 100.00 feet from the center line of the main track at Survey Station "B" 104 plus 00; thence S. 71°18' E., 2,435.00 feet to the point of beginning.

PLO 2667

Parcel 2b - Commencing at Corner No. 14 of The Alaska Railroad Terminal Reserve at Whittier; thence S. 32°00' E., 1,615 feet, more or less, to the true point of beginning for this description, thence:

N. 40°30' E., 535 feet, more or less, to a point on the mean high tide line of the Passage Canal;

Following the meanders of said high tide line in a generally southerly direction to a point that is S. 35°15' E., from the point of beginning;

N. 35°15' W., 135 feet, more or less, to a point;

S. 58°00' W., 200 feet to a point;

S. 85°15' W., 1,720 feet, more or less, to a point on a boundary line of Parcel No. 3 of Public Land Order No. 587;

N. 62°01'10" E., 245.00 feet, along said boundary line, more or less, to a point that is 100 feet from the preceding course when measured at right angle thereto;

N. 85°15' E., 1,475 feet, more or less, to a point;

N. 58°00' E., 175 feet, more or less, to a point that is S. 35°15' E., 255 feet, more or less, from the point of beginning;

N. 35°15'W., 255 feet, more or less, to the point of beginning.

Total acreage of PLO 396, as modified: 214.48 acres.

COPY

Additional Railroad Parcels:

PLO 587 (Whittier)

Parcel 7 - Beginning at a point on the northwest corner of the approach to the original Whittier Wharf from which corner No. 8 of U.S.S. 2559 bears S. 21°08'20" W., 396.24 feet, thence by metes and bounds:

N. 55°39' E., 406.00 feet along seaward face of the wharf approach;

S. 78°24' W., 402.59 feet;

S. 55°39' W., 1,772.13 feet to a point on the approximate mean high water line of Passage Canal, from which corner No. 9, U.S.S. 2559 bears S. 12°11'10" E.;

S. 34°21' E., 77.20 feet to a point approximately 10 feet North of the center line of the No. 1 wharf track of the Alaska Railroad;

N. 75°34'30" E., 176.07 feet to a point on the north line of Parcel No. 9;

N. 60°39' E., 185.01 feet along north line of Parcel No. 9;

N. 48°33' E., 361.78 feet along north line of Parcel No. 9;

N. 55°42' E., 375.71 feet along north line of Parcel No. 9;

S. 34°21' E., 45.84 feet;

N. 55°39' E., 652.85 feet;

S. 34°21' E., 0.88 foot to point of beginning.

Containing approximately: 6.15 acres.

U.S. Survey No. 2559: (Whittier)

Block 2, Lot 2.

Containing approximately: 0.11 acre.

PLO 2791, Tract No. 1 (Whittier)

BEGINNING at a point from which a point on the center line of the main track of the Portage Canal Connection, Alaska Railroad, at U.S. Army Survey Station 104+00.00, approximately two miles west of the Whittier railroad station, in approximate latitude 60°46' N., longitude 148°44' W., bears West 1,320.00 feet, S. 18°42' W., 2,136.27 feet. From the initial point; N. 17°30' E.,

COPY

795.00 feet; East approximately 770 feet to a point on line of mean high tide of Passage Canal; Southerly with meanders approximately 1,100 feet; N. 73°00' W., 860 feet to the point of beginning.

Containing approximately: 16.18 acres.

U.S. Survey No. 408: (Anchorage)

Additional Terminal Reserve, excluding PLO 3532;

That portion designated as Railroad Centerline; AND

Block 1, Anchorage Townsite, lots 1 to 5 inclusive, and lots 8 to 11, inclusive;
Block 3, Anchorage Townsite, portion of lots 1, 2 and 3a, excluding the following described lands:

BEGINNING at the SE corner of said Lot 1, Block 3; thence (1), North along the easterly line of said Lot 1, 79.94 feet to the P.C. of a 60-foot radius curve; thence (2), from a tangent that bears South, along a curve to the right having a radius of 60 feet, through an angle of 87°28'47" for an arc length of 91.61 feet; thence (3), S. 87°28'47" W., 92.73 feet to the intersection thereof with the westerly line of said Lot 3a; thence (4), South 15.92 feet to the SW corner of said Lot 3a; thence (5), East along the southerly line of said Lots 3a, 2 and 1, 150 feet to the point of beginning.

Also excluding all that portion of said Lot 1, Block 3, described as follows:

BEGINNING at the NE corner of said Lot 1; thence (1), West 22 feet along the North line of said Lot 1; thence (2), from a tangent that bears East, along a curve to the right having a radius of 22 feet through an angle of 90° for an arc distance of 34.56 feet to the intersection with the East line of said Lot 1; thence (3), North along last said line 22 feet to the point of beginning.

Block 3, Anchorage Townsite, lots 4a, 5a and 6a of the Original Townsite of Anchorage, Alaska, according to plat C-140, Anchorage Recording District, excluding the following described lands:

BEGINNING at the Southwest corner of said Lot 6a; thence (1) East 150 feet to the Southeast corner of said Lot 4a; thence (2) North along the East line of said

COPY

Lot 4a, 15.92 feet; thence (3) S. 87°28'47" W., 150.14 feet to the intersection thereof with the West line of said Lot 6a; thence (4) south along the West line of said Lot 6a, 9.32 feet to the point of beginning.

Block 4, Anchorage Townsite, N2, excluding the following described lands:

BEGINNING at SW corner of the designated A.R.R. Reserve; thence (1) North 79.57 feet along the West line of said reserve; thence (2) East 7.15 feet; thence (3) from a tangent that bears S. 65°00' E., along a curve to the left having a radius of 763.94 feet through an angle of 22°45' for an arc length of 303.33 feet to the intersection thereof with the East line of said reserve; thence (4) South 8.59 feet along last said line to the SE corner of said reserve; thence (5) west 300.00 feet along the South line of said reserve to the point of beginning;

Block 5, Anchorage Townsite, lot 1, excluding the following described lands:

BEGINNING at the NE corner of said lot 1; thence (1) West 50 feet to the NW corner of said lot 1; thence (2) South along the West line of said lot 1, 9.78 feet; thence (3) S. 86°16'06" E., 50.11 feet to the intersection thereof with the East line of said lot 1; thence (4) North along the East line of said lot 1, 13.04 feet to the point of beginning;

Block 11, Anchorage Townsite, lots 4, 5 and 6;
Block 12, Anchorage Townsite, lots 1, 2, 10, 11 and 12;
Block 20, Anchorage Townsite, lots 1 to 12, inclusive, including 20-foot alley;
Block 21, Anchorage Townsite, lots 1 to 6, inclusive, lots 9 and 10;
Block 40A, East Addition, Anchorage Townsite, excluding Ship Creek;
Block 41A, East Addition, Anchorage Townsite;
Block 41D, East Addition, Anchorage Townsite;
Block 43, East Addition, Anchorage Townsite;
Block 59, Anchorage Townsite, lots 7 and 8;
Block 120, Anchorage Townsite, lots 1 to 6, inclusive;
Block 121, Anchorage Townsite, lots 1 to 6, inclusive.

Containing approximately: 65.47 acres.

COPY

U.S. Survey No. 1170 (Anchorage)

Alaska Railroad Terminal Reserve, excluding U.S. Survey Nos. 2275, 2276, 2961 A, 3047 A and B, 3061 A and B, and Tracts 1, 2 and 3 of U.S. Survey No. 2920, Tracts 1 and 2 of U.S. Survey No. 3026, Tracts 1-4 inclusive of U.S. Survey No. 3296 A and B, Tracts A, B and C of U.S. Survey No. 3458, lots 1 and 2 of U.S. Survey No. 4816 and PLO 546, also excluding the following described lands:

A parcel of land located in the NE4SE4 of Sec. 7, T. 13 N., R. 3 W., Seward Meridian, adjoining Lot 5A, Block O of the West Government Hill Subdivision, more specifically described as follows:

BEGINNING at Corner C-6, U.S. Survey No. 3047, thence S. 61°11'30" W., 152.32 feet; thence southerly along a 35°35' curve, radius 160.99 feet, 128.15 feet; thence S. 15°36' W., 15.59 feet; thence N. 74°24' W., 60 feet to the southeasterly corner of said parcel and the true point of beginning, thence N. 15°36' E., 15.88 feet; thence easterly along a 25°56' curve, radius 220.99 feet, 8.83 feet; thence S. 61°18' W., 35.35 feet; thence S. 74°24' E., 25.05 feet to the true point of beginning; and

ALSO excluding parcel of land located in the NE4SE4, Sec. 7, T. 13 N., R. 3 W., Seward Meridian, being the northerly 242.65 feet of Block 1 of the East Government Hill Subdivision of the Alaska Railroad at Anchorage, Alaska, and more specifically described as follows:

BEGINNING at Corner C-6, U.S. Survey No. 3047, thence S. 61°11'30" W., 152.32 feet; thence southerly along a 35°35' curve with a radius of 160.99 feet, 59.32 feet; thence S. 74°22' E., 255.47 feet; thence N. 15°38' E., 242.65 feet; thence N. 74°22' W., 22.86 feet; thence S. 61°11'30" W., 126.25 feet to the point of beginning; and

ALSO excluding the following described lands located in the SW4 of Sec. 7, T. 13 N., R. 3 W., Seward Meridian and further described as:

Block E, lot 2A; Block F, lots 2A and 3A; Block G, lots 1A to 3A, inclusive; Block H, lots 1A to 4A, inclusive, all located within the West Government Hill Subdivision, City of Anchorage, filed for record on May 18, 1956, Filing No. C-101-f, in the United States Commissioner's Office, Anchorage, Alaska.

Containing approximately: 320.00 acres

COPY

U.S. Survey No. 1456 (Anchorage)
Block 33, Fourth Addition, Anchorage Townsite, lots 1, 2, 3 and 5;
Block 34, Fourth Addition, Anchorage Townsite, lots 1 and 2.

Containing approximately: 3.41 acres.

U.S. Survey No. 3458 (Anchorage)
Tract A, Block P;
Tract C, lots 4 and 5.

Containing approximately: 0.66 acre.

T. 13 N., R. 3 W., Seward Meridian
Sec. 7, a portion of Government lots 10 and 15, more particularly described as follows:

BEGINNING at the southwest corner of Government Lot 11 of said Sec. 7; thence on the west line thereof, north, a distance of 580.14 feet to the northwest corner of said lot; thence N. 12°30'00" E., a distance of 224.00 feet, more or less to a point being called Point "A" in this description, for further reference hereinbelow; said point being on the East Meander Line for Knik Arm; thence returning to said POINT OF BEGINNING; thence on the south line of said Lot 11, East, a distance of 830.28 feet to the southeast corner of said Lot 11; thence on the East line thereof, north, a distance of 113.52 feet to the southwest corner of Government Lot 14 of said Sec. 7; thence on the South line thereof, N. 81°49'38" E., a distance of 309.54 feet to the southeast corner of said Lot 14; thence S. 62°44'30" W., a distance of 409.54 feet more or less, to a point being 30.00 feet south (as measured at right angles to) of said south line of Lot 11; thence along a line being parallel with and 30.00 feet south of said line, west, a distance of 588.42 feet more or less to a point on a 349.87 foot radius curve to the left; said curve having its center point bearing S. 23°55'05" E.; thence on said curve through a central angle of 18°02'30" for an arc distance of 109.98 feet; thence S. 47°59'25" W., a distance of 181.90 feet; thence S. 41°37'30" W., a distance of 595.00 feet, more or less to said Meander Line; thence northeasterly on said Meander Line to the above-described Point "A". There is excepted therefrom the following described parcels of land:

PARCEL 1

Commencing at the center 1/4 corner of said Sec. 7; thence N. 00°08' W., a distance of 739.86 feet, to the

COPY

northeast corner of U.S. Government Lot 10; thence S. 89°57' W., along the north line of said Lot 10, a distance of 129.22 feet and the TRUE POINT OF BEGINNING; thence S. 45°22'13" E., a distance of 42.15 feet; thence S. 89°57' W., a distance of 42.15 feet; thence N. 45°22'13" W., a distance of 42.15 feet, to the north line of said Lot 10; thence N. 89°57' E., along said north line of Lot 10, a distance of 42.15 feet to the point of beginning.

PARCEL 2

Commencing at the center 1/4 corner of said Sec. 7; thence N. 00°08' W., a distance of 739.86 feet, to the northeast corner of U.S. Government Lot 10; thence S. 89°57' W., along the north line of said Lot 10, a distance of 220.83 feet and the TRUE POINT OF BEGINNING; thence S. 23°20'22" E., a distance of 32.67 feet; thence S. 89°57' W., a distance of 35.94 feet; thence N. 23°20'22" W., a distance of 32.67 feet to the north line of said Lot 10; thence N. 89°57' E., along said north line of Lot 10, a distance of 35.94 feet to the point of beginning.

Containing 5.78 acres, more or less.

Sec. 8, SE4 excluding U.S. Survey No. 3026, Tract 2 and the following described lands:

BEGINNING at the 1/4 corner for Secs. 7 and 8, thence by metes and bounds; West, 730 feet along the center line of Sec. 7 to its intersection with the center line of the Ft. Richardson Sewer Outfall Line; S. 00°03'40" W., 25 feet; thence along a line generally 25 feet south of the center line of the sewer line, S. 61°37'16" E., 262.60 feet; S. 74°18'35" E., 3,905.60 feet; N. 72°33'20" E., 1,039.70 feet; N. 62°11'20" E., 740.70 feet; N. 82°11'05" E., 347.50 feet; N. 60°17'59" E., 364.00 feet; N. 22°49'17" E., 682.10 feet; N. 51°38'42" E., 189.60 feet; N. 84°25'22" E., 201.90 feet; S. 46°02'30" E., 295.20 feet; N. 70°42'50" E., 218 feet to the east line of the SW4NW4 of Sec. 9, T. 13 N., R. 3 W.; N. 00°01'40" W., 1,000.60 feet to the center point of the NW4 Sec. 9; N. 89°58'20" W., 1,319.66 feet to the section line between secs. 8 and 9; S. 00°01'40" E., 1,318.90 feet along section line to the 1/4 corner for Secs. 8 and 9; West along the center line of Sec. 8 approximately 1 mile to point of beginning;

Sec. 9, SW4SW4, NW4SW4 and SW4NW4, excluding PLO 546.

Containing approximately: 175.00 acres.

COPY

PLO 670 (Anchorage)

Those lands between the west right-of-way line of the Alaska Railroad (a line parallel to and 100 feet west of the center line) and the shore line of Knik Arm, and extending from the north boundary of Anchorage Townsite (U.S. Survey No. 409), withdrawn by Executive Order 1919 1/2 of April 21, 1914 and Executive Order 2216 of June 22, 1915, southwesterly to the south boundary of the South Addition to Anchorage (U.S. Survey No. 408), withdrawn by Executive Order 1919 1/2 of April 21, 1914, and Executive Order 2242 of August 31, 1915, as such townsite and Addition are shown on a townsite plat approved October 1, 1917.

Containing approximately: 13.45 acres.

PLO 789 (Anchorage)

BEGINNING at Corner No. 4, East Addition to Anchorage Townsite, coincident with the northwest corner of Sec. 17, T. 13 N., R. 3 W., Seward Meridian, thence by metes and bounds:

S. 00°08' E., 792.66 feet to the intersection with centerline of an alley;

East, 208.52 feet to intersection with west boundary line of East "H" Street extended;

North, 210.00 feet to intersection with north boundary line of Seward Street;

East, 720.00 feet to intersection with west boundary line of East "I" Street;

North, 300.00 feet to intersection with south boundary line of Ship Street;

East, 1,440.00 feet to intersection with west boundary line of East "L" Street;

North, 283.99 feet to intersection with section line between sections 8 and 17;

S. 89°58' W., 2,370.37 feet to point of beginning, as shown on the supplemental plat of survey of the East Addition to Anchorage Townsite accepted August 30, 1941.

Containing approximately: 22.82 acres.

COPY

Exhibit "G"
Page 13 of 57

PLO 3128 (Anchorage)

BEGINNING at a point which bears west 625.29 feet from center 1/4 corner of Sec. 7, T. 13 N., R. 3 W., Seward Meridian; thence West, 569.50 feet; N. 02°30' W., 111.00 feet; N. 56°30' E., 230.00 feet; N. 67°30' E., 108.50 feet; N. 79°25' E., 113.00 feet; N. 87°10' E., 161.50 feet; S. 01°25' E., 308.70 feet to the point of beginning.

Containing approximately: 3.20 acres.

PLO 3919 (Anchorage)

A tract of land lying in lot 10, Sec. 7, T. 13 N., R. 3 W., and described as follows:

BEGINNING at a point on the latitudinal 1/4 section line of said Sec. 7 which bears W. 252.14 feet from the center 1/4 corner of said Sec. 7; thence N. 18°00' E., 464.00 feet; S. 76°01'15" W., 487.79 feet; S. 80°30' W., 90.00 feet; S. 01°25' E., 308.70 feet to a point on the said latitudinal 1/4 section line;
East, 411.10 feet along said latitudinal 1/4 section line to the point of beginning.

Containing approximately: 4.00 acres.

Seward Meridian, Alaska

T. 15 N., R. 2 W. (PLOs 689 and 2308)
Sec. 25, SW4;
Sec. 26, NE4, S2;
Sec. 34, lots 1, 2, 5 and 6, SE4NE4, NE4SE4, S2SE4;
Sec. 35;
Sec. 36, W2 that portion North and West of the right-of-way line of the Glenn Highway; AND

Tract A - Beginning at the northeast corner of the SW4SW4 of said Sec. 36, T. 15 N., R. 2 W., thence easterly along the northerly line of the SE4SW4 of said Sec. 36, a distance of 662.85 feet to the northwesterly right-of-way line of the old existing Glenn Highway; thence S. 37°28'47" W. along last said line a distance of 564.13 feet; thence along a 01°54'02" curve to the left (radius equals 3,014.79 feet) through an arc of 09°24'52" a distance of 495.37 feet; thence N. 60°55'25" W. a distance of

COPY

727.26 feet; thence N. 02°56'29" E. a distance of 102.90 feet to the southeasterly right-of-way line of said Alaska Highway Project F-042-1(1); thence N. 44°56'35" E. along the last said line a distance of 819.38 feet; thence southerly along the easterly line of NW4SW4 of said Sec. 36 a distance of 171.70 feet to the point of beginning; AND

Tract B - Beginning at the southwest corner of said Sec. 36, T. 15 N., R. 2 W., thence S. 89°56'13" E. along the south line of said Sec. 36, a distance of 1,137.25 feet to the northwesterly right-of-way line of the old existing Glenn Highway; thence N. 27°23'47" E. along the last said line a distance of 312.81 feet; thence N. 60°55'25" W. a distance of 732.92 feet; thence S. 88°13'51" W. a distance of 180.17 feet to the southeasterly right-of-way line of said Alaska Highway Project F-042-1(1); thence S. 44°56'35" W. along the last said line a distance of 651.47 feet to the west line of said Sec. 36; thence S. 00°07'50" W. along the last said line a distance of 166.04 feet to the point of beginning.

Containing approximately: 1,798.062 acres.

T. 15 N., R. 1 W. (PLO 3577)

Sec. 5, SW4, that portion lying southeasterly of a line extending 100 feet northwesterly from and parallel to, the centerline of the Alaska Railroad;
Sec. 6, SE4SE4SE4SE4 that portion lying southeasterly of a line extending 100 feet northwesterly from, and parallel to the Alaska Railroad;
Sec. 7, SE4NE4 and SE4SW4NE4;
Sec. 8, N2NW4 and W2SW4NW4.

Containing approximately: 250.80 acres.

T. 16 N., R. 1 W. (PLO 755)

Sec. 23, SE4, that part south and west of the main channel of the Eklutna River;

COPY

Sec. 25, W2, that part south and west of the main channel of the Eklutna River and west of the right-of-way of the Alaska Railroad;

Sec. 26, E2, that part south of the main channel of the Eklutna River and north and west of the right-of-way of the Alaska Railroad; AND

An easement appurtenant for road purposes more fully described as follows:

An easement sixty (60) feet in width, thirty (30) feet each side of centerline, for an existing road from the Glenn Highway in the NE4 Sec. 25, T. 16 N., R. 1 W., westerly to the west side of the Alaska Railroad right-of-way in Sec. 26, T. 16 N., R. 1 W.

Containing approximately: 205.00 acres.

T. 16 N., R. 1 W. (PLO 2672)

Sec. 23, lots 3 and 4;
Sec. 26, NW4 and N2SW4.

Containing approximately: 310.00 acres.

T. 16 N., R. 1 W.

Sec. 24, S2NE4SW4, SE4SW4, and that part of the S2NW4SE4 lying northwesterly of the right-of-way of the Alaska Railroad; and

SE4NW4NE4, SW4NE4, NW4NW4SE4, SW4NW4NE4 and that portion of the NE4NW4SE4 lying northeasterly from the right-of-way of the Alaska Railroad; AND

(1) An easement appurtenant for road purposes more fully described as follows:

An easement sixty (60) feet in width, thirty (30) feet each side of centerline, for an existing road from the Glenn Highway in the NE4 Sec. 25, T. 16 N., R. 1 W., northwesterly to the east side of the Alaska Railroad right-of-way Sec. 24, T. 16 N., R. 1 W.

COPY

Excl. Lic.

(2) An easement appurtenant for utility purposes more fully described as follows:

An easement twenty (20) feet in width, ten (10) feet each side of centerline, for an existing power tranmission line from the E2 Sec. 19, T. 16 N., R. 1 W., westerly to the W2 Sec. 24, T. 16 N., R. 1 W..

Containing approximately: 138.20 acres.

Aggregating approximately: 3,552.79 acres.

Railroad Right-of-way as defined in Section 603(11) of ARTA:

Seward Meridian, Alaska

T. 10 N., R. 1 E.
Secs. 20 to 24, inclusive, 28, 29 and 30. ✓

Containing approximately: 6.40 miles or 155.14 acres.

T. 10 N., R. 1 W.
Secs. 5, 6, 8, 9, 10, 13, 14, 15, 23, 24 and 25. ✓

Containing approximately: 7.33 miles or 177.68 acres.

T. 10 N., R. 2 W.
Secs. 1, 2, 3 and 4.

Containing approximately: 3.33 miles or 80.72 acres.

T. 12 N., R. 3 W.
Sec. 33.

Containing approximately: 0.41 mile or 9.94 acres.

T. 13 N., R. 3 W.
Sec. 3;
Sec. 4, SE4SE4;
Sec. 9, N2NE4, SW4NE4, SE4NW4;
Sec. 10, N2NW4.

Containing approximately: 2.50 miles or 60.60 acres.

COPY

Excl. Lic. ROW

T. 14 N., R. 3 W.
Sec. 24, lot 6 and S2SE4;
Secs. 25 and 26;
Sec. 34, SE4SE4;
Sec. 35.

Containing approximately: 3.54 miles or 85.79 acres.

T. 13 N., R. 4 W.
Sec. 35, N2.

Containing approximately: 0.80 mile or 19.39 acres.

T. 14 N., R. 2 W.
Secs. 3, 9, 10, 16, 17 and 19;
Sec. 20, lots 1, 3 and 4, S2N2, SE4;
Sec. 21, NW4.

Containing approximately: 6.64 miles or 160.95 acres.

T. 15 N., R. 1 W.
Sec. 5, lots 4, 13, 15, 18, 32, 40, 41, 46, 47, 48, 49, 52, 54, 63, 64 and 66, S2SW4SW4NE4;
Sec. 7, lots 7, 20 and 64;
Sec. 18, lots 10, 41, 58, 75, 89, 107, 119, 137, 145, 161, 165, 184, 186, 199 and 201.

Containing approximately: 3.00 miles or 72.72 acres.

T. 16 N., R. 1 W.
Sec. 24, N2NW4SE4;
Sec. 26, E2, SW4SW4;
Secs. 27, 32, 33 and 34.

Containing approximately: 2.88 miles or 68.06 acres.

T. 16 N., R. 1 E.
Sec. 15, lots 1, 5 and 6, S2;
Sec. 16;
Sec. 19, SE4NE4, NE4SE4, E2NW4SE4;
Secs. 20, 21 and 22.

Containing approximately: 3.87 miles or 93.69 acres.

Aggregating approximately: 40.70 miles or 984.68 acres.

Total aggregate for parcels and right-of-way: 4,537.47 acres.

COPY

NOW KNOW YE that there is, therefore, granted by the United States of America, through the Secretary of Transportation, unto the Alaska Railroad Corporation, an exclusive license for, to and on the real property described above, which license affords the holder the exclusive right to use, occupy and directly receive all benefits of the real property described above for the operation of the State-owned railroad in conformity with the attached Memorandum of Understanding among the Federal Railroad Administration, the State of Alaska, Eklutna Inc., Cook Inlet Region, Inc., and Toghotthele Corporation. This license is subject to the Reservations and Conditions set out below.

Reservations and Conditions

1. Pursuant to Sec. 604(c)(2) of ARTA the following described existing easements for administration are reserved to the United States under the jurisdiction of:

Secretary of Defense:

a. Easements for Current Communication, Utility and Transportation Uses:

The easements identified in this paragraph 1.a in, upon, over, under and across the real property hereby conveyed are reserved to the United States, or its assigns, for communication, utility, and transportation uses in conformity with the uses to which each such easement was devoted on January 14, 1983, including the continuing right in the United States, or its assigns, to use, operate, locate, replace, reconstruct, maintain, alter, repair, remove, patrol, and access the roads, parking lots, bunkers, fences, overhead and underground electric and communication cables, wires and equipment, water systems, storm and sewer lines, natural gas or petroleum products pipelines, and aircraft control systems, together with the right to trim, cut, fell and remove therefrom any and all vegetation, obstructions, structures or obstacles that are growing or may hereafter grow or be placed upon the real property subject to these easements and that may, in the judgment of the United States, or its assigns, substantially impair its authorized use of the easement. The United States, or its assigns, will give at least twenty (20) days notice to the Alaska Railroad Corporation, or its successors or assigns, before undertaking construction, reconstruction or demolition activity within an easement hereby reserved, except that in the case of an emergency the United States may undertake whatever activity is necessary to alleviate the emergency after giving such notice as is reasonable in the circumstances. The

COPY

easements identified in this paragraph 1.a are more specifically described in the paragraphs below identified as LOCATION DESCRIPTIONS OF CURRENT COMMUNICATIONS, UTILITY, AND TRANSPORTATION USES and displayed on the plats entitled Elmendorf Air Force Base P.L. 97-468 Easements, Fort Richardson P.L. 97-468 Easements, and Anchorage Petroleum Terminal P.L. 97-468 Easements, recorded herewith.

LOCATION DESCRIPTIONS OF CURRENT COMMUNICATIONS, UTILITY, AND TRANSPORTATION USES:

ON ELMENDORF AIR FORCE BASE:

NO.	MILEPOST	DESCRIPTION
1	115.68	A 24-inch sanitary sewer line starting from Elmendorf Air Force Base, thence to Manhole 21-13E, at approximately Railroad Mileage 115.65, thence in an easterly direction to Manhole 21-11E, at approximately Railroad Mileage 115.75, thence east back to Elmendorf Air Force Base, all being parallel to the Base boundary, all being north of the main-line track, and located in the NE4 of the SW4 and the NW4 of the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.
2	115.80	A vitrified clay 24-inch sanitary sewer line beginning on Elmendorf Air Force Base, thence to Manhole 21-9E (located south of Bluff Road near its intersection with Plum Avenue) (approximately Railroad Mileage 115.80), thence extending east approximately 600 feet, running south of and parallel to Bluff Road, all being north of the main-line track, and located in the N2 of the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.
3	115.81	A sanitary sewer line at approximately Railroad Mileage 115.81 beginning at Manhole 24 on the existing 24-inch outfall sewer line situated 25 feet north of the present south boundary of Elmendorf Air Force Base; thence S. 13°51'29" W. 226.95 feet to Manhole 34-2; thence S. 2°21'28" W., 74.86 feet to Manhole 34-1; thence S. 2°20'16" W., 355.49 feet to a point, said point being at Manhole A-34 of the outfall sewer line belonging to the Municipality of Anchorage, and located in the W2 of the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.

COPY

4	115.825	An automobile parking lot at approximately Railroad Mileage 115.825, beginning near the intersection of Plum Avenue and Bluff Road, measuring approximately 600 feet long by 30 feet wide, said lot being located on the south side of, parallel, and adjacent to Bluff Road where the Road passes in front of Building 21-700, on Elmendorf Air Force Base, all being north of the main-line track, and located in the N2 of the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.
5	115.93	An access road to the Security Police Bunker in Item 6 below (approximately 12 feet wide and 150 feet long) beginning at the end of Item 4 above, at approximately Railroad Mileage 115.93 north of the main-line track and extending to approximately Milepost 116, located in the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.
6	115.97	A Security Police Bunker, consisting of a structure and the surrounding area within a radius of 30 feet, located approximately 200 feet, as measured on a line perpendicular to the main-line track, north-northwesterly of Railroad Mileage 115.97, and located in the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian.
7	115.99	An overhead transmission line at approximately Railroad Mileage 115.99 extending approximately 50 feet south from the intersection of Bluff Road and the unnamed road (running north/south) directly east of Building 21-700 to a power pole with guy wire, thence approximately 100 feet in a south-southeasterly direction to its termination at the Municipal Light and Power transmission line, and located in the SE4 of Section 8, Township 13 North, Range 3 West, Seward Meridian; also, an overhead line running from the intersection of Plum Avenue and Bluff Road to the line described above, and located in the same quarter and section. Both lines include an area extending out 15 feet on either side of the lines.

COPY

8 116.23 The access road at approximately Railroad Mileage 116.23 diverging from Persimmon Street (at a point almost due South of Building 22-001) and running approximately 600 feet in an easterly direction to the parcel of land described in Item 10 below, all being north of the main-line track, and located in the NE4 of the SE4 of Section 8 and the NW4 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

9 116.23 A 24-inch sanitary sewer line starting from Elmendorf Air Force Base, thence to Manhole 22-21E, at approximately Railroad Mileage 116.23, thence in an east-northeasterly direction paralleling the Base boundary to Manhole 22-19E, at approximately Railroad Mileage 116.23, thence north-northeasterly back to Elmendorf Air Force Base, all being north of the main-line track, and located in the NE4 of the SE4 of Section 8 and the NW4 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

10 116.40 Parcels of land used for a pump house, access roads, water lines, storm drainage, and other associated uses in connection with the Elmendorf Base Power Plant (Building 22-004) at approximately Railroad Mileage 116.40 more fully described as follows:

PUMP HOUSE SITE

Commencing at the corner common to Sections 8, 9, 16, and 17, Township 13 North, Range 3 West, Seward Meridian, Alaska; thence N. 0°01'40" W. along the line common to Sections 8 and 9, a distance of 1951.60 feet to a point on the mainline of the Alaska Railroad at Station 125 +89.3; thence N. 60°00' E. along said mainline 314.70 feet to Station 129 +04.0, said station also being the point of intersection with the Powder Spur track; thence continue along the centerline of said spur track 202.00 feet to Station 2 +02.0; thence N. 54°28'36" W., 14.00 feet to the true point of beginning

COPY

for this description and also being the SE corner thereof; thence in a northeasterly direction concentric to and 14 feet from the center line of the aforesaid spur on a curve to the left 172.00 feet to the point of tangency of said curve; thence N. 14°04' E., 219.00 feet to the NE corner of the pump house site, said corner also being N. 75°56' W., 14.00 feet from the centerline of the spur track at Station 5 +98.0; thence N. 66°02' W., 109.0 feet to the NW corner of said Pump House Site and being situated upon the present boundary of Elmendorf Air Force Base; thence S. 22°49'17" W. along said boundary 285.00 feet to the SW corner; thence S. 29°44'48" E., 172.00 feet to the Point of Beginning. The above described parcel of land contains 0.88 acre, more or less.

Water Intake Line

Commencing at the NE corner of the Pump House Site, said corner being N. 75°56' W., 14.00 feet from Powder Spur Track Station 5 +98.0; thence S. 14°04' W., along the Pump House Site boundary 65.00 feet to the true point of beginning for this description; thence S. 66°02' E., 474.00 feet to a point on the Post Road right-of-way line; thence S. 60°00' W. along said line 22.00 feet; thence N. 66°02' W., 464.00 feet to a point on the aforesaid Pump House Site boundary; thence N. 14°04' E. along said boundary 20.00 feet to the Point of Beginning. The above-described parcel of land contains 0.22 acre, more or less.

Water Outlet Line

Commencing at the NE corner of the Pump House Site, said corner being N. 75°56' W., 14.00 feet from Powder Spur Track Station 5 +98.0; thence S. 14°04' W., 121.00 feet along the Pump House Site boundary to the true point of beginning for this description; thence S. 66°02' E., 434.00 feet; thence S. 57°30' W., 23.00 feet; thence N. 66°02' W., 418.00 feet

COPY

to a point on the aforesaid Pump House boundary line; thence N. 14°04' E. along said line 21.00 feet to the Point of Beginning. The above described parcel of land contains 0.20 acre, more or less.

A storm and industrial drainage outfall line traversing across a portion of the Alaska Railroad Terminal Reserve between the Elmendorf Air Force Base boundary and the northerly right-of-way line of Post Road, said outfall line crossing at a right angle to the main line of the Alaska Railroad at approximate Station 130 +84 and being 360 feet, more or less, in length within said Alaska Railroad Terminal Reserve, and located in the W2 of the NW4 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

Also that portion of land, approximately 50 feet long by 20 feet wide, extending along the northern side of the Post Road right-of-way from the above-described Water Intake and Outlet Lines to the water cooling pond located at the intersection of Post Road and Reeves Boulevard, and located in the N2 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

11 116.51 A 24-inch sanitary sewer line extending from Elmendorf Air Force Base to Manhole 22-9E, thence approximately 160.00 feet from Manhole 22-9E toward Manhole 22-7E, thence back to Elmendorf Air Force Base, which is approximately Railroad Mileage 116.51 to Railroad Mileage 116.54, respectively, all being north of the main-line track, and located in the SE4 of the SW4 of the NW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

12 116.55 A steel 10-inch storm drain, approximately 100 feet in length, running almost due North from Manhole 22-53 at approximately Railroad Mileage 116.55, that being on the Post Road right-of-way directly across from the cooling pond, all being

COPY

south of the main-line track, and located in the SE4 of the NW4 and the NE4 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; also, a vitrified clay 10-inch culvert, approximately 1000 feet in length, running inside the Post Road right-of-way from approximately Railroad Mileage 116.40 to Railroad Mileage 116.59, all being south of the main-line track, and located in the SE4 of the NW4 and the N2 of the SW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

13 116.57 That portion of the Post Road right-of-way (60 feet on either side of the Road's centerline) which overlaps the railroad right-of-way and consisting of the portion of the Road's right-of-way from where it first enters upon Elmendorf Air Force Base opposite the cooling pond, at approximately Railroad Mileage 116.57, and running for approximately 1000 feet towards Gate #2, all being on the northwest side of Post Road and on the southeast side of the main-line track, and located in the NE4 of the SW4 and the SE4 of the NW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

✓ 14 116.65 An overhead transmission line crossing over the right-of-way of the main line of The Alaska Railroad at approximately Railroad Mileage 116.65 in the SE4 of the NW4, Section 9, Township 13 North, Range 3 West, Seward Meridian, said crossing being located at approximate railroad station 148 +55 P.O.C. and crossing on an approximate bearing of S. 48°00' E. for a distance of 210.00 feet, more or less, and including an area extending out 15 feet on either side of the line.

15 116.67 A concrete storm drain channel crossing from, at approximately Railroad Mileage 116.67, the main-line track to Post Road, and located in the SW4 of the SE4 of the NW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

COPY

16 116.76 A chain link fence (approximately 150 feet in length) running perpendicular to and north of Post Road directly adjacent to Building 22-014 at approximately Railroad Mileage 116.76, all being south of the main-line track, and located in the SE4 of the NW4 and the SW4 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

17 116.88 A 24-inch sanitary sewer line at approximately Railroad Mileage 116.88 starting from Elmendorf Air Force Base approximately 50 feet west of Manhole 8-3E, thence to Manhole 8-3E, thence east-northeasterly to Manhole 8-1E, thence north-northeasterly approximately 90 feet until it returns to Elmendorf Air Force Base, all being north of the main-line track, and located in the NW4 of the SW4 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

18 116.45 An underground Federal Aviation Administration communication cable (Route A) crossing the right-of-way in two places: the first at approximately Railroad Mileage 116.45 crossing the right-of-way in a northeasterly direction beginning at approximately the NW corner of the Pump House Site as described in Item 10 above and re-entering Elmendorf Air Force Base 500 feet to the northeast, all being north of the main-line track, and located in the SW4 of the NW4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; including an area extending out 10 feet on either side of the cable. The second crossing is described in Item 21, below.

19 116.90 An 8-inch multiproduct underground pipeline entering the right-of-way from Elmendorf Air Force Base at approximately Railroad Mileage 116.90 running in an easterly direction until it reaches a point about midway between the right-of-way boundary and the main-line track where it turns and crosses at a perpendicular the main-line track, turning again when it reaches the southeast right-of-way boundary, and

COPY

following the boundary northeasterly for approximately 300 feet until it turns again and re-enters Elmendorf Air Force Base, and located in the NW4 of the SW4 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

20 116.90 A 6-inch underground gas pipeline entering the right-of-way from Elmendorf Air Force Base at approximately Railroad Mileage 116.90 running in an easterly direction until it reaches a point about midway between the right-of-way boundary and the main-line track where it turns and crosses at a perpendicular the main-line track, turning again when it reaches the southeast right-of-way boundary, and following the boundary northeasterly for approximately 300 feet until it turns again and re-enters Elmendorf Air Force Base, and located in the NW4 of the SW4 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

21 116.90 An underground Federal Aviation Administration communication cable (Route A) crossing the right-of-way in two places: the second at approximately Railroad Mileage 116.90 crossing the right-of-way in an easterly direction, crossing the main-line track approximately 750 feet southwest of where Post Road crosses the track, and located in the W2 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable. The first crossing is described in Item 18, above.

22 117.01 An overhead transmission line crossing the right-of-way in a north-northwesterly direction at approximately Railroad Mileage 117.01, or 200 feet southwest of where Post Road crosses the main-line track, and located in the W2 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 15 feet on either side of the line.

COPY

23 117.05 ✓ A roadway (Post Road) approximately 75 feet wide running in a northerly direction from approximately Railroad Mileage 117.02 to approximately Railroad Mileage 117.08 and crossing the main-line track at approximately Railroad Mileage 117.05, and located in the SE4 of the NW4 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian.

24 117.267 ✓ An underground communication cable running from Elmendorf Air Force Base for approximately 227 feet on a bearing of S. 72°20'40" W. to the main-line track, thence paralleling the south side for approximately 150.0 feet, thence crossing the track at approximately Railroad Mileage 117.267 (Survey Station 180 +40) on a bearing of S. 43°50'10" E. running for approximately 22.20 feet, thence turning and paralleling the track in a northeasterly direction for approximately 150.00 feet, thence turning to a bearing of S. 16°55'50" W. for approximately 200.00 feet where it re-enters Elmendorf Air Force Base, located in the N2 of the NE4 of Section 9, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

25 117.45 A buried electrical cable running, on a line perpendicular to the main-line track, from Elmendorf Air Force Base to a point approximately at Railroad Mileage 117.45, thence turning in an east-northeasterly direction and, paralleling the adjacent Base boundary, continuing to Central Substation at approximately Railroad Mileage 117.72, all being north of the main-line track, and located in the S2 of the SW4 of the SW4 and the SW4 of the SE4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

26 117.54 Access road approximately 12 feet wide beginning at approximately Railroad Mileage 117.54 and running in an easterly direction to approximately

COPY

Railroad Mileage 117.68 where it turns south and enters Elmendorf Air Force Base, all being south of the main-line track, and located in the N2 of the NW4 of the NW4 of Section 10 and the SE4 of the SW4 of the SW4 and the SW4 of the SE4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

27 117.57 ✓ An overhead transmission line running from a transformer approximately 30 feet south of the main-line track at approximately Railroad Mileage 117.57 to approximately Railroad Mileage 118.15 where it crosses into Elmendorf Air Force Base, all being south of the main-line track, and located in the N2 of the NW4 of the NW4 of Section 10 and SE4 of the SW4 of the SW4 and the S2 of the SE4 of the SW4 of the SW4 and the S2 of the SE4 of the SW4 and the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 15 feet on either side of the line.

28 117.59 ✓ Underground POL lines at approximately Railroad Mileage 117.59 located as follows: Beginning at the section corner common to Sections 3, 4, 9 and 10, Township 13 North, Range 3 West, Seward Meridian, thence S. 0°02'32" E. a distance of 59.40 feet to a point on the centerline of the railroad right-of-way; thence N. 80°46'45" E. following the centerline of said right-of-way a distance of 844.00 feet to the true point of beginning for this description; thence by metes and bounds along the following courses and distances: N. 9°13'15" W., 100.00 feet; N. 80°46'45" E., 16.00 feet; S. 9°13'15" E., 100.00 feet; S. 39°31'55" E., 115.00 feet, more or less, to the right-of-way boundary; S. 80°46'45" W., 34.00 feet, more or less, on a line coinciding with the right-of-way boundary; N. 39°31'55" W., 75.00 feet, more or less; N. 9°13'15" W., 35.00 feet, to the true point of beginning of this description.

COPY

29 117.65 An underground Federal Aviation Administration cable (Route B) entering the right-of-way from Elmendorf Air Force Base at approximately Railroad Mileage 117.65, north of the main-line track, and running almost due east between 2nd Street and the main-line track until it crosses the main-line track just south of the 2nd Street crossing and then re-enters Elmendorf Air Force Base at approximately Railroad Mileage 118.06, or about 100 feet south of where 2nd Street re-enters the Base, and located in the S2 of the SW4 and the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

30 117.68 An overhead transmission line crossing over the right-of-way of The Alaska Railroad at Mileage 117.68, approximately along the easterly line of the SW4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian, crossing over the centerline of the main track at survey station "R" 201 plus 87.7 P.O.T. on a bearing of S. 0°11'11" W. The said point of crossing the centerline of the main track is located as follows: From the section corner common to Sections 3, 4, 9 and 10, T. 13 N., R. 3 W., Seward Meridian, thence S. 0°02'32" E., 59.40 feet to a point on the center line of main track; thence N. 80°46'45" E., 1329.10 feet to an intersection with the centerline of the power line. The length of the power line included within the right-of-way of the railroad is 202.72 feet. The total area covered being as follows: From the section corner common to Sections 3, 4, 9 and 10, T. 13 N., R. 3 W, Seward Meridian, thence S. 0°02'32" E., 59.40 feet to a point on the centerline of main track; thence N. 80°46'45" E., 1313.89 feet to the true point of beginning of this description; thence N. 0°11'11" E., 101.36 feet to the right-of-way boundary; thence N. 80°46'45" E., 30.40 feet on a line coinciding with the right-of-way boundary; thence S. 0°11'11" W., 202.72 feet to the

COPY

right-of-way boundary; thence S. 80°46'45" W., 30.40 feet on a line coinciding with the right-of-way boundary; thence N. 0°11'11" E., 101.36 feet to the true point of beginning of this description.

31 117.68 Two overhead transmission lines at approximately Railroad Mileage 117.68: the first crossing the southern boundary of the right-of-way from Elmendorf Air Force Base at approximately the same point as Item 30 above does and proceeding in a north-northeasterly direction, at about a 25° angle from Item 30 above, until it re-enters the Base north of the main-line track, and located in the SW4 of the SE4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; the second crossing into the right-of-way at approximately the same place as the first and proceeding in a northwesterly direction, at about a 30° angle from Item 30 above, until it crosses the main-line track at which point it turns to an east-northeasterly direction and re-enters the Base at approximately the same place as Item 30 above does, and located in the SE4 of the SW4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian. Both lines include an area extending out 15 feet on either side of the lines.

32 117.72 A 24-inch vitrified clay storm drain and manhole and a culvert located at approximately Railroad Mileage 117.72, entering the right-of-way from Elmendorf Air Force Base almost due south of the intersection of Q and 2nd Streets, all being north of the main-line track, and located in the SW4 of the SE4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

33 117.74 2nd Street beginning at approximately Railroad Mileage 117.74 where it enters, from Elmendorf Air Force Base, the railroad right-of-way, running parallel to the Base boundary and north of the main-line track, to Milepost 118 where Spur Road diverges, thence across the main-line track at approximately Railroad Mileage 118.04 to approximately Railroad Mileage 118.07 where it reenters Elmendorf Air Force Base, located in the S2 of the SE4 of the SW4 and the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

COPY

34 117.77 An overhead communication cable running from Elmendorf Air Force Base south to a pole located on the right-of-way at approximately Railroad Mileage 117.77, thence south across the main-line tracks to a pole carrying the lines described in Item 30 above, thence in an east-southeasterly direction until it crosses into Elmendorf Air Force Base, and located in the SE4 of the SW4 of the SW4 and the SW4 of the SE4 of the SW4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

35 117.93 A Security Police Bunker, consisting of a structure and the surrounding area within a radius of 30 feet, located just inside the right-of-way at the south end of the north/south runway on Elmendorf Air Force Base, at approximately Railroad Mileage 117.93, all being north of the main-line track, and located in the SE4 of the SE4 of the SW4 and the SW4 of the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

36 117.94 The North/South Runway approach lighting system located on both sides of the extended centerline of the runway where it crosses the right-of-way at approximately Railroad Mileage 117.94, Survey Station 216 +08.7, and on both sides of the main-line track, and located in the SE4 of the SE4 of the SW4 and the SW4 of the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

37 117.97 A 10-inch water main running in a straight line almost due north crossing the right-of-way at approximately Railroad Mileage 117.97, and located in the SW4 of the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

COPY

38 117.98 Access road from 2nd Street west of the right-of-way to the Golf Course and POL areas, being approximately 30 feet wide, and entering the right-of-way at approximately Railroad Mileage 117.98, thence heading west more or less parallel to the right-of-way boundary until it finally returns to Elmendorf Air Force Base at approximately Railroad Mileage 117.68, all being south of the main-line track, and located in the S2 of the SE4 of the SW4 and the SW4 of the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

39 118.00 Spur Road from the point it diverges from 2nd Street at approximately Milepost 118.00, running parallel to the Base boundary and all being northwesterly of the main-line track, to approximately Railroad Mileage 118.65 where it re-enters Elmendorf Air Force Base, and located in the W2 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

40 118.00 A 12-inch underground water main running east from Elmendorf Air Force Base to a point located between Spur Road and 2nd Street at approximately Railroad Mileage 118.03, thence running parallel to and northwest of the main-line track (near the Base boundary) to a point at approximately Railroad Mileage 118.36, thence easterly crossing the main-line track to approximately Railroad Mileage 118.378, thence resuming its original course but parallel to and southeast of the main-line track (near the Base boundary) until it re-enters Elmendorf Air Force Base at approximately Railroad Mileage 118.57, and located in the SW4, NW4, and NE4 of the SE4 and the SE4 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

41 118.05 A 15-inch storm drain culvert crossing 2nd Street between the main-line track and the southeastern boundary of the right-of-way, at approximately Railroad Mileage 118.05, all being southeast of the main-line track, and located in the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian.

COPY

42 118.07 An underground communication cable consisting of four conduits spaced about 4 feet apart crossing the right-of-way in an easterly direction at approximately Railroad Mileage 118.07, or approximately 100 feet north of 2nd Street, and located in the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the conduits.

43 118.09 A buried communication cable located at Elmendorf Air Force Base, in the Third State Judicial District, being wholly within the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian, and also being wholly within the Alaska Railroad right-of-way; the centerline of which being more specifically described as follows:

Beginning at Manhole 337, said point being 25 feet from the centerline of Spur Road when measured at right angle thereto, and opposite ARR Engineers Survey Station 224 +45 (approx.) when measured at right angle thereto; thence northeasterly, 25 feet from and parallel to the centerline of Spur Road for a distance of 1,525.00 feet to a point opposite ARR Engineers Survey Station 239 +70 (approx.) when measured at right angle thereto; thence northwesterly across Spur Road for a distance of 50 feet, more or less, to the Elmendorf Air Force Base boundary; and including an area extending out 10 feet on either side of the cable.

44 118.09 A buried communication cable running easterly from Elmendorf Air Force Base to Manhole 336 on the right-of-way at approximately Railroad Mileage 118.09, about 225 feet northeast of the meeting of Spur Road and 2nd Street, thence about 550 feet in a northeasterly direction parallel to the northwestern right-of-way boundary until it turns just beyond Manhole 337 to the east, crossing the main-line track and re-entering Elmendorf Air Force Base, and located in the SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

COPY

45 118.16 A buried communication cable running from the cable described in Item 44 above at approximately Railroad Mileage 118.16 parallel to the main-line track for approximately 1,575 feet where it turns at 90° to the northwest, thence approximately 75 feet where it diverges with one branch running west to Elmendorf Air Force Base and the other running northeast for approximately 700 feet where it re-enters the Base, all being northwest of the main-line track, and located in the W2 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

46 118.22 An underground communication cable at approximately Railroad Mileage 118.22 extending 274 feet across the right-of-way of the Railroad on a bearing of S. 80°52' W., and crosses under the center line of the main track at railroad survey station 223 + 80 P.O.C., a point which lies approximately 130 feet southwesterly from the northeasterly end of a 6°00' curve to the left. The coordinates of the point of crossing the center line of the main track on the Army grid system are: N. 110,676.11; E. 113,727.27, and located in SW4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

47 118.60 An underground 8-inch water main branching off from Item 40 above just prior to its turn at approximately Railroad Mileage 118.378, running thence in a southerly direction until it crosses onto Elmendorf Air Force Base at approximately Railroad Mileage 118.37, approximately 75 feet in total length and all being east of the main-line track, located in the NE4 of the SE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

48 118.60 A 6-inch underground water main running northeast from its juncture with Item 40 above, crossing the main-line track at a perpendicular, and crossing into Elmendorf Air Force Base at approximately Railroad Mileage 118.60, survey station 246 +50, and located in NE4 of the SE4 and the SE4 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

COPY

49 118.60 Overhead power lines, communication cables, and guy wire crossing the right-of-way at approximately Railroad Mileage 118.60 (station 244 +73), and located in the W2 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 15 feet on either side of the lines.

50 118.80 An overhead transmission line crossing the right-of-way in an east/west direction at approximately Railroad Mileage 118.80, and located in the W2 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 15 feet on either side of the line.

51 119.00 Four underground conduits carrying power lines crossing the right-of-way perpendicularly at approximately Railroad Mileage 119.00; also underground power lines diverging and heading due north from those described above at Manhole 43-27 located along the eastern boundary of the right-of-way until they reach a power pole and electrical transformer approximately 250 feet north of the above-described lines and midway between the main-line track and the eastern boundary of the right-of-way; all located in the NE4 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the conduits.

52 119.10 Underground conduits carrying communication cables crossing at approximately a 75° angle the right-of-way at approximately Railroad Mileage 119.10 which is approximately 200 feet south of the centerline of Spur Road where it crosses the right-of-way and meets Davis Highway, and located in the NE4 of the NE4 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the conduits.

COPY

53 119.19 Underground conduits carrying communication cables crossing in a more-or-less straight line at a perpendicular to the right-of-way at approximately Railroad Mileage 119.19 which is approximately 60 feet south of the centerline of Spur Road where it crosses the right-of-way and meets Davis Highway, and located in the NE4 of the NE4 of the NE4 of Section 3, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the conduits.

54 119.20 Spur Road, being approximately 75 feet wide, where it crosses the right-of-way and meets Davis Highway at approximately Railroad Mileage 119.20, and located in the sub-quarter sections which meet at the point of meeting of Sections 2 and 3, Township 13 North, and Sections 34 and 35, Township 14 North, Range 3 West, Seward Meridian.

55 119.20 Spur Road from its crossing described in Item 54 above where it meets with Davis Highway at approximately Railroad Mileage 119.20, thence running north, parallel and adjacent to the Elmendorf Air Force Base boundary, to its junction with an unnamed access road, that road thence running north, parallel and adjacent to the Base boundary, to approximately Railroad Mileage 119.62 where it crosses into Elmendorf Air Force Base, all being on the eastern side of the main-line track, and located in the SE4 of the SE4 of the SE4 of Section 34 and the W2 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian.

56 119.20 Hubble Road from its intersection with Spur Road, at approximately Railroad Mileage 119.20, to approximately Railroad Mileage 119.60, all being west of the main-line track, and located in the E2 of the SE4 of Section 34 and the W2 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian.

57 119.20 A 14-inch underground water main crossing the right-of-way in an east/west direction, at approximately Railroad Mileage 119.20, or approximately 50 feet north of the centerline of Spur Road where it crosses the right-of-way to meet Davis Highway, and located in the SE4 of the

COPY

SE4 of the SE4 of Section 34 and the SW4 of the SW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

58 119.25 A Security Police Bunker, consisting of a structure and the surrounding area within a radius of 30 feet, located approximately 70 feet east of the main-line track and approximately 150 feet north of the centerline of Spur Road where it crosses the right-of-way, at approximately Railroad Mileage 119.25, and located in the SE4 of the SE4 of the SE4 of Section 34 and the SW4 of the SW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian.

59 119.25 A buried communication cable crossing the right-of-way in an easterly direction at approximately Railroad Mileage 119.25, or 425 feet north of Spur Road where it crosses the right-of-way to meet Davis Highway, and located in the SE4 of the SE4 of the SE4 of Section 34 and the SW4 of the SW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

60 119.35 A 14-inch underground water main entering from Elmendorf Air Force Base the right-of-way on its eastern side at approximately Railroad Mileage 119.35 that being approximately 750 feet north of the centerline of Spur Road where it crosses the right-of-way, thence in a straight line north-northwesterly, crossing the main-line track, to a point at approximately Railroad Mileage 119.38 approximately midway between the main-line track and the Base boundary, thence in a straight line northerly until it crosses into Elmendorf Air Force Base west of the main-line track at approximately Railroad Mileage 119.61, and located in the SE4 of the SE4 of the SE4 of Section 34 and the W2 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

COPY

61 119.60 An aerial communication line crossing the right-of-way in an east/west direction at approximately Railroad Mileage 119.60, or 1,950 feet north of Spur Road where it crosses the right-of-way to meet Davis Highway, and located in the NW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

62 119.42 An 8-inch underground water main entering the right-of-way from the east from Elmendorf Air Force Base at approximately Railroad Mileage 119.42 crossing in a northwesterly direction the Army Spur Line to Fort Richardson to a point between and approximately equidistant from the Spur Line and the main-line track, thence turning in an easterly direction, crossing the main-line track and re-entering the Base on the west at approximately Railroad Mileage 119.44, and located in the NW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the main.

63 119.60 An overhead transmission line crossing the right-of-way in an east-southeasterly direction at approximately Railroad Mileage 119.60, or approximately 2,000 feet north of the centerline of Spur Road where it crosses the right-of-way to meet Davis Highway, and located in the NW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 15 feet on either side of the line.

64 119.75 An underground sanitary sewer line entering the right-of-way at S. 85°30' E., or approximately Railroad Mileage 119.75, and running in an easterly direction across the right-of-way to a point on the far side of the right-of-way approximately 100 feet north of its entrance where it leaves the right-of-way, and located in the NW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

COPY

65	119.80	A buried communication cable crossing the right-of-way in an east/west direction at approximately Railroad Mileage 119.80, and located in the SW4 of the NW4 and the NW4 of the SW4 of Section 35, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.

ON FORT RICHARDSON:

1	122.91	All those portions of Loop Road, Roosevelt Road, and Farrel Road where they intersect while crossing the right-of-way, said intersection being located at approximately Railroad Mileage 122.91 and the entire area stretching for approximately 1,000 feet along and across the right-of-way, all being located in the W2 of Section 19, T. 14 N., R. 2 W., Seward Meridian.
2	121.60	An underground communication cable crossing the right-of-way at approximately Railroad Mileage 121.60, in the NW4 of Section 25, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.
3	122.12	An underground communication cable crossing the right-of-way at approximately Railroad Mileage 122.12, at the line dividing Sections 24 and 25, Township 14 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.
4	122.87	A communication line proceeding from the Railroad T. & T. Line Pole No. 10,988 on the northwesterly side of the main track, thence southeasterly in an underground conduit 75 feet approximately to Alaska Communications System Pole No. 10,987, crossing under the centerline of the main track at survey station 3721 +74 (1947 chainage); thence northeasterly 150 feet approximately by aerial pole line to the southeasterly right-of-way line of the railroad, at approximately Railroad Mileage 122.87, and located in the W2 of Section 19, Township 14 North, Range 2 West, Seward Meridian; and including an area extending out 10 feet on either side of the line.

COPY

5	123.00	A power line crossing the right-of-way at approximately Milepost 123.00, survey station 3732 +60, and located in the NE4 of the SW4 of Section 19, Township 14 North, Range 2 West, Seward Meridian; and including an area extending out 30 feet on either side of the line.
6	123.03	A communication cable crossing the right-of-way approximately 90 feet north of Milepost 123, survey station 3733+97, and located in the NE4 of the SW4 of Section 19, Township 14 North, Range 2 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.
7	126.70	An artillery road where it crosses the right-of-way at approximately Railroad Mileage 126.70, and located in the SE4 of Section 9, Township 14 North, Range 2 West, Seward Meridian.
8	127.96	A 60-foot right-of-way for a road, 30 feet on each side of, and parallel to the centerline of the road, across the 200 foot right-of-way of the Railroad at Railroad Mileage 127.96, the centerline of road crossing the centerline of the main track of the Railroad at survey station 3395 approximately, and located in the N2 of Section 10, Township 14 North, Range 2 West, Seward Meridian. Also a road branching off from the above-described crossing where it intersects with the road described in item 9 below, all being west of the main-line track.
9	127.96	An unnamed road, running parallel to the main-line track, from its junction with the crossing described in Item 8 above at approximately Railroad Mileage 127.96, in the N2 of Section 10, Township 14 North, Range 2 West, Seward Meridian, to its entry onto Fort Richardson at approximately Railroad Mileage 129.30, approximately 125 feet due south of the Post boundary, in Section 3, Township 14 North, Range 2 West, Seward Meridian, all being wholly within the right-of-way and west of the main-line track; also, a branch from the above-described road diverging at a perpendicular approximately 1,100 feet due south of the Post boundary, all being west of the main-line track.

COPY

10	127.96	A communication cable crossing the right-of-way at approximately Railroad Mileage 127.96, and located in the N2 of Section 10, Township 14 North, Range 2 West, Seward Meridian; and including an area extending out 10 feet on either side of the cable.
11		Not Used.
12	123.38	An unnamed road, crossing into the right-of-way in a west-northwesterly direction at approximately Railroad Mileage 123.38, and located in the NE4 of Section 19, Township 14 North, Range 2 West, Seward Meridian.
13		Not Used.
14	122.14	An unnamed road entering the right-of-way at approximately Railroad Mileage 122.14, running in an easterly direction paralleling the right-of-way boundary, to approximately Railroad Mileage 122.32 where it leaves the right-of-way, all being north of the main-line track, and located in the SW4 of the SE4 of Section 24, Township 14 North, Range 3 West, Seward Meridian.
15	122.90	An 18-inch concrete line with manholes crossing Farrel Road just before its junction with Loop Road, at approximately Railroad Mileage 122.90, all being northwest of the main-line track, and located in the SW4 of Section 19, Township 14 North, Range 2 West, Seward Meridian.

On Anchorage Petroleum Terminal --

1	Access to Anchorage Petroleum Terminal (U.S. Army) by way of Ocean Dock, Port, Tidewater and Terminal Roads and W. Bluff Drive and the unnamed road branching off to the east from Ocean Dock Road; located within the Alaska Railroad Terminal Reserve in Section 7, Township 13 North, Range 3 West, Seward Meridian.
2	Multiproduct underground pipelines located within Section 7, lots 10 and 15, Township 13 North, Range 3 West, Seward Meridian; and including an area extending out 10 feet on either side of the lines (A-041517).

All the foregoing covenants and agreements shall run with the land.

COPY

b. Avigation Easements:

The following easements over the real property hereby conveyed and situated within the exterior perimeters of or adjacent to Elmendorf Air Force Base and Fort Richardson are reserved to the United States, or its assigns, for the purpose of unobstructed passage of all aircraft ("aircraft" being defined for the purpose of this instrument as any contrivance now known or hereafter invented, used, or designed for the navigation of or flight in the air) by whomever owned and operated in the airspace above said real property at the following heights:

(1) Within Elmendorf Air Force Base: From 23 feet above the railroad bed as it exists to an infinite height on that portion of the main line right-of-way lying approximately between Railroad Mileage 117.77 and Railroad Mileage 118.12, and Railroad Mileage 118.91 and Railroad Mileage 119.30, those being areas within extensions from the active aircraft runways, as more specifically displayed on the plat entitled Elmendorf Air Force Base P.L. 97-468 Easements, recorded herewith.

(2) From 60 feet above the railroad bed as it exists to an infinite height on all that portion of the real property hereby conveyed lying between Railroad Mileage 118.12 and Railroad Mileage 118.91, that being all the area situated between the two areas identified in the foregoing paragraph, and as more specifically displayed on the plat entitled Elmendorf Air Force Base P.L. 97-468 Easements, recorded herewith.

(3) Within and Adjacent to Fort Richardson: From 50 feet above the railroad bed as it exists to an infinite height on all that portion of the main line right-of-way situated approximately between Railroad Mileage 122.74 and Railroad Mileage 131.66, that being an active aircraft training area and restricted airspace zone, as more specifically displayed on the plat entitled Fort Richardson P.L. 97-468 Easements, recorded herewith.

There is further reserved to the United States the right to fire or fly missiles or projectiles in the above-described airspace of Fort Richardson except when a train or Alaska Railroad personnel are present in the area. No right to fire or fly missiles or projectiles below the above-described airspace is reserved hereby.

COPY

There is further reserved to the United States, or its assigns, the right to cause in all airspace above the real property subject to the above-described avigation easements such noise, vibrations, fumes, dust, fuel particles, and all other ordinary effects that may be caused by the operation of aircraft landing, taking off, or operating at or on Elmendorf Air Force Base or Fort Richardson; provided, however, that the phrase "operation of aircraft" and the word "operating," as used in this instrument, do not include aircraft crashes or landing of aircraft on the above-described real property. The Alaska Railroad Corporation hereby waives, remises, and releases all rights or causes of action which it, or its successors or assigns, may hereafter acquire against the United States due to such noise, vibration, fumes, dust, fuel particles, or any other ordinary effects that may be caused by the operation of aircraft landing at, taking off from, or operating at or on Elmendorf Air Force Base or Fort Richardson, except that no waiver is made or given hereby of any action or liability accruing in favor of the State of Alaska or the Alaska Railroad Corporation under any applicable Federal or State law or regulation concerning air or water quality. The Avigation Easements hereby reserved include as an incident thereof the continuing right in the United States to prevent the erection or growth upon the above-described real property of the State of Alaska of any building, structure, tree, or other object extending into the prohibited airspace established by this paragraph 1.b, and to remove from said airspace, or at the sole option of the United States as an alternative, to require the marking and lighting as obstructions to air navigation, any such building, structure, tree, or other object which may in the future be upon the real property subject to these easements and intrude into the prohibited airspace established by this paragraph 1.b, together with the right of ingress to, egress from, and passage over the above-described real property to accomplish the purposes stated in this sentence.

The Alaska Railroad Corporation hereby covenants, for itself and its successors and assigns, that for and during the life of the avigation easements hereby reserved, it will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon the real property any building, structure, tree, or other object extending into the prohibited airspace established by this paragraph 1.b, and that it shall not hereafter use or permit or suffer the use of said property in such manner as to create electrical interference with radio communication between any installation upon Elmendorf Air Force Base or Fort Richardson, and aircraft, or as to make it difficult for fliers to distinguish between landing lights and other lights, or as to impair visibility in the vicinity of said bases, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft within the prohibited airspace established by this paragraph 1.b.

COPY

These avigation easements do not prevent the Alaska Railroad Corporation, its successors or assigns, from transporting aboard rail cars objects, with reasonable prior notice, which extend into the prohibited airspace established by the enumerated paragraphs above, provided that such objects remain in transit and are not stored upon the right-of-way or on any of the real property subject to these easements. All the foregoing covenants and agreements shall run with the land.

c. Safety Zone Easements Related to Munitions and Explosives:

The following easements in and over the real property hereby conveyed, and situated within the exterior perimeters of Elmendorf Air Force Base and Fort Richardson, are reserved to the United States, or its assigns, to maintain a safety zone surrounding locations wherein explosives and munitions are stored, handled, and transported, to wit: All that portion of the main line right-of-way lying approximately between Railroad Mileage 118.19 and Railroad Mileage 118.69, and Railroad Mileage 119.09 and Railroad Mileage 119.79 in the case of Elmendorf Air Force Base, and Railroad Mileage 121.10 and Railroad Mileage 122.41 in the case of Fort Richardson, as more specifically displayed on the plats entitled Elmendorf Air Force Base P.L. 97-468 Easements, and Fort Richardson P.L. 97-468 Easements, recorded herewith.

The easements reserved by this paragraph 1.c include the continuing right in the United States, or its assigns, to prohibit human habitation on (but not transportation of persons or freight over and through) the real property subject to these safety zone easements, and the right of ingress to, egress from, and passage over the said real property to accomplish the above purposes. The Alaska Railroad Corporation hereby convenants and agrees, for itself and its successors and assigns, that, for and during the life of this easement, it will not erect, permit the erection of, or permit or suffer to remain upon the said real property within the herein described safety zones any habitation or dwelling of any kind. All the foregoing covenants and agreements shall run with the land.

d. Safety Zone Easements Surrounding Runways:

The following easements in and over the real property hereby conveyed, and situated within the exterior boundaries of Elmendorf Air Force Base, are reserved to the United States, or its assigns, to maintain safety zones surrounding the active runways: All those portions of the main line right-of-way lying

COPY

approximately between Railroad Mileage 117.64 and Railroad Mileage 118.16, and Railroad Mileage 118.79 and Railroad Mileage 119.41, as more specifically displayed on the plat entitled Elmendorf Air Force Base P.L. 97-468 Easements, recorded herewith.

The easements reserved by this paragraph 1.d include the continuing right in the United States, or its assigns, to prohibit human habitation on (but not transportation of persons or freight over and through) the real property subject to these safety zone easements, and the right of ingress to, egress from, and passage over the said real property to accomplish the above purposes. The Alaska Railroad Corporation hereby convenants and agrees, for itself and its successors and assigns, that, for and during the life of this easement, it will not erect, permit the erection of, or permit or suffer to remain upon the said real property within the herein described safety zones any habitation or dwelling of any kind. All the foregoing convenants and agreements shall run with the land.

e. Fire, Rescue, and Security Easement:

An easement in and over all the real property hereby conveyed, and situated within the exterior perimeters of Elmendorf Air Force Base and Fort Richardson, is reserved to the United States, or its assigns, permitting the United States (1) to enter upon said real property at any time without notice for purposes of fire suppression or protection of government property or in response to aircraft emergencies or crashes, or for training for such purposes; (2) to maintain the continued security of the military installations adjacent to said real property by entry of security personnel of the United States and their equipment upon said real property, without notice and as may be necessary, subject to the requirement that such entry or use shall not interfere with railroad operations; and (3) to enter upon the said real property to cut or trim any vegetation deemed by the United States to interfere with installation security or with the continuing ability to use fire suppression equipment as aforesaid. All the foregoing convenants and agreements shall run with the land.

f. Restrictive Security Easement:

An easement in and over all the real property hereby conveyed, and situated within the exterior perimeters of Elmendorf Air Force Base and Fort Richardson, is reserved to the United States, or its assigns, by which, unless the Alaska Railroad Corporation, or its successors or assigns, takes certain actions as hereinafter stated, the United States, in

COPY

order to prevent compromise of United States military security and assure adequate protection of defense resources within the military reservations in the interests of national defense, may prevent access to or presence on said properties by any person, other than passengers on a train, employees, agents, or contractors of the Alaska Railroad Corporation, or its successors or assigns, or Federal, State, or Municipal government employees. The Alaska Railroad Corporation, hereby convenants and agrees, for itself and its successors and assigns, that for and during the life of this easement, it and they will take no action to permit access to or presence upon the above described real property by any person except those who are passengers on a train, employees, agents, or contractors of the Alaska Railroad Corporation, or its successors or assigns, or employees of the Federal, State, or Municipal Governments, unless it has first taken such precautions as are acceptable to the United States which are reasonable and generally utilized in similar circumstances, to include erection of suitable barriers and adoption of control procedures, to ensure such access does not jeopardize the security of the military installations. All the foregoing covenants and agreements shall run with the land.

g. Termination of Easements: NALA

The easements, covenants, and agreements specified in paragraphs 1.c, 1.e, and 1.f above shall terminate if and when, and to the extent the military reservation within which they are situated, is revoked, vacated, or no longer used for military or defense purposes.

Secretary of Agriculture:

✓ An easement for a communication site issued within Sec. 3, T. 10 N., R. 2 W., Seward Meridian (43 U.S.C. 1732) (AA-953).

Such easements and the use of such easements shall not interfere with railroad operations or support functions of the State-owned railroad, as defined in Sec. 603(14) of ARTA.

2. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted herein is subject to any valid leases, permits and other instruments issued before the date of transfer of the railroad to the State, specifically including:

a. The granted license under Power Project 350 as to those lands herein conveyed within Secs. 8 and 9, T. 13 N., R. 3 W.; Sec. 24, T. 14 N., R. 3 W., all in Seward Meridian.

COPY

b. The granted license under Power Project 2170 as to those lands herein conveyed within Secs. 20 through 24, 29, and 30, T. 10 N., R. 1 E.; Secs. 5 and 15, T. 10 N., R. 1 W., all in Seward Meridian.

c. The granted license under Power Project 7114 as to those lands herein conveyed within Secs. 19 and 20, T. 14 N., R. 2 W., Seward Meridian.

d. There is excepted and reserved any element of ownership from Sec. 19, T. 14 N., R. 2 W.; Sec. 24, T. 14 N., R. 3 W.; Sec. 36, T. 15 N., R. 2 W.; Sec. 26, T. 16 N., R. 1 W.; Secs. 15, 16, 19, 20 and 21, T. 16 N., R. 1 E., all in Seward Meridian, conveyed by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (40 U.S.C. 771-792) (AA-6187).

e. Any interest in the Glenn Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Secs. 35 and 36, T. 15 N., R. 2 W.; Secs. 15, 16, 20 and 21, T. 16 N., R. 1 E., all in Seward Meridian.

f. Any interest in the Seward/Anchorage Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to Secs. 22, 23, 24 and 30, T. 10 N., R. 1 E.; Secs. 5, 6, 8, 9, 10, 13, 14, 15 and 24, T. 10 N., R. 1 W.; Secs. 1, 2, 3 and 4, T. 10 N., R. 2 W., all in Seward Meridian.

g. A right-of-way, AA-2559, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Sec. 35, T. 15 N., R. 2 W., Seward Meridian, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

h. A right-of-way, AA-8095, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Secs. 16 and 21, T. 16 N., R. 1 E., Seward Meridian, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

COPY

i. A right-of-way, AA-8997, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Sec. 16, T. 16 N., R. 1 E., Seward Meridian, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

j. A right-of-way, A-010069, for a transmission line issued to the Matanuska Electric Association, Inc., within Sec. 15, T. 16 N., R. 1 E., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

k. A right-of-way, AA-15076, for a transmission line issued to the Matanuska Electric Association, Inc., within Sec. 15, T. 16 N., R. 1 E., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

l. A right-of-way, AA-16161, for a transmission line issued to the Chugach Electric Association, Inc., within Sec. 19, T. 14 N., R. 2 W.; Sec. 20, T. 14 N., R. 3 W., all in Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

m. A right-of-way, A-020860, for a transmission line issued to the Chugach Electric Association, Inc., within U.S. Survey No. 408 (PLO 789) Blocks 38B and 41D (T. 13 N., R. 3 W., Seward Meridian), under the Act of February 15, 1901 (43 U.S.C. 959).

n. A right-of-way, A-021429, for a transmission line issued to the Matanuska Electric Association, Inc., within Secs. 5 and 8, T. 15 N., R. 1 W., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

o. A right-of-way, A-022452, for a transmission line issued to the Alaska Power Administration within Secs. 35 and 36, T. 15 N., R. 2 W., Seward Meridian (43 U.S.C. 1732).

p. A right-of-way, A-029885, for an electric distribution line issued to the Chugach Electric Association, Inc., within Secs. 20 through 24, T. 10 N., R. 1 E.; Secs. 1 thru 4, T. 10 N., R. 2 W., all in Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

COPY

q. A right-of-way, A-038111, for an electric distribution line issued to the Matanuska Electric Association, Inc., within Sec. 24, T. 16 N., R. 1 W., Seward Meridian (PLO 2259), under the Act of February 15, 1901 (43 U.S.C. 959).

r. A right-of-way, A-046811, for a transmission line, issued to the Chugach Electric Association, Inc., within Sec. 30, T. 10 N., R. 1 E., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

s. A right-of-way, A-050466, for a transmission line issued to the Matanuska Electric Association, Inc., within Sec. 10, T. 14 N., R. 2 W.; Sec. 24, T. 14 N., R. 3 W.; Secs. 25, 26, 34 and 35, T. 15 N., R. 2 W.; Secs. 5 and 8, T. 15 N., R. 1 W.; Sec. 26, T. 16 N., R. 1 W., all in Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

t. A right-of-way, AA-51054, for a pipeline issued to the Alaska Pipeline Company within Secs. 15, 16, 20 and 21, T. 16 N., R. 1 E., Seward Meridian, under the Act of February 25, 1920 (30 U.S.C. 185).

u. A right-of-way, A-057370, for a material site issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Sec. 15, T. 16 N., R. 1 E., Seward Meridian, Under the Act of August 27, 1958, as amended (23 U.S.C. 317).

v. A right-of-way, A-063653, for a transmission line issued to the Matanuska Electric Association, Inc., within Secs. 35 and 36, T. 15 N., R. 2 W., Seward Meridian, under the Act of February 15, 1901 (43 U.S.C. 959).

w. A right-of-way, A-067568, for highway purposes, issued to the State of Alaska, Department of Highways (now Department of Transportation and Public Facilities) within Secs. 23 and 24, T. 10 N., R. 1 E., Seward Meridian, under the Act of August 27, 1958, as amended (23 U.S.C. 317).

COPY

3. This license is subject to settlement or final adjudication of the unresolved claims of valid existing rights as defined in Sec. 603(3) of ARTA. A listing of these unresolved claims is set out below:

Parcels

All parcels in Whittier - State Selection AA-17588.

U.S. Survey No. 408:

That portion designated as Dedicated Railroad Centerline - State Selection A-060527.

Additional Terminal Reserve - State Selections A-060527 and A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-32.

Block 1 Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-30.

Blocks 3, 4 and 5 Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-18.

Block 11 Anchorage Townsite - State Selection A-060527 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-6.

Block 12 Anchorage Townsite - State Selection A-060527 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-37.

Blocks 20 and 21 Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-3.

Block 33 Fourth Addition, Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-31.

Block 34 Fourth Addition, Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-54.

Block 40A East Addition, Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-32.

COPY

Blocks 41A and 41D East Addition, Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-2.

Block 43 East Addition, Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-54.

Block 59, lot 7 Anchorage Townsite - State Selection A-060527.

Block 59, lot 8 - State Selection A-060527 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-9.

Blocks 120 and 121 Anchorage Townsite - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-38.

U.S. Survey No. 1170 - State Selections A-060527 and A-061880 and Regional Selections (Cook Inlet Region, Inc.) AA-8098-32, AA-8098-39, AA-8098-43 and AA-8098-70.

U.S. Survey No. 3458, Tract C, Lots 4 and 5 - State Selection A-061880.

U.S. Survey No. 3458, Tract A, Block P - Regional Selection (Cook Inlet Region, Inc.) AA-8098-42 and State Selection A-061880.

Seward Meridian

T. 13 N., R. 3 W.,

Sec. 7, portions of lots 10 and 15 - State Selection A-061880 and Regional Selections (Cook Inlet Region, Inc.) AA-8098-75 and AA-8098-69.
Sec. 8 - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-32.
Sec. 9 - State Selection A-061880 and Regional Selections (Cook Inlet Region, Inc.) AA-8098-32 and AA-8098-92.

PLO 670 - State Selection A-060527.

PLO 789 - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-32.

COPY

PLO 3128 and PLO 3919 - State Selection A-061880 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-32.

T. 15 N., R. 2 W.
PLO 2308 and 689 - State Selection A-061267, Village Selection (Eklutna Inc.) AA-6661-C and Regional Selection (Cook Inlet Region, Inc.) AA-8098-16.

T. 15 N., R. 1 W.
PLO 3577 - State Selection A-061179, Village Selection (Eklutna, Inc.) AA-6661-C and Regional Selection (Cook Inlet Region, Inc.) AA-8098-91.

T. 16 N., R. 1 W.
Sec. 24 (acquired) - Village Selection (Eklutna, Inc.) AA-6661-B and Regional Selection (Cook Inlet Region, Inc.) AA-8098-17.

PLO 755 - Village Selection (Eklutna, Inc.) AA-6661-C and Regional Selection (Cook Inlet Region, Inc.) AA-8098-17.

PLO 2672 - State Selection A-055409, Village Selection (Eklutna, Inc.) AA-6661-C and Regional Selection (Cook Inlet Region, Inc.) AA-11153-14.

PLO 2259 - Village Selection (Eklutna, Inc.) AA-6661-C.

Right-of-way:

Seward Meridian

T. 10 N., R. 1 E., Secs. 20 to 24, inclusive, 28, 29 and 30 - State Selection A-053724.

T. 10 N., R. 1 W., Secs. 5, 6, 8, 9, 10, 13, 14, 15, 23, 24 and 25 - State Selection A-053730.

T. 10 N., R. 2 W., Secs. 1, 2, 3 and 4 - State Selection A-053730.

T. 12 N., R. 3 W., Sec. 33 - State Selection A-058730.

T. 13 N., R. 3 W., Secs. 3, 4, 9 and 10 - Regional Selection (Cook Inlet Region, Inc.) AA-8098-92 and State Selections A-061880.

COPY

T. 13 N., R. 4 W., N2, Sec. 35 - State Selection A-058730.

T. 14 N., R. 3 W., Secs. 24 and 25 - Regional Selection (Cook Inlet Region, Inc.) AA-8098-35 and State Selection AA-21462.

T. 14 N., R. 3 W., Secs. 26 and 35 - Regional Selection (Cook Inlet Region, Inc.) AA-8098-92 and State Selection AA-21462.

T. 14 N., R. 3 W., Sec. 34 - State Selection AA-21462 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-92.

T. 14 N., R. 2 W., Secs. 3, 9, 10, 16, 17 and 19 - State Selection A-061777 and Regional Selection (Cook Inlet Region, Inc.) AA-8098-35.

T. 14 N., R. 2 W., Secs. 20 and 21 - Regional Selection (Cook Inlet Region, Inc.) AA-8098-35 and State Selection A-061777.

T. 15 N., R. 1 W., Sec. 5:
lots 4, 13, 18, 32, 40, 41, 46, 47, 48, 49, 52, 54, 63, 64 and 66 - State Selection A-058730.

lot 15 - State Selection A-061I79 and Village Selection (Eklutna, Inc.) AA-6661-A.

S2SW4SW4NE4 - Native allotment AA-5834, Village Selection (Eklutna Inc.) AA-6661-F, Regional Selection (Cook Inlet Region, Inc.) AA-11153-23 and Litigation AA-16675.

T. 15 N., R. 1 W., Sec. 7 - lots 7, 20 and 64 - State Selection A-058730.

T. 15 N., R. 1 W., Sec. 18 - lots 10, 41, 58, 75, 89, 107, 119, 137, 145, 161, 165, 184, 186, 199 and 201 - State Selection A-058730.

T. 16 N., R. 1 W., Secs. 24, 26, 27, 32, 33 and 34 - State Selection A-055409, Village Selection (Eklutna Inc.) AA-6661-A and Litigation AA-41462.

COPY

T. 16 N., R. 1 E., Secs. 15, 16, 20, 21 and 22 - State Selection A-055409, Village Selection (Eklutna, Inc.) AA-6661-A and Litigation AA-41462.

T. 16 N., R. 1 E., Sec. 19 - State Selection A-055409, Village Selection (Eklutna, Inc.) AA-6661-C, Regional Selection (Cook Inlet Region, Inc.) AA-8098-10 and Litigation AA-41462.

During the term of this license the exclusive rights granted by this license shall not be diminished by any unresolved claim of a valid existing right.

4. Pursuant to Sec. 604(b)(4) of ARTA, the exclusive license granted for any lands herein shall terminate upon the conveyance of such lands following the settlement or relinquishment of any of the unresolved claims of valid existing rights described in paragraph 3 above. This license shall terminate only to the extent of the claim or claims settled or adjudicated.

5. If the real property that is the subject of any unresolved claim listed in paragraph 3 above is located within the railroad's right-of-way and if the final adjudication of the claim is in favor of the claimant and against the Alaska Railroad, the license granted herein shall automatically terminate for such property upon conveyance of that property pursuant to Sec. 604(b)(4) of ARTA. If as the result of such a conveyance, any lands within the railroad's right-of-way or any interest in such lands are conveyed from federal ownership, the State shall, concurrently with the conveyance to the claimant, receive not less than an exclusive use easement in such lands pursuant to Sec. 606(b)(4)(B) of ARTA.

6. If the final adjudication of any unresolved claim listed in paragraph 3 is against the claimant and in favor of the Alaska Railroad, that land previously subject to the claim shall, pursuant to Sec. 604(b)(2) of ARTA, be conveyed to the State by an interim conveyance or patent. Upon such conveyance, the license granted herein for the property subject to the conveyance shall terminate pursuant to Sec. 604(b)(4) of ARTA.

COPY

7. At the time all or a portion of this license is terminated, the United States Department of Transportation shall issue to the State a notice of termination identifying the real property that is no longer subject to the license and each conveyance that has caused full or partial termination of the license.

8. Pursuant to Sec. 606(e) of ARTA, the State shall be liable to a party receiving a conveyance of land among the above-described properties subject to this license for damage resulting from use by the State of land under this license in a manner not authorized by this license.

Definitions

1. "Exclusive-use easement," as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

   a. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

   b. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

   c. subjacent and lateral support of the lands subject to the easement; and

   d. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

2. "Right-of-way," as used herein, means as provided in Sec. 603(11) of ARTA:

   a. an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

COPY.

b. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (a) of this paragraph.

IN WITNESS WHEREOF, the undersigned authorized officer of the Department of Transportation has in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 5th day of January, 1985, in Nenana, Alaska.

UNITED STATES OF AMERICA

Secretary of Transportation
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____
Its: Chairman of the Board
Dated January 5, 1985

COPY

Databases, Tables & Calculators by Subject

TOP PICKS
SERIES REPORT
PUBLIC DATA API
DISCONTINUED DATABASES
FAQS
SPECIAL NOTICES
MORE SOURCES OF DATA

CPI Inflation Calculator

CPI Inflation Calculator

$ 24,115.00
in 1965
Has the same buying power as:
$179,075.69
in 2014
Calculate

About this calculator
Mobile Browser? View full screen.

About the CPI Inflation Calculator

The CPI inflation calculator uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used.

www.bls.gov | Telephone: 1-202-691-5200 | TDD: 1-800-877-8339 | Contact Us

Exhibit "H"
Page 2 of 2

MOVING THE AMERICAN ECONOMY

Federal Railroad Administration
Trespassing and ATV Usage
On Railroad Property
Fact Sheet

Background on Railroad Trespassing

Trespassing along railroad rights-of-way is the leading cause of rail-related fatalities in America. Nationally, approximately 500 trespassing deaths occur each year, the vast majority of which are preventable. By definition, trespassers are illegally on private railroad property without permission. They are most often pedestrians who walk across or along railroad tracks as a shortcut to another destination. Some trespassers are loitering; engaged in recreational activities such as jogging, hunting, bicycling, snowmobiling; or operating off-road, all-terrain vehicles (ATV).

Overall, the railroad-operating environment is inherently a hazardous one for which railroad employees have the benefit of extensive safety training. Trespassers do not have the benefit of this knowledge, nor are they are aware of current and impending train movements. In addition to risking their lives, trespassers may sustain life-threatening injuries by failing to properly use designated crossing locations at highway-rail grade crossings, and dedicated pedestrian access paths. In most States, trespassing is codified as a property crime and is a general offense. A number of States specifically forbid trespassing on railroad property. A list of State-by-State trespassing laws is available at: www.fra.dot.gov/us/content/2305.

Role of the Federal Railroad Administration

The focus of the Federal Railroad Administration's (FRA) efforts to combat rail trespassing is to prevent it from occurring in the first place, not to make the behavior safe. FRA's Highway-Rail Grade Crossing Safety and Trespass Prevention Program team is committed to reducing the prevalence, popular indifference, and social acceptability of trespassing. To that end, FRA sponsors and carries out wide-ranging efforts, primarily focusing on public education. FRA works in partnership with the rail industry, State and local governments, and other transportation organizations to raise public awareness through outreach efforts at schools, workplaces, and community organizations across the country about the inherent dangers and consequences of trespassing. Law enforcement agencies and judicial officials, in particular, are critical in the success of these activities, since stopping individuals and issuing citations or tickets can significantly deter would-be violators.

Role of Railroads

The prevention of trespassing along railroad rights-of-way and facilities is a significant concern for railroads. When a trespass event occurs, locomotive engineers suffer the trauma of hopelessly witnessing a tragic event that he or she is effectively powerless to prevent, and the railroad incurs the cost of delays, equipment damage, and possible litigation. Railroads take several precautions to mitigate trespassing. These precautions include: posting "No Trespass" signs; dispatching railroad security forces to patrol railroad rights-of-way, sometimes in coordination with local law enforcement agencies; and encouraging their employees to report trespassers. In some instances, railroads install fencing near grade crossings and passenger train stations to prevent people from taking shortcuts, and conduct local education programs, often in conjunction with Operation

Lifesaver, Inc. Also, where appropriate, railroads support the construction of grade-separated pedestrian walkways.

Operation Lifesaver, Inc.

Operation Lifesaver, Inc. (OLI) is an international, nonprofit, continuing public education program that was first established in 1972 to end collisions, deaths, and injuries at places where roadways cross train tracks, and along railroad rights-of-way. Its programs are sponsored cooperatively by Federal, State, and local government agencies; highway safety organizations; and the Nation's railroads. OLI's trained and certified volunteer speakers offer free safety presentations for various professions and for all age groups in order to increase public safety around railroad tracks. FRA awards annual grant funding to OLI to provide grants to 50 State organizations that manage railroad safety awareness programs. The funds also support training programs such as regional workshops developed for Operation Lifesaver's volunteer trainers and presenters, communications programs, publications, and the development and distribution of public service announcements. Additional information is available at: www.oli.org.

The Average Trespasser

In order to better understand who is trespassing, and where and why they are trespassing, FRA issued a report in March 2008 based upon 3 years of reported trespasser fatalities. Medical examiners and coroners across the country were surveyed, and based on the best information available from those who elected to participate in the study, we found that the average trespasser is a 38-year-old Caucasian male under the influence of alcohol and/or drugs, with a median household income of $36,000. More than 25 percent of these individuals did not graduate from high school. The report, *Rail-Trespasser Fatalities: Developing Demographic Profiles*, available at www.fra.dot.gov/downloads/safety/tdreport_final.pdf, recommends conducting additional demographic analysis to develop targeted educational and outreach programs and law enforcement initiatives to reduce the number of rail trespass incidents.

Key Safety Tips to Avoid Becoming a Trespass Statistic

- Always expect a train! This is especially critical where there are multiple tracks and the sound of one train can mask the sound of a second train on the other set of tracks.
- Cross the tracks only at approved crossings. Crossing tracks at any other location is illegal and puts you at risk of tripping on rails or slipping on icy ballast. There is no margin for error if a train is approaching.
- Don't try to beat a train at a crossing. It's almost impossible to accurately judge the distance and speed of an oncoming train.
- Don't stand close to the tracks. A train is at least 3 feet wider than the tracks on each side. In addition, a fast moving train may kick up or drop debris.
- Don't ever walk along tracks on bridges or in tunnels. You may not hear an approaching train and since clearances in bridges and tunnels can be tight, you may not be able to escape an approaching train.
- Don't attempt to jump or climb on, over, under, or in between rail equipment. Even an idle freight car can be dangerous.

ATVs Damage Railroad Track

- ATV operators are illegally trespassing by riding on or near railroad tracks and rights-of-way. Railroads and governmental authorities are very concerned about damage to track caused by ATVs and other off-road vehicles.
- Riding along railroad tracks leads to erosion of an important part of the track foundation known as "ballast." Ballast is the rock and soil material used to support the ties and rail, and it is responsible for carrying 40 percent of the weight of a passing train.
- The ballast is crucial for maintaining safe train operations. Damage to the ballast degrades the entire track structure and can lead to a train derailment.
- A derailment can result in injuries and or the death of train crews, railroad passengers, and innocent bystanders including those who live and work along rail lines; as well as a hazardous material spill or release, and damage to property nearby. Only authorized railroad employees or contractors are permitted to operate vehicles on or occupy railroad tracks and rights-of-way.

Ireland	Mica	Rudd
Jeffries	Minish	Russo
Jenkins	Mitchell (NY)	Santini
Johnston	Moffett	Sawyer
Jones (NC)	Mollohan	Scheuer
Jones (TN)	Morrison	Shamansky
Lantos	Mottl	Shelby
Latta	Murphy	Siljander
LeBoutillier	Nelligan	Simon
Lee	Nelson	Smith (IA)
Lehman	Nichols	Smith (OR)
Levitas	Ottinger	Smith (PA)
Lewis	Oxley	Stangeland
Livingston	Panetta	Stanton
Long (LA)	Patterson	Stark
Lott	Paul	Synar
Luken	Perkins	Taylor
Lungren	Peyser	Traxler
Marlenee	Price	Walgren
Marriott	Pritchard	Washington
Martin (NC)	Pursell	Watkins
Martin (NY)	Quillen	Weaver
Martinez	Rahall	Weber (OH)
Mattox	Railsback	Whitehurst
McClory	Rhodes	Williams (OH)
McCurdy	Roberts (SD)	Winn
McDade	Rogers	Yatron
McEwen	Rose	Young (AK)
McGrath	Rosenthal	Zeferetti

□ 1940

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendments of the House to the amendments of the Senate with amendments to a bill of the House of the following title:

H.R. 3420. An act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes.

PIPELINE SAFETY AUTHORIZATION ACT OF 1981

Mr. FLORIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3420), to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes, with Senate amendments to the House amendment to the Senate amendments and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate engrossed amendment to the text of H.R. 3420, insert the following:

That titles II through VII of this Act may be cited as the "Rail Safety and Service Improvement Act of 1982".

TITLE I—NATURAL GAS PIPELINE SAFETY

SEC. 101. Section 4(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1673(b)) and section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(b)) are each amended by striking "once every 6 months," and substituting "twice each calendar year.".

SEC. 102. Section 8(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1675(a)) is amended by striking "sixtieth day" and substituting "90th day".

SEC. 103. Section 206(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2005(a)) is amended by striking "60th day" and substituting "90th day".

SEC. 104. Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674(a)) is amended by striking "(other than subsection (a)(3) thereof)" and substituting "(other than subsection (a)(2) thereof)".

TITLE II—BANKRUPT RAILROADS

SHORT TITLE

SEC. 201. This title may be referred to as the "Bankrupt Railroad Service Preservation and Employee Protection Act of 1982".

Subtitle A—Service Preservation

PURPOSE

SEC. 211. It is the purpose of this subtitle to continue the effort by Congress to assure service over the lines of rail carriers subject to liquidation in instances where rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations.

FINDINGS

SEC. 212. The Congress finds that—

(1) it is necessary to establish procedures to facilitate and expedite the acquisition of rail lines of carriers subject to liquidation by financially responsible persons in instances where service is not being provided over the line by the carrier and where the financially responsible person seeks to provide rail service over the line;

(2) procedures set forth in the amendments made by this title represent an exercise of the powers of the Congress under the Constitution of regulate commerce among the several States which will provide a practicable means for preserving rail service, thus benefiting shippers, employees, and the economies of the States in which such carriers subject to liquidation have operated service, and for facilitating interstate commerce, while at the same time providing safeguards to protect the interest of the estates of such carriers by requiring compensation which is not less than the constitutionally required minimum; and

(3) it is in the public interest that the Interstate Commerce Commission's authority to issue orders involving temporary authority to operate service over lines of carriers subject to liquidation be clarified.

AMENDMENTS TO THE MILWAUKEE RAILROAD RESTRUCTURING ACT

SEC. 213. Section 17(b) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 915(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) If a person has made or makes an offer to acquire from a carrier subject to liquidation a rail line or lines over which no service is provided by that carrier, and that offer has been or is rejected by the trustee in bankruptcy of such carrier, such person may submit an application to the Commission seeking approval of such person's acquisition of such line or lines. A copy of any such application shall be filed simultaneously with the court.

"(B) The Commission shall, within 15 days after the filing of an application under subparagraph (A) of this paragraph, determine whether the applicant—

"(i) is a financially responsible person; and

"(ii) has made a bona fide offer to acquire the line or lines under reasonable terms.

"(C)(i) If the Commission's determination under subparagraph (B) of this paragraph is affirmative with respect to the matters referred to in clauses (i) and (ii) of such subparagraph, the applicant and the trustee in bankruptcy (hereafter in this paragraph referred to collectively as the 'parties') shall enter into negotiations with respect to terms for the acquisition of the line or lines applied for. If the parties at any time agree on such terms, a request for approval of the acquisition shall be filed with the Commission and the court. If the parties are unable to agree to such terms within 30 days after the date of the Commission's determination under subparagraph (B) of this paragraph, either party may, within 60 days after the expiration of such 30-day period, request the Commission to prescribe terms for such acquisition, including compensation for the line or lines to be acquired. The Commission shall prescribe such terms within 60 days after any such request is made. The terms prescribed by the Commission shall be binding upon both parties, subject to court review as provided in subparagraph (D) of this paragraph, except that the applicant may withdraw its offer within 10 days after the Commission prescribes such terms.

"(ii) If more than one applicant has requested under this subparagraph that the Commission prescribe the terms of acquisition for the same or overlapping lines or portions of such lines, the Commission shall prescribe terms for such acquisition which it determines best serve the public interest.

"(D)(i) Within 15 days after the Commission prescribes terms under subparagraph (C) of this paragraph, the Commission shall transmit such terms to the court, unless the offer is withdrawn under such subparagraph. Notwithstanding any other provision of law, the court shall, within 60 days after such transmittal, approve the acquisition under terms prescribed by the Commission if the compensation for the line or lines is not less than that required as a constitutional minimum.

"(ii) Except as provided in this subparagraph, no action shall be taken by the court which would prejudice the acquisition which is the subject of an application under this paragraph.

"(E) The Commission shall require that any person acquiring a line or lines under this paragraph use, to the maximum extent practicable, employees or former employees of the carrier subject to liquidation in the operation of service on such line or lines.

"(F) No person acquiring a line under this paragraph may transfer or discontinue service on such line prior to the expiration of 4 years after such acquisition.

"(G) The Commission shall, within 45 days after the date of enactment of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, prescribe such regulations and procedures as are necessary to carry out the provisions of this paragraph.

"(H) As used in this paragraph, the term—

"(i) 'carrier subject to liquidation' means a carrier which, on the date of enactment of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11, United States Code, and which has been ordered by the court to liquidate its properties;

"(ii) 'the court' means the court having bankruptcy jurisdiction over the carrier subject to liquidation; and

"(iii) 'financially responsible person' means a person capable of compensating the carrier subject to liquidation for the acquisition of the line or lines proposed to be acquired and able to cover expenses associated with providing service over such line or lines for a period of not less than 4 years.".

INTERSTATE COMMERCE COMMISSION AUTHORITY

SEC. 214. (a) Section 122(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1017(a)) is amended—

(1) by striking "the Rock Island Railroad or the Milwaukee Railroad" and inserting in lieu thereof the following: "a carrier which, on the date of enactment of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11, United States Code";

(2) by striking the last sentence of such section; and

(3) by adding at the end thereof the following: "The Commission shall have authority to authorize continued rail service under this section over the lines of any such carrier which has been ordered by the court having jurisdiction over such a carrier to liquidate its properties until the disposition of the properties of the estate of such carrier.".

(b) Section 122(c) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1017(c)) is repealed.

Subtitle B—Employee Protection

EMPLOYEE PROTECTION AGREEMENT

SEC. 231. Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENT

"SEC. 106. (a) The Secretary and the representatives of the various classes and crafts of employees of the Rock Island Railroad shall, not later than 90 days after the date of enactment of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, enter into an agreement providing protection for employees of the Rock Island Railroad who are adversely affected as a result of a reduction in service by such Railroad. Such agreement may provide for the use of funds described in subsection (c) of this section for the following purposes:

"(1) Subsistence allowances to employees.

"(2) Moving expenses for employees who must make a change in residence.

"(3) Retraining expenses for employees who are seeking employment in new areas.

"(4) Separation allowances for employees.

"(5) Health and welfare insurance premiums.

"(6) Such other purposes as may be agreed upon by the parties.

"(b) If the parties are unable to reach agreement within the time period specified in subsection (a) of this section, the Secretary shall, within 30 days after the expiration of such time period, prescribe a schedule of benefits for employee protection not inconsistent with the provisions of this Act.

"(c) Any agreement entered into under subsection (a) of this section, and any benefit schedule prescribed under subsection (b) of this section, shall not require the expenditure of funds in excess of amounts authorized to be appropriated under section 217(f)(1)(C) of the Regional Rail Reorganization Act of 1973, nor shall any individual employee receive benefits in excess of $20,000 under such agreement or benefit schedule. No benefits or assistance may be provided under any agreement entered into or benefit schedule prescribed under this section after April 1, 1984.

"(d) The Board shall, in such manner as it shall prescribe by regulation, administer the distribution of funds under any agreement entered into or benefit schedule prescribed under this section, and shall determine the amount for which each employee is eligible under such agreement or benefit schedule. Such regulation shall include procedures to resolve by final and binding arbitration any dispute over an employee's eligibility or claim.".

ELECTION

SEC. 232. Section 108 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007) is amended—

(1) in subsections (a) and (d), by striking "or arrangement entered into" and inserting in lieu thereof "entered into or benefit schedule prescribed"; and

(2) in subsection (b), by striking "April 1, 1981" and inserting in lieu thereof "120 days after the effective date of any agreement entered into under section 106(a) of this title or of any benefit schedule prescribed under section 106(b) of this title, as the case may be".

NEW CAREER TRAINING ASSISTANCE

SEC. 233. Section 119(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1014(a)) is amended by striking "from the Rock Island Railroad under an employee protection agreement or arrangement entered into under section 106 of this title may" and inserting in lieu thereof "under an employee protection agreement entered into or a benefit schedule prescribed under section 106 of this title may, if so provided under such agreement or benefit schedule,".

REPEALS

SEC. 234. (a) Section 110 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008) is repealed.

(b) The second sentence of section 14(b) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913(b)) is repealed.

DISPUTE RESOLUTION

SEC. 235. (a) Section 704(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797(c)) is amended by striking "3-year" and inserting in lieu thereof "4-year".

(b) Section 704(g) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797(g)) is amended by striking "this section or section 703 of this Act" wherever it appears and inserting in lieu thereof "this section, section 703 of this Act, section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907), or section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004)".

RAILROAD HIRING

SEC. 236. (a) Section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907) is amended by striking "April 1, 1981," and inserting in lieu thereof "April 1, 1984,".

(b) Section 105(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004(a)) is amended by striking "January 1, 1981," and inserting in lieu thereof "January 1, 1984,".

TITLE III—NORTHEAST CORRIDOR

AMENDMENTS

SEC. 301. Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 851 et seq.) is amended as follows:

(1) Section 703(1)(A)(ii) is amended by striking "and Albany, New York" and inserting in lieu thereof "Albany, New York, and Atlantic City, New Jersey".

(2) Section 704(a)(1) is amended to read as follows:

"(1) $2,313,000,000 to remain available until expended (A) in order to effectuate the goals of section 703(1)(A)(i) of this title, of which not less than $27,000,000 shall be available to finance the cost of the equipment modification and replacement which States (or local or regional transportation authorities) will be required to bear as a result of the electrification conversion system of the Northeast Corridor pursuant to this title; (B) of which, if the National Railroad Passenger Corporation receives notification on or before June 1, 1983, from the State of New Jersey that such State has approved a plan, developed in consultation with the National Railroad Passenger Corporation, for the operation of rail passenger service between the main line of the Northeast Corridor and Atlantic City, New Jersey, and if such Corporation determines that such plan is feasible, $30,000,000 shall be made available by the Secretary to the National Railroad Passenger Corporation for rehabilitation and other improvements (including upgrading track and the signal system, ensuring safety at public and private highway and pedestrian crossings by improving signals or eliminating such crossings, and the improvement of operational portions of stations related to intercity rail passenger service) on the main line track between such points, consistent with the plan for operation approved by the State, in order to ensure that such track will be of sufficient quality to permit safe rail passenger service at a minimum of 79 miles per hour not later than September 30, 1985, and to promote rail passenger use of such track; and (C) of which such sums as may be required shall be available for the following projects with respect to the main line of the Northeast Corridor: development of the Union Station in Washington, District of Columbia; installation of 189 track miles of concrete ties with continuously welded rail between Washington, District of Columbia, and New York, New York; renewal of 133 track miles of existing continuously welded rail on concrete tie track between Washington, District of Columbia, and New York, New York; installation of reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 tracks; restoration of ditch drainage in concrete tie locations between Washington, District of Columbia, and New York, New York; undercutting of 83 track miles between Washington, District of Columbia, and New York, New York; rehabilitation of bridges between Washington, District of Columbia, and New York, New York (including Hi line); development of a maintenance-of-way equipment repair facility between Washington, District of Columbia, and New York, New York; roadbed stabilization at various locations between Washington, District of Columbia, and New York, New York; automation of Bush River Drawbridge at milepost 72.14; improvements to the New York Service Facility to develop rolling stock repair capability; construction of maintenance-of-way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut; installation of rail car washer facility at Philadelphia, Pennsylvania; restoration of storage tracks and buildings at the Washington Service Facility; installation of centralized traffic control from Landlith, Delaware, to Philadelphia, Pennsylvania; track improvements including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution; rehabilitation of interlockings between Washington, District of Columbia, and New York, New York; painting of Connecticut River, Groton, and Pelham Bay bridges; additional catenary renewal and

power supply upgrading between Washington, District of Columbia, and New York, New York; rehabilitation of structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania; and installation of evacuation and fire protection facilities in tunnels at New York, New York;".

(3) Section 704(a) is amened by adding at the end thereof the following new sentences: "Funds are authorized to be appropriated under this section in excess of limitations imposed under the preceding sentence with respect to a fiscal year, or for fiscal years after the fiscal year ending September 30, 1983, to the extent that the amount appropriated under the authority of this section for any previous fiscal year is less than the limitation under such sentence with respect to such previous fiscal year. The Secretary shall expend or reserve for expenditure funds from the yearly appropriations under this section for the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, first (A) if the National Railroad Passenger Corporation receives the notification referred to in paragraph (1)(B) of this subsection, for the purposes under such paragraph; and (B) in the amount of $62,000,000 for track improvements with respect to the Southwest corridor project in Boston, Massachusetts, less any amounts obligated for such purpose from yearly appropriations for any fiscal year ending before October 1, 1982. The amount so expended or reserved for expenditure for the purposes of paragraph (1)(B) of this subsection for the fiscal year ending September 30, 1983 shall be $10,000,000.".

(4) Section 704(b) is amended—

(A) by striking "LIMITATION.—" and inserting in lieu thereof "LIMITATIONS.—(1)"; and

(B) by adding at the end thereof the following:

"(2)(A) The projects for which funds are authorized to be appropriated under subsection (a)(1)(C) of this section shall be a part of the Northeast Corridor improvement project, and the goals of this title shall not be considered to be fulfilled until such projects are completed. Such projects shall not be undertaken or viewed as a substitute for any improvements specified in the document entitled Corridor Master Plan II, NECIP Restructured Program, date January 1982, prepared for the United States Department of Transportation, Federal Railroad Administration, Northeast Corridor Improvement Project, in cooperation with the Federal Railroad Administration and the National Railroad Passenger Corporation (Amtrak), by DeLeuw, Cather/Parsons, NECIP architect/engineer.

"(B) For purposes of implementing the improvements and rehabilitation described in subsection (a)(1)(3) of this section, the Secretary may defer projects identified in the document referred to in subparagraph (A) of this paragraph. The aggregate cost of such projects as the Secretary may so defer shall not be substantially greater than the amount the Secretary is required to expend or reserve for expenditure for purposes of subsection (a)(1)(3) of this section.".

(5) Section 705 is amended—

(A) in subsection (a), by striking "the" after "reallocation to" and inserting in lieu thereof "such"; and

(B) in subsection (b), by inserting "National Railroad Passenger" immediately before "Corporation".

NEW SERVICE

SEC. 302. (a) If the National Railroad Passenger Corporation receives notification on or before June 1, 1983, from the State of New York that such State has approved a plan, developed in consultation with such Corporation, for the acquisition and rehabilitation of a line and construction necessary to facilitate improved rail passenger service between Spuyten Duyvil, New York, and the main line of the Northeast Corridor, and has approved a plan, developed in consultation with such Corporation and appropriate local governmental officials, for the rehabilitation of the Amtrak station at Syracuse, New York, such Corporation shall, by September 30, 1985, expend funds, not in excess of $30,000,000, authorized to be appropriated under section 601 of the Rail Passenger Service Act (45 U.S.C. 601) for such purposes.

(b) Notwithstanding the provisions of section 403 of the Rail Passenger Service Act (45 U.S.C. 563), the National Railroad Passenger Corporation may operate the service described in secion 704(a)(1)(B) of the Railroad Revitalization and Regulatory Reform Act of 1976.

(c) Section 601 of the Rail Passenger Service Act (45 U.S.C. 601) is amended by adding at the end thereof the following new subsection:

"(e) Funds from the yearly appropriations under this section for the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985 shall, if the Corporation receives the notification referred to in section 302(a) of the Rail Safety and Service Improvement Act of 1982, be first expended or reserved for expenditure by the Corporation for the purposes under such section 302(a). The amount expended or reserved for expenditure for such purposes for the fiscal year ending September 30, 1983 shall be $10,000,000.".

TITLE IV—RAILROAD FINANCING

EXTENSION

SEC. 401. Sections 505(e), 507(a), 507(d), and 509(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829(a)) are amended by striking "September 30, 1982" wherever it appears and inserting in lieu thereof "September 30, 1985".

TRANSACTION ASSISTANCE

SEC. 402. Notwithstanding any other provision of law, any financially responsible person (including any government authority), except for a class I rail carrier, shall upon application be eligible for financial assistance made available in section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) for the purchase, lease, or rehabilitation of rail lines of the Consolidated Rail Corporation which are to be used for common carrier rail service and with respect to which an application for a certificate of abandonment has been filed with the Interstate Commerce Commission under section 308(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748(a)), or a notice of insufficient revenues has been filed with the Commission under section 308(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748(c)).

AUTHORIZATION FOR RAIL FUND

SEC. 403. (a) Section 509(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829(b)) is amended—

(1) in paragraph (2), by striking "Not less than" and inserting in lieu thereof "Not more than";

(2) by striking paragraph (3);

(3) by redesignating paragraph (4) as paragraph (3);

(4) in paragraph (3), as redesignated by paragraph (3) of this section—

(A) by striking ", (2) and (3)" and inserting in lieu thereof "and (2)"; and

(B) by inserting ", and not more than $55,000,000 are authorized to be appropriated for fiscal years 1983, 1984 and 1985" immediately before the period; and

(5) by adding at the end thereof the following new paragraphs:

"(4) $40,000,000 of the funds received by the Secretary of the Treasury from amounts appropriated under subsection (a) of this section shall be reserved and made available for meritorious applications regarding that restructuring of rail freight facilities and systems specified in section 505(b)(2)(ii) of this title.

"(5) $15,000,000 of the funds appropriated under subsection (a) of this section shall be available for the purchase, or for the refinancing of the purchase, of the rail line of the Chicago, Rock Island and Pacific Railroad Company between Fort Worth and Dallas, Texas, or of interests in such rail line, by a State or one or more political subdivisions thereof. To the extent that funds are made available for such purposes through appropriations for any Administration of the Department of Transportation, other than the Federal Railroad Administration, the amount of funds authorized under this section shall be reduced accordingly.".

(b) Section 505(b)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)(2)) is amended—

(1) by inserting "(i) immediately after "priorities"; and

(2) by inserting "(ii) immediately after "in the private sector and".

TITLE V—MISCELLANEOUS PROVISIONS

LOCAL RAIL SERVICE

SEC. 501. Section 5(h)(2)(A) of the Department of Transportation Act (49 U.S.C. 1654(h)(2)(A)) is amended to read as follows:

"(A) two-thirds of the available funds, multiplied by a fraction the numerator of which is the sum of (i) total rail mileage in the State, other than rail mileage of the Consolidated Rail Corporation, which, in accordance with section 10904(e) of title 49, United States Code, either is 'potentially subject to abandonment' or with respect to which a carrier plans to file, or has filed, an application for a certificate under subsection (a) of such section, and (ii) the total rail mileage of the Consolidated Rail Corporation in the State which such Corporation has certified to be in a situation comparable to 'potentially subject to abandonment' within the meaning of such term under such section 10904 or with respect to which the Consolidated Rail Corporation plans to file, or has filed, an application for a certificate under section 308 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748) or under section 10904(a) of title 49, United States Code, and the denominator of which is the total of the rail mileage described in clauses (i) and (ii) in all the States; and".

CONTRACT RATES

SEC. 502. Section 10713(k)(1) of title 49, United States Code, is amended by striking "and paper)" and inserting in lieu thereof ", but not including wood pulp, wood chips, pulpwood or paper)".

BURNHAM CANAL

SEC. 503. The portion of the Burnham Canal, in Milwaukee, Wisconsin, which is underneath and west of a point one hundred feet east of South Eleventh Street is declared to be not a navigable water of the United States within the meaning of the Constitution and laws of the United States. The right to alter, amend, or repeal this section is hereby expressly reserved.

COMMUTER TRANSITION FUNDING

SEC. 504. (a) Section 1139(b) of the Northeast Rail Service Act of 1981 is amended—

(1) by inserting "(1)" immediately after "(b)";

(2) by striking "in the fiscal year ending September 30, 1982,";

(3) by striking "contracting with Amtrak Commuter"; and

(4) by adding at the end thereof the following new paragraph:

"(2) Any funds appropriated under the authority of this subsection shall be distributed by the Secretary to Amtrak Commuter and commuter authorities according to the statutory provisions of paragraph (1) of this subsection within 60 days after receipt of an application by Amtrak Commuter or such commuter authorities or within 90 days after the date of enactment of the Rail Safety and Service Improvement Act of 1982, whichever is later.".

(b) Section 216(g) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(g)) is amended—

(1) by inserting "(1)" immediately after "APPROPRIATION.—"; and

(2) by adding at the end thereof the following new paragraph:

"(2) To the extent provided in appropriation Acts, any funds appropriated under the authority of paragraph (1) of this subsection prior to the date of enactment of the Rail Safety and Service Improvement Act of 1982 may be reappropriated to the Secretary, to facilitate the transfer of rail commuter services from the Corporation to other operators, for distribution under the statutory provisions of section 1139(b) of the Northeast Rail Service Act of 1981.".

(c)(1) Section 217(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(a)) is amended by striking "$262,000,000" and inserting in lieu thereof "$137,000,000".

(2) Section 217(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(f)) is amended to read as follows:

"(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There is authorized to be appropriated not to exceed $262,000,000—

"(A) of which not to exceed $137,000,000 shall be appropriated to the Association for purposes of purchasing securities and accounts receivable of the Corporation under this section, such sums to remain available until the Secretary transfers the Corporation under title IV of this Act;

"(B) of which not to exceed $75,000,000 shall be appropriated to the Secretary, to facilitate the transfer of rail commuter services from the Corporation to other operators, for distribution under the statutory provisions of section 1139(b) of the Northeast Rail Service Act of 1981;

"(C) of which not to exceed $35,000,000 shall be appropriated to the Secretary to be allocated for employee protection under section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005); and

"(D) of which not to exceed $15,000,000 shall be appropriated to the Secretary to facilitate the transfer of rail commuter services from railroads that entered reorganization after calendar year 1974 to any commuter authority that was providing commuter service, operated by a railroad that entered reorganization after calendar year 1974, as of January 1, 1979.

"(2) All sums received on account of the holding or disposition of any securities or accounts receivable referred to in paragraph (1)(A) of this subsection shall be deposited in the general fund of the Treasury.

"(3) The amount authorized to be appropriated under paragraph (1)(B) of this subsection shall be reduced, in an amount equal to any amounts reappropriated under the authority of section 216(g)(2) of this Act, upon the date of enactment of any Act which reappropriates such amounts.".

INTERCITY PASSENGER SERVICE EMPLOYEE PROTECTION

SEC. 505. (a) Section 1165 of the Northeast Rail Service Act of 1981 is amended—

(1) by inserting "(a)" immediately after "SEC. 1165."; and

(2) by adding at the end thereof the following new subsection:

"(b) Conrail employees who are deprived of employment by an assumption or discontinuance of intercity passenger service by Amtrak shall be eligible for employee protection benefits under section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance.".

RAILROAD DEVELOPMENT CRITERIA

SEC. 506. (a) Section 10910(b)(1)(A)(ii) of title 49, United States Code, is amended by striking "has been placed" and inserting in lieu thereof "is", and by inserting "before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section" immediately after "10903 and 10904 of this title".

(b) The amendment made by subsection (a) of this section shall be effective with respect to any application or preliminary filing with respect to which the Commission has made no final decision before May 1, 1982, except that such amendment shall not affect any line which has been removed from the carrier's system diagram map before the date of enactment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 507. There is authorized to be appropriated to the Secretary of Transportation $15,600,000 for the fiscal year ending September 30, 1983, for the Office of the Administrator of the Federal Railroad Administration, of which not to exceed $9,200,000 shall be used for executive direction and administration and not to exceed $6,400,000 shall be used for policy support.

NORTHEAST CORRIDOR COORDINATION

SEC. 508. Section 505 of the Rail Passenger Service Act (45 U.S.C. 585) is amended—

(1) by striking "Board of Directors of Amtrak Commuter" both places it appears and inserting in lieu thereof "Northeast Corridor Coordination Board"; and

(2) by adding at the end thereof the following new subsection:

"(c) The Northeast Corridor Coordination Board shall consist of (1) one member from each commute authority, within the meaning of such term under section 1135(a)(3) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1104(a)(3)), which operates or contracts for the operation of rail commuter service over the main line of the Northeast Corridor; (2) two members to be named by Amtrak; and (3) one member to be named by the Consolidated Rail Corporation.".

APPLICABILITY OF LAWS

SEC. 509. Title V of the Rail Passenger Service Act (45 U.S.C. 581 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 511. APPLICABILITY OF LAWS.

"Any commuter authority operating commuter service under this title shall be subject to applicable laws with respect to such service, including, but not limited to, the Railway Labor Act (45 U.S.C. 151 et seq.), the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).".

COMMISSION PROCEEDINGS

SEC. 510. Section 1164(c) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1112(c)) is amended—

(1) in paragraph (1)—

(A) by striking "bankruptcy, substantial sale," and inserting in lieu thereof "bankruptcy or substantial sale"; and

(B) by amending the last sentence to read as follows: "The Secretary may substitute for the evidence of such debt contingency notes payable solely from the railroad operating assets then securing such debt, including reinvestments thereof, or such other contingency notes as the Secretary deems appropriate and which conform to the terms set forth in this subsection."; (2) by amending paragraph (2) to read as follows:

"(2) If the interest of the United States is limited under paragraph (1), any new debt issued by such a railroad subsequent to the issuance of the debt described in paragraph (1) may have such higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of such a railroad than the debt described in such paragraph as the Secretary and the railroad may agree."; and

(3) by adding at the end thereof the following new paragraph:

"(3) In carrying out the duties under this subsection, the Secretary may (A) enter into such agreements, (B) in accordance with any such agreements, cancel or cause to be cancelled or amend or cause to be amended any notes or securities currently held by agencies or instrumentalities of the United States, and (C) accept in exchange as substitution therefor such instruments evidencing the indebtedness owed to such agencies or instrumentalities as, in the Secretary's judgment, will effectuate the purposes of this subsection.".

FEEDER LINE TRANSFER

SEC. 511. (a) Notwithstanding any other provision of law, the Secretary of Transportation shall provide Federal financial assistance, in accordance with the provisions of this section, for the acquisition and rehabilitation (including related new construction of sidings and connecting tracks) of the feeder line which the Illinois Central Gulf Railroad has abandoned extending between Milepost 72 near Herscher, Illinois and Milepost 135 near Barnes, Illinois (known as the "Bloomer Line").

(b) In carrying out this section, the Secretary shall provide assistance to a qualified applicant in an amount not to exceed 90 percent of the acquisition costs and 80 percent of the rehabilitation costs associated with the redevelopment of the feeder line. Any qualified applicant may provide the non-Federal share of the costs of such project.

(c) If an application is filed with the Secretary which is supported by a preponderance of the rail service users on the feeder line or segment of such line for which such an application is filed, the Secretary shall act expeditiously on such application. If the Secretary denies an application filed under this section, the Secretary must provide to the applicant a contemporaneous statement of reasons for the denial and a list of the specific amendments to the application which, if made, would cause the Secretary to approve such application.

(d) If the entity purchasing the line described in subsection (a) of this section petitions the Interstate Commerce Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practically participate, the Commission shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of title 49, United States Code, require the establishment of reasonable joint rates and divisions over such route.

(e) There is authorized to be appropriated $2,000,000 to carry out this section.

(f) As used in this section, the term "qualified applicant" means—

(1) a State or local governmental entity;

(2) a person who is able to assure that adequate transportation will be provided over a substantial portion of the feeder line described in subsection (a) of this section for a period of not less than 3 years; or

(3) any combination of members of the classes of applicants described in paragraphs (1) and (2) of this subsection.

TITLE VI—ALASKA RAILROAD TRANSFER

SHORT TITLE

SEC. 601. This title may be cited as the "Alaska Railroad Transfer Act of 1982".

FINDINGS

SEC. 602. The Congress finds that—

(1) the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that primarily benefit residents and businesses in the State of Alaska;

(2) many communities and individuals in Alaska are wholly or substantially dependent on the Alaska Railroad for freight and passenger service and provision of such service is an essential governmental function;

(3) continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State and private objectives; however, continued Federal control and financial support are no longer necessary to accomplish these objectives;

(4) the transfer of the Alaska Railroad and provision for its operation by the State in the manner contemplated by this title is made pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States;

(5) the State's continued operation of the Alaska Railroad following the transfer contemplated by this title, together with such expansion of the railroad as may be necessary or convenient in the future, will constitute an appropriate public use of the rail system and associated properties, will provide an essential governmental service, and will promote the general welfare of Alaska's residents and visitors; and

(6) in order to give the State government the ability to determine the Alaska Railroad's role in serving the State's transportation needs in the future, including the opportunity to extend rail service, and to provide a savings to the Federal Government, the Federal Government should offer to transfer the railroad to the State, in accordance with the provisions of this title, in the same manner in which other Federal transportation functions (including highways and airports) have been transferred since Alaska became a State in 1959.

DEFINITIONS

SEC. 603. As used in this title, the term—

(1) "Alaska Railroad" means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act") and section 6(1) of the Department of Transportation Act (49 U.S.C. 1655(1)), or, as the context requires, the railroad operated by that agency;

(2) "Alaska Railroad Revolving Fund" means the public enterprise fund maintained by the Department of the Treasury into which revenues of the Alaska Railroad and appropriations for the Alaska Railroad are deposited, and from which funds are expended for Alaska Railroad operation, maintenance and construction work authorized by law;

(3) "claim of valid existing rights" means any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of the day before the date of enactment of this Act;

(4) "date of transfer" means the date on which the Secretary delivers to the State the four documents referred to in section 604(b)(1) of this title;

(5) "employees" means all permanent personnel employed by the Alaska Railroad on the date of transfer, including the officers of the Alaska Railroad, unless otherwise indicated in this title;

(6) "exclusive-use easement" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

(7) "Native Corporation" has the same meaning as such term has under section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6));

(8) "officers of the Alaska Railroad" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager; Assistant General Manager; Assistant to the General Manager; Chief of Administration; and Chief Counsel;

(9) "public lands" has the same meaning as such term has under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e));

(10) "rail properties of the Alaska Railroad" means all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of the date of enactment of this Act, but excluding any such properties disposed of, and including any such properties acquired, in the ordinary course of business after that date but before the date of transfer, and also including the exclusive-use easement within the Denali National Park and Preserve conveyed to the State pursuant to this title and also excluding the following:

(A) the unexercised reservation to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska, as provided by the Act of March 12, 1914 (43 U.S.C. 975 et seq.);

(B) the right of the United States to exercise the power of eminent domain;

(C) any moneys in the Alaska Railroad Revolving Fund which the Secretary demonstrates, in consultation with the State, are unobligated funds appropriated from general tax revenues or are needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from such Fund but for this title and which are not assumed by the State pursuant to this title;

(D) any personal property which the Secretary demonstrates, in consultation with the State, prior to the date of transfer under section 604 of this title to, be necessary to carry out functions of the United States after the date of transfer; and

(E) any lands or interest therein (except as specified in this title) within the boundaries of the Denali National Park and Preserve;

(11) "right-of-way" means, except as used in section 809 of this title—

(A) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(B) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph;

(12) "Secretary" means the Secretary of Transportation;

(13) "State" means the State of Alaska or the State-owned railroad, as the context requires;

(14) "State-owned railroad" means the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operates or manage the rail properties of the Alaska Railroad or, as the context requires, the railroad owned, operated, or managed by such authority, agency, corporation, or other entity; and

(15) "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)).

TRANSFER AUTHORIZATION

SEC. 604. (a) Subject to the provisions of this title, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. Such transfer shall occur as soon as practicable after the Secretary has made the certifications required by subsection (d) of this section and shall be accomplished in the manner specified in subsection (b) of this section.

(b)(1) On the date of transfer, the Secretary shall simultaneously:

(A) deliver to the Senate a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property;

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights;

(C) deliver to the State an exclusive license granting the State the right to use all

rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights;

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of the date of enactment of this Act. In the event of reversion to the United States, pursuant to section 618 of this title, of the State's interests in all or part of the lands subject to such easement, such easement shall terminate with respect to the lands subject to such reversion, and no new exclusive-use easement with respect to such reverted lands shall be granted except by Act of Congress.

(2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 606 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

(3) The force and effect of an interim conveyance made pursuant to paragraphs (1)(B) or (2) of this subsection shall be to convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent by the United States. The Secretary of the Interior shall survey the land conveyed by an interim conveyance to the State pursuant to paragraphs (1)(B) or (2) of this subsection and, upon completion of the survey, the Secretary shall issue a patent therefor.

(4) The license granted pursuant to paragraph (1)(C) of this subsection shall authorize the State to use, occupy, and directly receive all benefits of the rail properties described in the license for the operation of the State-owned railroad in conformity with the Memorandum of Understanding, referred to in section 606(b)(3) of this title. The license shall be exclusive, subject only to valid leases, permits, and other instruments issued before the date of transfer and easements reserved pursuant to subsection (c)(2) of this section. With respect to any parcel conveyed pursuant to this title, the license shall terminate upon conveyance of such parcel.

(c)(1) Interim conveyances and patents issued to the State pursuant to subsection (b) of this section shall confirm, convey and vest in the State all reservations to the United States (whether or not expressed in a particular patent or document of title), except the unexercised reservations to the United States for future rights-of-way made or required by the first section of the Act of March 12, 1914 (43 U.S.C. 975d). The conveyance to the State of such reservations shall not be affected by the repeal of such Act under section 615 of this title.

(2) In the license granted under subsection (b)(1)(C) of this section and in all conveyances made to the State under this title, there shall be reserved to the Secretary of the Interior, the Secretary of Defense and the Secretary of Agriculture, as appropriate, existing easements for administration (including agency transportation and utility purposes) that are identified in the report required by section 605(a) of this title. The appropriate Secretary may obtain, only after consent of the State, such future easements as are necessary for administration. Existing and future easements and use of such easements shall not interfere with operations and support functions of the State-owned railroad.

(3) There shall be reserved to the Secretary of the Interior the right to use and occupy, without compensation, 5,000 square feet of land at Talkeetna, Alaska, as described in ARR Lease Numbered 69-25-0003-5165 for National Park Service administrative activities, so long as the use or occupation does not interfere with the operation of the State-owned railroad. This reservation shall be effective on the date of transfer under this section or the expiration date of such lease, whichever is later.

(d)(1) Prior to the date of transfer, the Secretary shall certify that the State has agreed to operate the railroad as a rail carrier in intrastate and interstate commerce.

(2)(A) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, and accounts payable, except as otherwise provided by this title.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the United States shall be solely responsible for—

(i) all claims and causes of action against the Alaska Railroad that accrue on or before the date of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than $2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld; and

(ii) all claims that resulted in a judgment or award against the Alaska Railroad before the date of transfer.

(C) For purposes of subparagraph (B) of this paragraph, the term "accrue" shall have the meaning contained in section 2401 of title 28, United States Code.

(3)(A) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has established arrangements pursuant to section 607 of this title to protect the employment interests of employees of the Alaska Railroad during the 2-year period commencing on the date of transfer. These arrangements shall include provisions—

(i) which ensure that the State-owned railroad will adopt collective bargaining agreements in accordance with the provisions of subparagraph (B) of this paragraph;

(ii) for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the 2-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work;

(iii) for the payment of compensation to transferred employees (other than employees provided for in subparagraph (E) of this paragraph), except in cases of separation for cause, resignation, retirement, or lack of work, for 2 years commencing on the date of transfer at or above the base salary levels in effect for such employees on the date of transfer, unless the parties otherwise agree during that 2-year period.

(iv) for priority of reemployment at the State-owned railroad during the 2-year period commencing on the date of transfer for transferred employees who are separated for lack of work, in accordance with subparagraph (C) of this paragraph (except for officers of the Alaska Railroad, who shall receive such priority for one year following the date of transfer);

(v) for credit during the 2-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transfered employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer);

(vi) for payment to transferred employees retained by the State-owned railroad during the 2-year period commencing on the date of transfer, including for one year officers retrained or separated under subparagraph (E) of this paragraph, of an amount equivalent to the cost-of-living allowance to which they are entitled as Federal employees on the day before the date of transfer, in accordance with the provisions of subparagraph (D) of this paragraph; and

(vii) for health and life insurance programs for transferred employees retained by the State-owned railroad during the 2-year period commencing on the date of transfer, substantially equivalent to the Federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer).

(B) The State-owned railroad shall adopt all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the 2-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that 2-year period. Such agreements shall be renegotiated during the 2-year period, unless the parties agree to the contrary. Any labor-management negotiation impasse declared before the date of transfer shall be settled in accordance with chapter 71 of title 5, United States Code. Any impasse declared after the date of transfer shall be subject to applicable State law.

(C) Federal service shall be included in the computation of seniority for transferred employees with priority for reemployment, as provided in subparagraph (A)(iv) of this paragraph.

(D) Payment to transferred employees pursuant to subparagraph (A)(vi) of this paragraph shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a

cost-of-living allowance on the day before the date of transfer, unless the parties agree to the contrary.

(E) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has agreed to the retention, for at least one year from the date of transfer, of the offices of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or to the payment of lump-sum severance pay in an amount equal to such base salaries for one year to officers not retained by the State-owned railroad upon transfer or, for officers separated within one year lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation).

(4) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska Railroad when needed for the performance of functions related to the period of Federal ownership.

(5) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to compensate the United States at the value, if any, determined pursuant to section 605(d) of this title.

TRANSITION PERIOD

SEC. 605. (a) Within six months after the date of enactment of this Act, the Secretary and the Governor of Alaska shall jointly prepare and deliver to the Congress of the United States and the Legislature of the State a report that describes to the extent possible the rail properties of the Alaska Railroad, the liabilities and obligations to be assumed by the State, the sum of money, if any, in the Alaska Railroad Revolving Fund to be withheld from the State pursuant to section 603(8)(C) of this title, and any personal property to be withheld pursuant to section 603(8)(D) of this title. The report shall separately identify by the best available descriptions (1) the rail properties of the Alaska Railroad to be transferred pursuant to section 604(b)(1)(A), (B) and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 604(b)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 604(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all information and assistance necessary to allow the Secretary to complete the report within the time required.

(b) During the period from the date of enactment of this Act until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 606(b)(3) of this title—

(1) make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of $300,000;

(2) (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or

(3) lease any rail property of the Alaska Railroad for a term in excess of 5 years.

(c) Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

(d)(1) Within nine months after the date of enactment of this Act, the United States Railway Association (hereinafter in this section referred to as the "Association") shall determine the fair market value of the Alaska Railroad under the terms and conditions of this title, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the state pursuant to this title. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this title and other applicable law upon operation and ownership of the state-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the closing report prepared pursuant to subsection (a) of this section.

(2) The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.).

(e) Section 202(a) of the Regional Rail Reorganization Act of 1973 is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(11) determine the value of the Alaska Railroad, as required by section 605 of the Alaska Railroad Transfer Act of 1982.".

LANDS TO BE TRANSFERRED

SEC. 606. (a) Lands among the rail properties of the Alaska Railroad shall not be—

(1) available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(3)(A)(D) of such Act, as amended by subsection (d)(5) of this section;

(2) available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2515);

(3) available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

(4) available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this title, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(A)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

(b)(1)(A) During the ten months following the date of enactment of this Act, so far as practicable consistent with the priority of preparing the report required pursuant to section 605(a) of this title, the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

(B) At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this title or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

(2) The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this title. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act, and shall complete the survey of all lands to be conveyed under this title not later than five years after the date of enactment of this Act, and after consulting with the Governor of the State of Alaska to determine priority of survey with regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after the date of enactment of this Act.

(3) Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted to the State pursuant to section 604(b)(1)(C) of this title, lands subject to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Inc., Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), and Toghotthele Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, D.C., and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title-

status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

(A)(i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 804(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 604(b)(1)(B) or (2) of this title.

(ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 604(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

(B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to the date of enactment of this Act, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 604(b)(1)(3) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the coveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 604(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to the date of enactment of this Act, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

(c)(1) The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to judicial review only by an action brought in the United States District Court for the District of Alaska. Review of agency action pursuant to this title shall be expedited to the same extent as the expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

(2) No administrative or judicial action under this title shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this title, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this title. If transfer to the State does not occur pursuant to section 604 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d)(1) Section 12(b)(7)(i) of the Act of January 2, 1976 (Public Law 94-204) is amended—

(A) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b) (5) and (6)";

(B) by striking "12(b)(7)(ii)" and inserting in lieu thereof "12(b)(7)(iv)";

(C) by by striking "crediting" and inserting in lieu thereof "using";

(D) by striking "this subsection 12(b)(7)(1)(b)" and inserting in lieu thereof "these subsections 12(b)(7) (i)(b) or (ii)";

(E) by striking "State" in the last sentence and inserting in lieu thereof "state"; and

(F) by striking the penultimate sentence.

(2) Section 12(b)(7) of such Act is amended—

(A) by redesignating subsections (ii) through (iv) as subsections (iv) through (vi), respectively; and

(B) by inserting immediately after subsection (i) the following:

"(ii) Subject to the exceptions stated in section 12(b)(9), and notwithstanding the foregoing subsection 12(b)(7)(i) and any provision of any other law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under sections 12(b) (5) and (6) are otherwise fulfilled:

"(A) concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall notify the Region that such property may be available for conveyance to the Region upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Region may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under sections 12(b) (5) and (6). If the Administrator determines the property should be disposed of by transfer to the Region, the Administrator or other appropriate Federal official shall promptly transfer such property;

"(B) no disposition or conveyance of property under this subsection to the Region shall be made until the Administrator, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code and the regulations thereunder for the disposition or conveyance of surplus property; and

"(C) as used in this subsection, 'real property' means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

"(iii) If the Region accepts any conveyance under section 12(b)(7)(i) or (ii), it shall be in exchange for acreas or acre-equivalents as provided in subparagraph I(C)(2)(e) of the document referred to in this section, except that, after the obligation of the Secretary and the Administrator under subparagraph I(C)(2)(g) of that document has been fulfilled, the acre-equivalents under subparagraph I(C)(2)(e)(iii)(A) shall be one-half the valued increment therein stated. The entitlement of the Region under section 12(b) of this Act shall be reduced by the number of acres or acre-equivalents attributed to the Region under this subsection. The Secretary and the Administrator are directed to execute an agreement with the Region which shall confrom substantially to the 'Memorandum of Understanding Regarding the Implementation of Section 12(b)(7)', dated September 10, 1982, and submitted to the Senate Committee on Commerce, Science, and Transportation. The Secretary, the Administrator and the Region may thereafter otherwise agree to procedures to implement responsibilities under this section 12(b)(7), including establishment of accounting procedures and the delegation or reassignment of duties under this statute.".

(3) Section 12(b)(7)(iv) of such Act, as so redesignated by paragraph (2) of this subsection, is amended—

(A) by striking "surplus" the first place it appears therein;

(B) by inserting immediately before the period at the end of the first sentence the following: "or paying for the conveyance of property pursuant to subsections (i) or (ii)";

(C) by inserting immediately after "account shall be" the following: "the sum of (1)";

(D) by striking "I(C)(2)(e)" and inserting in lieu thereof "I(C)(2)(e)(iii)(A)";

(E) by striking "the effective date of this subsection", and inserting in lieu thereof "December 2, 1980";

(F) by striking "and shall be adjusted" and inserting in lieu thereof "and (2) one-half the acre or acre-equivalent exchange value under subparagraph I(C)(2)(e)(iii)(A) of ten townships fewer than the unfulfilled entitlement of the Region on the same date to acres or acre-equivalents under paragraph I(C)(1) of the document referred to in this section. The balance of the property account shall be adjusted in accordance with subsection 12(b)(7)(iii)"; and

(G) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b)(5) and (6)".

(4) Section 12(b)(7)(v) of such Act, as so redesignated by paragraph (2) of this subsection, is amended by striking "subsection (ii)" and inserting in lieu thereof "subsection (iv)".

(5) Section 12(b)(8) of such Act is amended to read as follows:

"12(b)(8). Subject to the exceptions stated in section 12(b)(9), and notwithstanding any provisions of law or implementing regulation inconsistent with this section:

"(i) The deadlines in subparagraphs I(C)(2)(a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under section 12(b) (5) and (6) are fulfilled: *Provided*, That:

"(A) the obligation of the Secretary under subparagraph I(C)(2)(a) of such document shall terminate on such date, after July 15, 1984, that the Secretary has fulfilled his obligation under subparagraph I(C)(2)(g) of that document: *Provided*, That the obligation of the Secretary under subparagraph I(C)(2)(g) of such document shall be fulfilled at such date, after July 15, 1984, that the sum of the acres or acre-equivalents identified for and placed in the pool and the acres or acre-equivalents used by the Region in purchasing property under section 12(b)(7) equals or exceeds 138,240 acres or acre-equivalents;

"(B) the authority of the Secretary under subparagraphs I(C)(2)(b) and I(C)(2)(g)(ii) of such document to contribute to the pool created under subparagraph I(C)(2)(a) of such document shall terminate (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph I(C)(2) (g), or (b) if not, on such date after July 15, 1984 as such obligation is fulfilled, or (c) if such obligation remains unfulfilled, on July 15, 1987;

"(C) the concurrence by the State as described in subparagraphs I(C)(2)(a)(vi) and I(C)(2)(c) of the document referred to in this section shall be deemed not required

after the Secretary has fulfilled his obligation under subparagraph I(C)(2)(g) of that document, but in no event after July 15, 1987. In lieu of such concurrence, after 1984 as to military property, and after the Secretary has fulfilled his obligation under subparagraph I(C)(2)(g) of that document or July 15, 1987, whichever is earlier, as to any other property, except property of the Alaska Railroad which is governed by subsection 12(b)(6)(I)(D) of this Act, the Secretary shall not place any lands in the selection pool referred to in subparagraphs I(C)(2) (a) and (g) of the document referred to in this section without the prior written concurrence of the State. Such concurrence shall be deemed obtained unless the State advises the Secretary within ninety days of receipt of a formal notice from the Secretary that he is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or municipality; and

"(D) notwithstanding section 606(a)(2) of the Alaska Railroad Transfer Act of 1982, the Secretary may include property of the Alaska Railroad in the pool of lands to be made available for selection to the extent that he is authorized to do so under a provision of section 12(b) of this Act if the State consents to its inclusion, which consent is not subject to any limitation under subsection 12(b)(8)(I)(C) herein: *Provided*, That, while the Alaska Railroad is the property of the United States, the Secretary shall obtain the consent of the Secretary of Transportation prior to including such property: *And provided further*, That, if the transfer of the Alaska Railroad to the State does not occur pursuant to the terms of the Alaska Railroad Transfer Act of 1982 or any amendments thereto, the State's consent shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that he is considering placing such property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or the municipality.

"(ii) In addition to the review required to identify public lands under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), the Secretary shall identify for inclusion in the pool all public lands (as such term is used under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), as described in subparagraph I(C)(2)(a)(v) of the document referred to in this section, and shall, in so doing, review all Federal installations within the boundaries of the Cook Inlet Region whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610) or by the Secretary acting under authority contained in that section: *Provided*, That no such additional review under such subparagraph shall be required of military installations or of such other installations as may be mutually excluded from review by the Region and the Secretary: *And provided further*, That the Secretary shall not review any property of the Alaska Railroad unless such property becomes available for selection pursuant to subsection 12(b)(8)(I)(D).

"(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph I(C)(2)(b) of the document referred to in this section shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that the Secretary is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question requires the property for a public purpose of the State or the municipality.

"(iv) The deadlines in subparagraph I(C)(1)(b) of the document referred to in this section shall be extended for an additional twenty-four months beyond the dates established in the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947).

"(v) On or before January 15, 1985, the Secretary shall report to the Congress with respect to:

"(A) such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies, to determine what lands, except for lands held by the Alaska Railroad or the State-owned railroad, within the boundaries of the Cook Inlet Region or elsewhere can be made available to the Region, to the extent of its entitlement;

"(B) the feasibility and appropriate nature of reimbursement of the Region for its unfulfilled entitlement as valued in subsection 12(b)(7)(iv) of this Act;

"(C) the extent to which implementation of the mechanisms established in section 12(b)(7) promise to meet such unfulfilled entitlement;

"(D) such other remedial legislation or administrative action as may be needed; and

"(E) the need to terminate any mechanism established by law through which the entitlement of the Region may be completed.".

(6) Section 12(b) of such Act is amended by adding at the end thereof the following:

"12(b)(9). No disposition or conveyance of property located within the State to the Region under section 12(b)(6), 12(b)(7) and 12(b)(8), as amended, shall be made if the property is subject to an express waiver of rights under the provisions of subparagraph I(C)(2)(f) of the document referred to in this section, or if such disposition or conveyance violates valid rights, including valid selections or valid authorized agreements, of Native Corporations (as such term is used in section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6)) or the State existing at the time of such disposition or conveyance under section 6 of Public Law 85-508, as amended (excepting section 906(e) of the Alaska National Interest Lands Conservation Act), sections 12(a), 12(b), 16(b) or 22(f) of the Alaska Native Claims Settlement Act, section 12(h) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1154), or sections 1416, 1418 through 1425 (inclusive), 1427 through 1434 (inclusive), or 1436 of the Alaska National Interest Lands Conservation Act: *Provided, however*, That nothing within this subsection 12(b)(9) shall diminish such rights and priorities as the Region has under section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1151), as amended by section 4 of the Act of October 4, 1976 (Public Law 94-456; 90 Stat. 1935), section 3 of the Act of November 15, 1977 (Public Law 95-178; 91 Stat. 1369), section 2 of the Act of August 14, 1979 (Public Law 96-55; 93 Stat. 386), the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947), and section 1435 of the Alaska National Interest Lands Conservation Act.

"12(b)(10). For the purpose of its incorporation into this section, paragraph I(C)(1) of the document referred to in this section is amended as follows: (1) by striking 'withdrawn' and inserting in lieu thereof 'withdrawn or formerly withdrawn'; (2) by striking '17(d)(1)' and inserting in lieu thereof '17(d)(1) and (2)'; and (3) by striking the last sentence of subparagraph I(C)(1)(a) and inserting in lieu thereof the following: 'Cook Inlet Region, Incorporated shall not nominate any lands within the boundaries of any conservation system unit, national conservation area, national recreation area, national forest, defense withdrawal, or any lands that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972.'.

"12(b)(11). Notwithstanding the provisions of section 906 of the Alaska National Interest Lands Conservation Act and section 6(i) of the Alaska Statehood Act (72 Stat. 339):

"(i) The State is hereby authorized to convey to the United States for reconveyance to the Region, and the Secretary is directed to accept and so reconvey, lands tentatively approved for patent or patented to the State, if the State and the Region enter into an agreement that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph I(C)(1) of the document referred to in this section: *Provided*, That the acreage of lands conveyed to the United States under this provision shall be added to the State's unfulfilled entitlement pursuant to section 6 of the Alaska Statehood Act, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph I(C)(1) of the document referred to in this section shall be reduced accordingly.

"(ii) The Secretary is directed to convey to the Region lands selected by the State prior to July 18, 1975 or pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972, if the State relinquishes such selections and enters into an agreement with the Region that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph I(C)(1) of the document referred to in this section, and the number of townships to be nominated, pooled struck, selected and conveyed pursuant to paragraph I(C)(1) of the document referred to in this section shall be reduced accordingly.

"(iii) The Secretary, in the Secretary's discretion, is authorized to enter into an agreement with the State and the Region to implement the authority contained in this section 12(b)(11), which agreement may provide for conveyances directly from the State to the Region. Conveyances directly conveyed shall be deemed conveyances from the Secretary pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).".

(c) The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 604(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

EMPLOYEES OF THE ALASKA RAILROAD

SEC. 607. (a)(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5, United States Code) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service

shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5, United States Code, and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5, United States Code) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5, United States Code. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the 2-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within 5 years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within 5 years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accured interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for empleyees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within 5 years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid onto the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisons of section 8334 of title 5, United States Code.

(b) Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Transferred employees whose employment with the State-owned railroad is terminated during the 2-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 604(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Any employee who transfers to the State-owned railroad under this title shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the State with the unused annual leave balance at the time of transfer.

STATE OPERATION

SEC. 606. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 202(c) of the Federal Railroad Safety Act of 970 (45 U.S.C. 431(c)).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 13(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).

(B) Nothing in this title shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) As soon as practicable after the date of enactment of this Act, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 252(b) of the Energy Policy and Conservation Act (42 U.S.C. 6272(b)) shall not apply to actions of the Commission under this subsection.

(c) The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code.

(d) After the date of transfer to the State pursuant to section 604 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this title.

FUTURE RIGHTS-OF-WAY

SEC. 609. (a) After the date of enactment of this Act, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit,

Exhibit "J"
Page 10 of 16

lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 603(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

(c) Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 610 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the "date of transfer".

REVERSION

SEC. 610. (a) If, within ten years after the date of transfer to the State authorized by section 604 of this title, the Secretary finds that all or part of the real property transferred to the State under this title, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

(b) If, after the date of transfer pursuant to section 604 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

(c) Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this title which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 604 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

(f) The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

OTHER DISPOSITION

SEC. 611. If the Secretary has not certified that the State has satisfied the conditions under section 604 within one year after the date of delivery of the report referred to in section 605(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that—

(1) such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), pursuant to such section, as amended by section 606(d) of this title; and

(2) this section shall not be construed to diminish or modify the powers of consent of the Secretary or the State under section 12(b)(8) of such Act, as amended by section 606(d)(5) of this title.

Any disposal under this section shall be subject to valid existing rights.

DENALI NATIONAL PARK AND PRESERVE LANDS

SEC. 612. On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 604(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a transferee under section 611 of this title shall receive the same interest as the State under section 604(b)(1)(D) of this title.

APPLICABILITY OF OTHER LAWS

SEC. 613. (a) The provisions of chapter 5 of title 5, United States Code (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. Appx. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this title, except to the extent that such laws may be applicable to granting of rights-of-way under section 606 of this title.

(b) The enactment of this title, actions taken during the transition period as provided in section 605 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this title shall be deemed not to be the disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. Appx. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Beginning on the date of enactment of this Act, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5, United States Code, shall not apply to the Alaska Railroad.

(d) Nothing in this title is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this title, nothing contained in this title shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

CONFLICT WITH OTHER LAWS

SEC. 614. The provisions of this title shall govern if there is any conflict between this title and any other law.

REPEAL AND AMENDMENT OF EXISTING STATUTES

SEC. 615 (a) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are repealed:

(1) The Act of March 12, 1914 (43 U.S.C. 975 et seq.).

(The act of June 24, 1946, to authorize certain expenditures by the Alaska Railroad (60 Stat. 304).

(2) The Act of July 19, 1932, concerning mining of coal adjacent to the Alaska Railroad (30 U.S.C. 208a).

(4) Section 6(f) of the Department of Transportation act (49 U.S.C. 1655(f)).

(b) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are amended as follows:

(1) Title 5, United States Code, is amended—

(A) in section 305(a), by striking paragraph (3), and by redesignating paragraphs (4)-(8) as paragraphs (3)-(7), respectively;

(B) in section 3401(1), by striking clause (iii), and by redesignating clauses (iv)-(viii) as clauses (iii)-(vii), respectively;

(C) in section 5102(a)(1), by striking clause (iii), and by redesignating clauses (iv)-(ix) as clauses (iii)-(viii), respectively;

(D) in section 5342(a)(1), by striking subparagraph (C), and by redesignating subpar-

agraphs (D)-(J) as subparagraphs (C)-(I), respectively; and

(E) in section 7327, by striking subsection (a), and by striking the subsection designation "(b)".

(2) Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended by striking "and the Alaska Railroad".

(3) Section 10749(b) of title 49, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1)(B);

(B) by striking "; or" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking paragraph (3).

(4) Section 324(a)(1) of the Public Health Service Act (42 U.S.C. 251(a)(1)) is amended by striking "employees of the Alaska Railroad and".

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1(3)(a)) is amended by striking the third sentence.

(6) Section 1(o) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(o)) is amended by inserting immediately after "National Transportation Safety Board," the following: "the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska,".

SEPARABILITY

Sec. 616. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE VII—RAIL SAFETY

SHORT TITLE

Sec. 701. This title may be referred to as the "Federal Railroad Safety Authorization Act of 1982".

REGULATORY AUTHORITY

Sec. 702. (a) Section 202(h)(1) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(h)(1)) is amended to read as follows:

"(h)(1)(A) The Secretary shall, within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, issue such initial rules, regulations, orders, and standards as may be necessary to insure that the construction, maintenance, and operation of railroad passenger equipment maximize safety to rail passengers. The Secretary shall, as a part of any such rulemaking, consider comparable Federal regulations and procedure which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration. The Secretary shall also consider relevant differences between commuter and intercity passenger service. The Secretary shall periodically review any such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in any such rules, regulations, orders, and standards as may be necessary.

"(B) The Secretary shall submit to the Congress a report within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982 with respect to rules, regulations, orders, and standards issued under subparagraph (A) of this paragraph which describes any rules, regulations, orders, and standards issued or to be issued under this subsection, explains the reasons for their issuance, and compares them to comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration.".

(b) The Secretary of Transportation shall, before March 1, 1983, conduct a study of the training of onboard operating and service railroad personnel in evacuation procedures and the use of emergency equipment. The Secretary shall consider, as part of such study, Federal regulations and procedures applicable to other modes of transportation. The Secretary shall submit the results of such study to the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421), as amended by subsection (a) of this section, is further amended by adding at the end thereof the following new subsections:

"(i) The Secretary shall, within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, issue rules, regulations, orders, and standards to apply appropriate safety principles to track used for commuter or other short-haul rail passenger service in a metropolitan or suburban area.

"(j) The Secretary shall, within 60 days after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, report to the Congress on whether to issue rules, regulations, orders, and standards to require that the leading car of any railroad train in operation after July 1, 1983, be equipped with an acceptable form of mounted oscillating light.

"(k) As used in this section, the term 'all areas of railroad safety' includes the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979.".

AUTHORIZATION FOR APPROPRIATIONS

Sec. 703. Section 214 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444) is amended—

"(1) by redesignating subsection (c) as subsection (d); and

"(2) by adding immediately after subsection (b) the following new subsection:

"(C)(1) There are authorized to be appropriated to carry out the provisions of this Act, except section 206(d) of this title and paragraph (3) of this subsection, not to exceed $29,300,000 for the fiscal year ending September 30, 1983, and not to exceed $31,400,000 for the fiscal year ending September 30, 1984.

"(2) To carry out the provisions of section 206(d) of this title relating to State safety programs, there are authorized to be appropriated not to exceed $2,700,000 for the fiscal year ending September 30, 1983, and not to exceed $2,900,000 for the fiscal year ending September 30, 1984.

"(3) For the purpose of conducting safety research and development activities under this Act, there are authorized to be appropriated not to exceed $20,000,000 for the fiscal year ending September 30, 1983, and not to exceed $21,000,000 for the fiscal year ending September 30, 1984, including funds for assisting in the treatment of alcohol and drug abuse problems of railroad employees.".

MOVEMENT FOR REPAIR

Sec. 704. Section 4 of the Act of April 14, 1910 (45 U.S.C. 13) is amended by striking "where such car can be repaired" and all that follows through "at the sole risk of the carrier," and inserting in lieu thereof the following: "on the line of railroad on which the car was discovered to be defective or insecure where such car can be repaired, or, at the option of a connecting carrier, such car may be hauled to the nearest available point on the line of such connecting carrier where such car can be repaired if such point is no farther than the nearest available point on the line on which the car was discovered defective or insecure, without liability for the penalties imposed by this section or section 6 of this title, if any such movement is necessary to make such repairs and such repairs cannot be made except at any such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier doing the moving or hauling.".

ASH PAN ACT

Sec. 705. The Act of May 30, 1908 (45 U.S.C. 17 through 21), commonly referred to as the Ash Pan Act, is repealed.

RESPONSIBILITY FOR COMPLIANCE

Sec. 706. Section 209(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(a)) is amended to read as follows:

"(a) It shall be unlawful for any railroad to fail to comply with any rule, regulation, order, or standard prescribed by the Secretary under this title.".

Amend the title of H.R. 3420 so as to read: "A bill making technical corrections to the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes".

Mr. FLORIO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. LENT. Reserving the right to object, Mr. Speaker, and I will not object, I do so solely for the purpose of asking my colleague, the chairman of the Subcommittee on Commerce, Transportation, and Tourism, if he would explain briefly the Senate amendment.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, I thank the gentleman for the opportunity to explain what it is that has been done. This bill is identical to that bill that was passed by the House yesterday with the following modifications. The Shipping Act provisions have been stricken from the bill, and on the Alaska railroad provision there has been a compromise effectuated whereby the compensation to be paid by the State of Alaska in the event that the Alaska railroad were to be transferred to the State would be fixed by the U.S. Railway Association and there would be no transfer until such compensation were paid.

It is important to note that the rail provisions of this legislation are derived from H.R. 6308. Accordingly, to the extent applicable, the legislative history of H.R. 6308 shall be part of the legislative history of H.R. 3420.

Title III of H.R. 3420 deals with the Northeast corridor improvement project. Basically, it clarifies the scope of the overall project and the availability of funds to complete the project. It also makes funds available to implement improvements and rehabilitation of the rail lines between the main line

of the Northeast corridor and Atlantic City, N.J., so that safe passenger rail service can be operated over this line at a minimum speed of 79 miles per hour not later than September 30, 1985.

The bill requires the Secretary of Transportation to expend or reserve for expenditure, first, a total of $30 million out of the yearly appropriations for the Northeast corridor improvement project in fiscal years 1983, 1984, and 1985 for improvements to the rail line between the main line of the Northeast corridor and Atlantic City, N.J. This provision is intended simply to make sure that sufficient resources will be made available in a timely manner so that the September 30, 1985, deadline for completing rehabilitation and improvement to the Atlantic City rail line can be met.

The term "expend or reserve for expenditure" is included so that if circumstances over which the Secretary has no control make it impossible for him to actually expend funds out of a particular fiscal year's appropriation for the Northeast corridor improvement project first for the Atlantic City rail improvements, then other corridor improvements can go forward as long as the Secretary first "reserves for expenditure" during that fiscal year funds out of the yearly appropriations for the Northeast corridor improvement project sufficient to permit required improvements and rehabilitation of the Atlantic City rail line to be accomplished by the end of fiscal year 1985.

Of the $30 million provided for improvements to the Atlantic City rail line, the bill directs the Secretary to expend or reserve for expenditure, first, $10 million out of the fiscal year 1983 appropriations for the Northeast corridor improvement project so that actual improvement and rehabilitation of the rail line can begin in fiscal year 1983.

Under the bill it should be noted that the Secretary of Transportation is required to expend or reserve for expenditure funds for the Atlantic City rail improvements. However, the Secretary is required by the bill to turn these funds over to Amtrak, and Amtrak, not the Secretary, has exclusive responsibility for implementing the required improvements.

In addition, the bill provides that the State of New Jersey shall consult with Amtrak in the development of the plan for the operation of improved passenger rail service between the mainline of the Northeast corridor and Atlantic City, N.J.

As the only U.S. operator of a national system of intercity rail passenger service, Amtrak has a great deal of expertise that will be valuable to the State of New Jersey in developing and insuring the feasibility of a plan for the operation of service over the Atlantic City rail line. Furthermore, the bill provides that the improvements and rehabilitation implemented by Amtrak pursuant to this legislation on the Atlantic City rail line must be consistent with the plan approved by the State of New Jersey for the operation of the service. For example, if an operator other than Amtrak is selected to provide service on the Atlantic rail line, it may be necessary for Amtrak to enter into agreements with other parties to insure that the improvements and rehabilitation of the line are consistent with the plan for operation of the service selected by the State.

Mr. LENT. It is my understanding this amendment has the support of the Department of Transportation; is that correct?

In addition it is my understanding that title III of the Senate amendment makes funds available to consolidate railroad passenger service at Pennsylvania Station in New York City. These funds would be used for the rehabilitation of a rail line required to facilitate rail passenger service between Spuyten Duyvl on the Hudson line and the main line of the Northeast corridor. This proposal, referred to as the west side connection, would allow the Empire Service trains from upstate New York to connect directly with the Northeast corridor at Penn Station. The connection is expected to yield benefits of approximately $10 million a year. Is my understanding correct as to the inclusion within the Senate amendment of this provision?

Mr. FLORIO. The gentleman is correct in both regards.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman from California.

Mr. ROUSSELOT. I thank the gentleman for yielding.

Does the gentleman mean we are finally going to get rid of the Alaskan Railroad?

Mr. LENT. That is correct.

Mr. ROUSSELOT. Fantastic.

Mr. LENT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. SEIBERLING. Mr. Speaker, reserving the right to object, and I will not object, I would just like to ask the gentleman, it is my understanding that this contains the provisions with respect to the land transactions and native rights that were worked out with the representatives of the House Committee on Interior and Insular Affairs, and that the Senate worked out the compromise on the acquisition cost.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

That is exactly correct.

Mr. SEIBERLING. Mr. Speaker, I strongly support this remarkable achievement, and I commend the gentleman from New Jersey for his role in achieving it.

Mr. Speaker, in addition to the concerns for pipeline and rail safety and the other aspects of this bill which I share with all of our colleagues, I have a particular concern for the portion of the bill dealing with the transfer of the Alaska Railroad to the State of Alaska. This concern arises from my responsibilities as chairman of the Subcommittee on Public Lands and National Parks of the Committee on Interior and Insular Affairs.

In conjunction with the distinguished chairman of our full committee, Mr. UDALL, I have carefully reviewed the Alaska Railroad provisions of the bill now before us. I am glad to be able to inform the House that those provisions, which are in title VI of the bill, are in accord with the positions taken by our committee and by the House as a whole after this legislation was reported from our committee and from the Committee on Energy and Commerce.

Therefore, I support the motion to concur in the amendment of the Senate, and I ask unanimous consent to revise and extend my remarks at this point in the RECORD.

When legislation to transfer the Alaska Railroad was proposed originally in the House, the Committee on Interior and Insular Affairs, through our chairman, Mr. UDALL, noted that we had a distinct interest because such a transfer inevitably involved matters within our committee's jurisdiction under the Rules of the House. Accordingly, the bill reported by the Committee on Energy and Commerce (H.R. 6308) was also referred to our committee, and we added a number of provisions relating to the procedures, terms, and conditions of the transfer. Thanks to the generous cooperation of the Committee on Energy and Commerce, and especially of the chairman of the subcommittee involved, Mr. FLORIO, those provisions were included within the bill that was brought to the floor and which the House passed on August 12, 1982.

Since that time, our committee has continued to play an active role with regard to the proposals to transfer the railroad, insofar as those proposals have involved matters within our jurisdiction.

By way of background, I should explain that the Alaska Railroad was authorized to be built by an act of Congress in 1914, and has been in operation since 1923. It is currently administered by the Department of Transportation. The railroad extends from the port town of Seward, at the southern end of the Kenai Peninsula, to Fairbanks. Between Anchorage and Fairbanks, its route passes through a portion of the Denali National Park and Preserve. Between Anchorage and Seward, the route crosses the Chugach National Forest.

Under the rules of the House, the Committee on Interior and Insular Affairs has jurisdiction over both the national park system and the national forests which were created by reservations from the public domain; the Chugach National Forest is in that category.

A number of Native corporations have asserted claims to land held by the railroad, under the provisions of the Alaska Native Claims Settlement Act. Generally, these claims are premised on section 3(e) of that act, which defines "public lands" for purposes of that act. Only public lands were to be made available for Native selections under the act. That section, in pertinent part, defines "public lands" as "all Federal lands and interests therein except: First, the smallest practicable tract, as determined by the Secretary of the Interior enclosing land actually used in connection with the administration of any Federal installations * * *". To date, there has been no final determination of what is the smallest practicable tract of land actually used by the Alaska Railroad; thus there has been no final determination of the validity of the several selections of railroad-held properties by the Native corporations.

The Committee on Interior and Insular Affairs, of course, has exclusive jurisdiction, under the rules of the House, over all matters involving Indians, including the Alaska Native Claims Settlement Act.

The 1914 act providing for establishment of the Alaska Railroad requires (43 U.S.C. 975d) that "all patents for lands taken up, entered, or located in Alaska after March 12, 1914" must include a reservation for rights-of-way for the construction of railroads, telegraph, and telephone lines. The significance of this requirement and its relationship to subsequent provisions of laws such as the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act, which includes a title, title XI, dealing with rights-of-way across certain Federal lands, is unclear. It is also unclear whether such a reserved right would be held to be transferred to the State in the event of transfer would be held to be transferred to the State in the event of transfer to the State of the Alaska Railroad, without clear provisions in any transfer legislation.

These also are matters within the special responsibilities and concerns of the Committee on Interior and Insular Affairs.

Let me briefly address myself to each of these matters and the postion on each which was taken by the Committee on Interior and Insular Affairs, positions which were reflected in the House bill, H.R. 6308, which dealt with the transfer of the railroad.

First, with regard to the portions of the railroad which cross Denali National Park and Preserve and the Chugach National Forest: The Committee on Interior and Insular Affairs concluded, as our Committee's Report (97-571, part II) explained, that "the exact status of the Railroad's present holdings" within those areas "is not to be viewed as determinative of the question of the extent to which those holdings should be transferred to the State." It was our view, and the view endorsed by the House through passage of H.R. 6308, that the State should be granted a railroad easement through Denali National Park and Preserve and the Chugach National Forest so as to allow continued operation of the railroad without creating new administrative and management problems arising from the creation of new non-Federal inholdings.

As it comes back to us from the Senate, the bill now before us meets our committee's concerns about the relationship between the railroad and the national park and national forest system, once the railroad is no longer in Federal ownership. Under section 604(b)(1)(D), on the date of transfer of the railroad the State will be granted an exclusive use easement for the portion of the railroad within Denali National Park and Preserve. This easement may be used only for railroad purposes and for such other transportation, transmission, or communication purposes for which the park lands subject to the easement were used on the date of enactment of the bill. And while under the bill the State will receive outright title to the portion of the railroad within the boundaries of the Chugach National Forest, that part of the railroad will be subject to all the laws and regulations for the protection of the resources and values of the national forest, pursuant to section 608(d) of the bill. Similarly, section 608(d) provides that the railroad-easement lands within the boundaries of the national park will be subject to all the laws and regulations for protection of the resources and values of the park, and also explicitly states that the Secretary of the Interior must concur before the State may be permitted to fence any of the lands within the national park affected by the railroad easement.

The bill is also acceptable with regard to the treatment of the various Native claims affecting railroad holdings. On this topic, I believe that it would be helpful to provide Members with some background information and a detailed discussion.

Since the enactment of the Alaska Native Claims Settlement Act (ANCSA) in 1971 there has been considerable controversy between village corporations representing Alaska Native villages located proximate to the Alaska Railroad (ARR) and the Federal Railroad Administration (FRA) regarding the validity of land selections filed by the corporations for lands which were reserved or withdrawn prior to the date of enactment of ANCSA for the use of the ARR.

If village corporation selections of ARR lands are valid they represent a solemn commitment of the United States to the Alaska Native people. However, ARR lands essential to the continued operation of the railroad by the State of Alaska should remain a part of the rail properties of the Alaska Railroad. The bill now before us reconciles these two competing policy goals in the following manner.

After enactment, and even on the date of transfer of the Railroad to the State, ARR lands, which are subject to claims of valid existing rights, including but not limited to land selection applications filed by village corporations pursuant to ANCSA, will remain in Federal ownership until such time as the validity of such claims is determined.

With respect to village corporation land selections, during the 10-month period following the date of enactment, the Secretary of the Interior, the State, and the village corporations with pending claims will make a good faith effort to agree whether ARR lands which have been selected by a village corporation should be conveyed to the corporation or the State. If the parties agree that a particular parcel of land which is the subject of a village corporation land selection application should be conveyed to the corporation, the parcel shall be immediately conveyed to the village corporation and the regional corporation representing the region within which the village is located, pursuant to the terms and conditions of ANCSA, and the acreage of the parcel will be deducted from the acreage entitlement of the village corporation under that act.

With respect to the village of Cantwell, its village corporation has been merged into Ahtna, Inc., a regional corporation; for purposes of this bill then, Ahtna, Inc. is the village corporation for Cantwell.

The conveyance of a parcel of land to native corporations as the result of an agreement between the parties shall not give rise to a presumption as to whether the parcel is or is not public land. Consequently, if a native corporation which has received a conveyance desires to compel the Federal Railroad Administration to pay the corporation any of the proceeds derived from the parcel subsequent to its selection by a village corporation, the corporation must file a civil action and obtain declaratory relief that the parcel is in fact public land within the meaning of the relevant provisions of ANCSA.

If the parties agree that a particular parcel of land which is the subject of a village corporation land selection application should remain part of the rail properties of the Alaska Railroad, the parcel shall be conveyed to the State pursuant to section 604(b)(2).

If at the end of the 10-month negotiation period the parties have not

agreed that a particular parcel of land which is the subject of a selection application filed by a village corporation should be conveyed to either the corporation or the State, the Secretary of the Interior shall adjudicate whether the parcel is public land available for selection by and conveyance to the corporation pursuant to ANCSA. The Secretary shall make his determination based on the standards set forth in the regulations implementing section 3(e) of ANCSA which he promulgated on October 22, 1980 (43 C.F.R. subpart 2655). The Secretary of the Interior shall complete his final administrative adjudication with respect to each parcel of land which is the subject of a village corporation land selection application within 2 years from the date of enactment of this act. However, the Secretary of the Interior shall not adjudicate the validity of a village corporation's selection of a parcel of land which is the subject of an agreement between the parties. "Final administrative adjudication" means the administrative procedure which the Bureau of Land Management, the Interior Board of Land Appeals, and the Secretary of the Interior employ to determine the availability of lands subject to a land selection application filed by a Native corporation for selection by and conveyance to Native corporations pursuant to ANCSA.

If the Secretary of the Interior determines that a parcel of land is public land available for selection by and conveyance to Native corporations, he shall immediately convey such parcel to the appropriate corporations, pursuant to the terms and conditions of ANCSA and shall deduct the acreage of the parcel from the acreage entitlement of the village corporation which filed the selection application. If the Secretary of the Interior determines that the parcel is not public land he shall immediately convey the parcel to the State pursuant to section 604(b)(2).

A decision by the Secretary of the Interior as the result of a final administrative adjudication that a parcel of land is or is not public land available for selection by and conveyance to Native corporations may be the subject of judicial review, in the U.S. District Court for the District of Alaska and by the appellate courts. The party seeking judicial review may request the district court and the appellate courts, as appropriate, to enjoin the conveyance of the parcel to the opposing party and for other appropriate injunctive relief. Similarly, injuctive relief is also available with respect to judicial review of any other administrative action undertaken pursuant to this Act. However, neither the district court nor the appellate courts may enjoin or otherwise delay the transfer of the railroad to the State or grant injunctive relief which will substantially impair or impede the operation of the railroad.

Prior to a decision by the State not to accept the transfer of the railroad, the State shall have standing to participate in both the administrative proceedings of the Secretary of the Interior relating to his final administrative adjudication of a village corporation's selection of lands among the rail properties of the Alaska Railroad and the proceedings of the district and appellate courts relating to judicial review of the final administrative adjudication. However, the State's standing shall cease at any time it determines not to accept the transfer of the Alaska Railroad and it shall not participate further in any administrative or judicial proceedings to which it was a party prior to the date of such determination. The State's standing to participate in any other administrative proceedings or judicial review pursuant to this act also shall cease at any time it determines not to accept the transfer of the Alaska Railroad.

Because of the importance of lands within the right-of-way to the continued operation of the State-owned railroad, if a village corporation land selection application includes lands within a portion of the right-of-way, the village corporation may relinquish its claim to the lands within the right-of-way at any time prior to a final administrative adjudication of the validity of its selection of the lands described in the application. In lieu of the lands within the right-of-way claims to which are so relinquished, the village corporation shall be conveyed lands from among its other selections or, if its other selections are insufficient to insure that the corporation will receive conveyance of its full acreage entitlement, from lands withdrawn for selection by and conveyance to the corporation pursuant to section 22(j)(2) of ANCSA, as amended. Under no circumstances shall relinquishments of lands within the right-of-way, relinquishments of lands as the result of an agreement between a village corporation and the State pursuant to section 606(b)(1)(A), or any other agreement, or administrative or judicial action undertaken as a result of this act result in a diminishment of the acreage entitlement of any Native Corporation pursuant to ANCSA. However, if lands within a portion of the right-of-way should revert to the Federal Government pursuant to section 610, Native corporations whose property abutts the portion of the right-of-way which is the subject of the reversion shall, like all other landowners whose property abutts the right-of-way, receive conveyance of the right-of-way pursuant to section 610(c), and lands within the right-of-way conveyed pursuant to section 610(c) shall not be deemed to have been conveyed pursuant to ANCSA and shall not be charged against the acreage entitlement of any Native corporation.

If a village corporation does not relinquish lands within the right-of-way which are described in a land selection application, the availability for selection and conveyance of the lands described in the application shall be adjudicated by the Secretary of the Interior pursuant to the standards set forth in the regulations implementing section 3(e) of ANCSA which were promulgated on October 22, 1980. If the lands described in the application are determined by the Secretary of the Interior to be available for selection by and conveyance to the corporation pursuant to those regulations, the Secretary of the Interior must then determine whether to retain the lands within the right-of-way in fee and convey such lands to the State pursuant to section 604(b)(2) of this act or to convey the lands within the right-of-way to the appropriate Native corporations reserving an easement for railroad purposes pursuant to section 17(b) of ANCSA. In this regard section 606(b)(4)(A)(ii) of the bill makes it clear that the Congress has determined that reserving an easement rather than retaining the lands within the right-of-way in fee will not afford the State sufficient protection or safe and economic operation of the railroad. Consequently, under this bill, the Secretary of the Interior shall not convey to the appropriate Native corporations the lands within the right-of-way; instead the Secretary of Transportation shall convey such lands to the State, pursuant to section 604(b)(2).

It should be emphasized that the above-described procedures for settling claims of valid existing rights filed by village corporations apply only to the settlement of claims to lands which have been validly claimed by the Alaska Railroad prior to the date of enactment of ANCSA under a public land order, executive order, statute, or similar color of law.

Between the date of enactment of the bill now before us and the conveyance of a parcel of land to the appropriate Native corporations pursuant to the above-described procedures, the Federal Railroad Administration shall administer each parcel of land which is the subject of a land selection application files by a village corporation pursuant to applicable law and the terms and conditions of the memorandum of understanding described in section 607(b)(3) regardless of whether a particular village corporation has signed the memorandum. Similarly, between the date of transfer and the conveyance of a parcel of land to the appropriate Native corporations, the State shall conform its occupation and use of the parcel to the terms and conditions of the memorandum regardless of whether the village corporation which selected the parcel has signed the memorandum.

It should be emphasized that with the exception of first, the 10-month negotiation period set forth in section 606(b)(1)(A); second, the authority of

a village corporation to relinquish lands within a portion of the right-of-way without having to relinquish all of the other lands which are the subject of the same land selection application as set forth in section 907(b)(4)(A)(i); third, the occupancy, use, and administration of lands by the Federal Railroad Administration and the State pursuant to the terms and conditions of the memorandum of understanding described in section 606(b)(3); fourth, the State's standing to participate in administrative and judicial proceedings pursuant to section 606(c)(3); and fifth, section 606(a) and 606(d), nothing in this bill is intended to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right or other interest of any Native corporation under ANCSA or the Alaska National Interest Lands Conservation Act. This is made clear by the terms of section 613(e).

Similarly, it should be emphasized that nothing in this act is intended to enlarge, diminish, or in any way alter the responsibility of the Federal Railroad Administration, and after the date of transfer the State, to deposit the proceeds derived from lands selected by Native corporations into the escrow account established by section 2 of Public Law 94-204, as amended. If lands which have been administered by the Federal Railroad Administration and selected by Native corporations are public lands which will be conveyed to Native corporations pursuant to ANCSA or as a result of the enactment of this act, then the Native corporations which receive conveyance of the lands are entitled to the proceeds which have been derived from those lands subsequent to the filing of their land selection applications. If such lands are adjudicated not to be public lands available for Native corporation selection and conveyance, then the proceeds derived from such lands remain the property of the Federal Railroad Administration, or after the date of transfer the State.

Unfortunately, since 1976 the Federal Railroad Administration has failed to deposit any proceeds from lands subject to Native corporation land selection applications in to the escrow account. However, pursuant to section 604(d)(2)(B) the United States remains responsible for all claims against the Alaska Railroad, including but not limited to claims against the Federal Railroad Administration for failure to deposit proceeds in the escrow account. Similarly, although the State is authorized pursuant to section 604 (b)(1)(C) and (b)(4) to receive all benefits of lands which are the subject of the exclusive license, pursuant to section 604(d)(2)(A) the State also is responsible for the obligations of the Alaska Railroad after the date of transfer. And such obligations may include the obligation to deposit the proceeds derived from lands which are the subject of land selection applications filed by Native corporations into the escrow account until such time as the lands are conveyed to either the Native corporations or the State.

Finally, Mr. Speaker, there are the remaining matters of concern to the Committee on Interior and Insular Affairs which are touched on in this bill.

Section 615(a)(1) provides that, on the date of transfer of the Railroad or other disposal of the Railroad pursuant to section 611, the original act of March 12, 1914, pursuant to which the railroad came into being, will be repealed. The reference to "other disposition" reflects the fact that section 611 gives the State 1 year after enactment of the bill to fulfill the conditions imposed for the State's receipt of the railroad and that if the State does not meet those conditions within that period, the Secretary of Transportation then will be authorized to dispose of the railroad. Such disposal would apparently be by sale, lease, or similar transaction. In any event, section 612 makes it clear that should the Secretary, under the authority of section 611, dispose of the railroad to any party other than the State, such party will receive no greater rights within the Denali National Park and Preserve than the State would receive under the other provisions of the bill. Similarly, it is our understanding that the portion of the Railroad within the Chugach National Forest would, under section 608(d) remain subject to the laws and regulations for protection of the values and resources of the national forest, regardless of the transfer of the title of those railroad lands.

As to future rights-of-way, section 609(a) provides that such rights-of-way for additions to or expansions of the railroad will be granted only in accordance with the provisions of applicable existing law, including but not limited to the Federal Land Policy and Management Act of 1976, the Alaska National Interest Lands Conservation Act, or the National Environmental Policy Act. Applicable existing law will also govern the granting of future leases, permits, or conveyances for terminal and station grounds and material sites which may be sought in connection with future rights-of-way.

In this connection, I should point out that the phrase "right-of-way" is used in different ways in different parts of title VI. Except with regard to section 609, the section dealing with future rights-of-way that may be applied for, for extending the railroad, the term refers to an area extending for certain specified distances on each side of the centerline of the railroad's main or branch lines—that is, those lines where railroad tracks are now in place. I believe that it is generally understood and agreed that there are places along the railroad's route where the railroad in fact has control over slightly different areas besides its tracks than the general area addressed in the definition section, whether because of ownership patterns, prior Federal actions, or for other reasons.

I should also point out, Mr. Speaker, that the Committee on Interior and Insular Affairs has not been involved in the debate over whether the United States should receive monetary or other compensation for the transfer of the railroad. That matter, in the House, is within the jurisdiction of the Committee on Energy and Commerce.

Mr. Speaker, let me conclude by pointing out that the Committee on Interior and Insular Affairs has attempted to act in an expeditious and cooperative manner with regard to this important legislation, while at the same time fulfilling our responsibilities under the rules of the House for a careful review of those aspects of this bill which are within our jurisdiction. I want to express my appreciation for the courtesy and consideration of the members of the Committee on Energy and Commerce, and in particular Mr. FLORIO, the chairman of the Subcommittee on Commerce, Transportation, and Tourism. So far as concerns the provisions of title VI, relating to the Alaska Railroad, the bill that they have brought before the House today is sound and I believe that it deserves the approval of the House.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey (Mr. FLORIO)?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Jersey?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the three conference reports on H.R. 5470, H.R. 7093, and H.R. 6056.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

STEVEN SCORDINO, Attorney-Advisor
Office of the Solicitor – Alaska Region
United States Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508-4626
(907) 271-4131/Fax (907) 271-4143

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

IBLA 2014-27	)	
	)	AA-55129
PETER SLAIBY AND REJANI SLAIBY	)	

ANSWER

The Office of the Solicitor received the Statement of Reasons in the above captioned case on January 13, 2014. In the Statement of Reasons, the Appellants argue that the Bureau of Land Management ("BLM") erred when it issued the Decision "Lands Found Proper for Conveyance to the Alaska Railroad Corporation" on September 16, 2013. The Appellants specifically argue that BLM misapplied the Alaska Railroad Transfer Act of 1982 ("ARTA"), 45 U.S.C. § 1201 et. seq. However, as shown below, the BLM correctly applied the ARTA when it issued the Decision.

I. Background

In 1982, the United States determined that continued Federal control and financial support of the Alaska Railroad was no longer necessary to accomplish the objectives of providing transportation and development needs in Alaska. 45 U.S.C. § 1201. As such, Congress enacted the Alaska Railroad Transfer Act of 1982 to transfer the railroad to the State of Alaska.

The lands at issue were patented by the United States to Edward Jarvi in 1950. (Ex. 5 to SOR.) The United States acquired the easement crossing the Appellant's lot in 1965. The lands at issue in the BLM's Decision are in Block 3 of Sunset Hills West Subdivision. The United States' property interests in the land were acquired from Edwin and Yula Jarvi by a warranty deed dated July 2, 1965. The interest conveyed was described as:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described ... [Parcel 4].

At that time the Alaska Railroad was still owned and operated by the United States. The acquisitions were part of a realignment of the Alaska Railroad necessitated by the 1964 earthquake. The easement is currently in use by the Alaska Railroad Corporation for railroad purposes.

On September 16, 2013, BLM issued a Decision titled "Lands Found Proper for Conveyance to the Alaska Railroad Corporation" which stated:

> In view of the above, when this decision becomes final, the Alaska Railroad Corporation shall receive the full and complete right, title, and interest of the United States in and to the [Parcel 4, of the Warranty Deed dated July 2, 1965, from Edwin A. Jarvi and Yula C. Jarvi, husband and wife, to the United States of America and futher described as protions of Lots 4, 13, and 14, Block 3, of the Sunset Hills West Subdivision], pursuant to Sec. 604(b)(2) and (3) of ARTA, 45 U.S.C. 1203(b)(2) and (3). Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest hereby granted by the United States in the real property of the Alaska Railroad shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA.

(Ex. 1 of Statement of Reasons ("SOR")).

II. Applicable Law

The United States is required to transfer all rail properties[1] of the Alaska Railroad to the State of Alaska. 45 U.S.C. § 1203(a). For most of the lands implicated, the United States had full title to the lands at the time of ARTA and was required to convey its full interest in the lands to the State of Alaska.[2] Where lands within the right-of-way had been previously transferred out of Federal ownership, ARTA requires the federal government to convey at least an exclusive-use easement to the Alaska Railroad Corporation for all lands within the right-of-way. Section 606(b)(4)(B) of ARTA, , sets out the requirement for conveyance of at least an exclusive-use easement as follows:

> (B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement[3] in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. (Emphasis added.)

---

[1] The definition of "rail properties" is found at 45 U.S.C. section 1202(10). Other than defining this term when used in ARTA, this clause has no operative effect.

[2] The only section in which the United States was not required to convey its full interest in the land was to the right-of-way within Denali National Park, in which ARTA only required the United States to convey an exclusive use easement. 45 U.S.C. § 1203(b)(1)(D).

[3] "Exclusive-use easement" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands

45 U.S.C. § 1202(6). This clause defines what an "exclusive use easement" means as used in ARTA. BLM does not rely on this section for its legal authority as posited by the Appellants.

45 U.S.C. § 1205(b)(4)(B).

The ARTA framework allowed the United States to issue interim conveyance to the State of its real property interests until the lands were surveyed. 45 U.S.C. § 1205(b)(1)(B). Once the lands were surveyed, ARTA requires the United States to issue a patent for the lands. 45 U.S.C. § 1205(b)(2).

III. Analysis

The issues presented by the Appelant in this case present purely a question of statutory construction. "Statutory construction begins with the language of the statute." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010). Specifically, this case turns on the construction of 45 U.S.C. § 1205(b)(4)(B).

The Appellants argue that within the context of this statute, Section 1205(b)(4)(B) can only apply to Native claims and conflicts. A look at all of Section 1205(b)(4) illustrates this section does not only pertain to native claims.

> (4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:
>
> (A) (i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 604(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 604(b)(1)(B) or (2) of this title.
>
> (ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the

> Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 604(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.
>
> (B) Where lands within the right-of-way, or any interest in such lands, *have been conveyed from Federal ownership prior to the date of enactment of this Act*, or is subject to a claim of valid existing rights by a party **other than a Village Corporation**, the conveyance to the State of the Federal interest in such properties pursuant to section 604(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 604(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to the date of enactment of this Act, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

Section 1205(b)(4) (emphasis added).

Section 1205(b)(4) has three purposes: (1) promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, (2) to clarify and simplify the title status of lands subject to such claims, and (3) to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way. The second purpose relates back to the first as shown when it references "such claims." Both the first and second purpose refers to claims filed by Village Corporations. These purposes are addressed in Sections 1205(b)(4)(A)(1) and (2). Note, the claims by the Village Corporations are the only type of Native claim addressed by Section 1205.

The third purpose addresses all other ownership interests which could impair the railroad operations by dividing the ownership of the right-of-way. The third purpose is addressed in Section 1205(b)(4)(B) by requiring the Federal government to grant at least an exclusive use

easement for all land that had been conveyed from Federal ownership.[4] Congress even took the extraordinary step of requiring the United States to defend the State of Alaska in any action commenced to contest the validity of the right-of-way for the use and benefit of the Alaska Railroad.

The Appellants argue that "Section 1205 generally concerns native claims and conflicts" and, as such, the Board should apply the "'*Noscitur a Soclis*' doctrine." (SOR at 12-13.) The Appellants appear to have read the multiple references in Section 1205 regarding Village Corporations to mean all types of Native claims, however no other type of Native claims are mentioned. Specifically, Section 1205(b)(4)(B) makes no mention of Native claims other than a statement that it does not apply to claims of Village Corporations. There is no basis in the language of the statute to believe that Congress only intended to avoid the potential impairment of railroad operations resulting from divided ownership with the use of exclusive use easements where Native people had claims to the land.

In applying the statute to the facts of this case, the land at issue was conveyed out of Federal ownership in 1950 and a railroad easement was acquired by the United States in 1965. Since the lands were conveyed out of Federal ownership prior the date of enactment of the act, the United States was required to convey "not less than an exclusive-use easement." 45 U.S.C. § 1205(b)(4)(B). The lands are surveyed, so the United States is required to issue a patent. 45 U.S.C. § 1205(b)(2).

IV. Conclusion

[4] Congress stated the purpose for the exclusive use easement in Section 1205(b)(4)(A)(ii), to wit: "Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad." While this purpose is stated within the section describing procedures for lands claimed by Village Corporations, the purpose would be no less applicable to land acquired via homestead than it would be to land acquired by a Village Corporation.

The Board should uphold the Decision of September 16, 2013, finding BLM must convey an exclusive use easement over the impacted lands. The land at issue within the Alaska Railroad right of way was conveyed out of Federal ownership in 1950. In 1965, the United States acquired an easement[5] and the Alaska Railroad right-of-way was realigned into its present location. Looking at the clear language of ARTA, the United States is required to convey all Federal interests, but in no case less than an exclusive use easement, because this land was conveyed out of Federal ownership before January 14, 1983. 43 U.S.C. § 1205(b)(4)(B). There is nothing in the statute to suggest this requirement only applied where Native people claimed the land. This land has also been surveyed, and as such, BLM correctly followed the statute to propose issuing a patent to all federal interest in the lands within the right-of-way, but in no case less than an exclusive use easement. 45 U.S.C. § 1205(b)(2).

Dated March 17, 2014.

Steve Scordino
Attorney Advisor

[5] The Appellants may ask for the Board to determine the extent of the interest conveyed in the 1965 Deed. However, this is beyond the scope of the question before the Board. ARTA requires BLM to convey all Federal interest to the lands within the Alaska Railroad right-of-way, but at a minimum an exclusive use easement. 43 U.S.C. § 1205(b)(4)(B). BLM understands the deed to convey an exclusive use easement, but there is no reason for the Board to reach that issue in this case. *See* Ex. 12 to SOR.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the office of the Regional Solicitor, Alaska Region, and I am a person of such age and discretion as to be competent to serve papers. I further certify that on 3/17/14, the foregoing Answer was served in accordance with applicable rules by certified mail, return receipt requested, postage prepaid on the Interior Board of Land Appeals, 801 North Quincy St., Suite 300, Arlington, VA 22203, with a copy of the same to the following:

CERTIFIED MAIL (RRR)

Andrew Behrend
Alaska Railroad Corporation
PO Box 107500
Anchorage, AK 99510

Roy Longacre, Esq.
425 G Street, Suite 910
Anchorage, AK 99501

Twyla Greer
Paralegal

Scordino, Steven <steven.scordino@sol.doi.gov>

RE: Slaiby Reply Brief Extension

5 messages

Roy Longacre <roy@longacrelaw.com> Wed, Apr 9, 2014 at 7:18 PM
To: "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>, "BehrendA@akrr.com" <BehrendA@akrr.com>

Gentlemen:

In working with Pete Slaiby on the reply, we discussed the Grant of Easement between ARRC and the Slaibys (addressing the RRUP) and the possibility of a settlement of the pending appeal. Mr. Slaiby was contacted by an ARRC Board member and in return has contacted ARRC's new CEO, Bill O'Leary and discussed the possibility of a settlement. My understanding is that Mr. Slaiby and Mr. O'Leary have set a settlement meeting for April 18th.

Mr. Slaiby has asked me to stop my finalization of the reply brief pending the settlement discussions. The thought is after their discussion and my return (leaving the 12th) to Anchorage on April 28th; if there are settlement points the lawyers could then assist with drafting a settlement agreement.

Discussions and negotiations for the Grant of Easement took over 3 months, but given there is an action pending, one month should be sufficient even with the out-of-town schedules of myself and Mr. Slaiby. The purpose of this email is to ask if you would object to a 30 day extension (until May 12th) for filing of the reply.

Roy

Andy Behrend <BehrendA@akrr.com> Wed, Apr 9, 2014 at 8:54 PM
To: Roy Longacre <roy@longacrelaw.com>
Cc: "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>

Roy:

Based on your message, I fear there may be a misunderstanding about recent contacts between Mr. Slaiby and ARRC's CEO, Bill O'Leary. I hope this message will help clear up any such misunderstanding.

It is my understanding that last week Mr. Slaiby called an ARRC Board member to discuss his property situation. That Board member told Mr. Slaiby that he should call Mr. O'Leary if he (Mr. Slaiby) wanted to discuss that matter with ARRC management. Mr. Slaiby subsequently contacted Mr. O'Leary last Friday indicating a desire to meet to discuss whether there was any way to resolve the parties' disagreement over property rights other than continuing with the ongoing appeal. Mr. O'Leary called Mr. Slaiby back and indicated a willingness to sit down and discuss the situation. Mr. O'Leary made it clear, however, that

while Mr. O'Leary would be open to hearing what Mr. Slaiby might propose, Mr. O'Leary would not be prepared to make or commit to any settlement offers. I understand that arrangements for a meeting on April 18 were just made today.

As you can see, it was not ARRC who reached out to Mr. Slaiby, but the opposite. And the April 18 meeting, at least from ARRC's perspective, is not a substantive "settlement meeting," but an opportunity for Mr. Slaiby to present to Mr. O'Leary any ideas that Mr. Slaiby may have about alternatives to the current appeal.

You ask for a 30-day extension to file the Slaibys' reply brief based on pending settlement talks. I have not yet had an opportunity to speak with Steve Scordino about this to determine BLM's position, but given that the parties are not currently in substantive settlement negotiations, ARRC is not inclined to think that a 30-day extension for the reply brief on that basis makes sense. If that position changes after I speak with Steve, I will let you know.

Regards,

Andy

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Wednesday, April 09, 2014 3:18 PM
To: steven.scordino@sol.doi.gov; Andy Behrend
Subject: RE: Slaiby Reply Brief Extension

[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Thu, Apr 10, 2014 at 12:36 PM
To: Roy Longacre <roy@longacrelaw.com>, Andy Behrend <BehrendA@akrr.com>

Roy,

I have to admit I am also confused by your reference to settlement talks. No one has approached BLM, the agency that issued the decision under appeal to the IBLA, about a settlement. However, BLM is also not in a position where it can change its decision. If you or your client is talking with ARRC about a revocable residential use permit or something within ARRC's domain before you dismiss the appeal, I guess that makes sense. I have no problem with a 30 day extension if that is the goal.

If the goal is to change the BLM decision, there is no reason for a 30 day extension because BLM is not in a situation where it can negotiate. BLM followed the law to the letter in granting the exclusive use easement. As an executive agency, BLM only has authority to follow the law and cannot agree to any settlement which would result in BLM not strictly following the law.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508

(907) 271-4204 / fax (907) 271-4

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Roy Longacre <roy@longacrelaw.com> Thu, Apr 10, 2014 at 1:00 PM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>, Andy Behrend <BehrendA@akrr.com>

Thank you both for your prompt responses.

Last summer Mr. Slaiby and ARRC negotiated and agreed to the attached [GrantEasement(XX)Recorded], but then it became clear that each interpreted the document differently [Slaiby - ARRC Email 2013.11.12 (public comment)].

I do not know what was recently stated between Mr. Slaiby and Mr. O'Leary, but understand Mr. Slaiby's good faith intent in meeting with ARRC is to see if the Grant of Easement can be modified or some other document can resolve the current dispute and result in terms which the parties both understand the effect on their respective rights. Mr. Slaiby is first talking with ARRC because we agree with you that is where the solution likely is. I would expect that if an agreement is reached it would then be appropriate to include BLM in the resolution/dismissal.

Roy
[Quoted text hidden]

---

2 attachments

GrantEasement(XX)Recorded.pdf
942K

Slaiby - ARRC Email 2013.11.12 (public comment).pdf
1606K

Andy Behrend <BehrendA@akrr.com> Thu, Apr 10, 2014 at 4:18 PM
To: Roy Longacre <roy@longacrelaw.com>, "Scordino, Steven" <steven.scordino@sol.doi.gov>

Roy:

As you know, ARRC responded to the Slaibys' November 12, 2013 letter, which interpreted the grant of easement as allowing them to make any use of the ARRC ROW that did not interfere with railroad operations. As we explained in our response letter of November 18, 2013 (copy attached), the grant of easement is limited to allowing the Slaibys' house to continue encroaching into the ARRC ROW and use of enough of the ROW necessary to maintain and repair the encroaching house. During our negotiation of that limited grant of easement, we also offered the Slaibys a residential use permit for the portion of the ROW they are currently using for lawn and garden purposes. The Slaibys refused that offer. It may be

that, as you say, ARRC and the[illegible]ys interpret the grant of easement [illegible]rently. But we submit that ARRC's interpretation is the only reasonable reading of the plain language of that document. Even if there was anything ambiguous about the grant of easement, which there is not, there is extensive extrinsic evidence which demonstrate the limited scope of that document.

Given the meeting between Mr. Slaiby and Mr. O'Leary scheduled for next week, ARRC has decided not to oppose your extension request for the reply brief. In doing so, we are not necessarily endorsing further discussions after that meeting. Mr. O'Leary is certainly open to listening to anything Mr. Slaiby may have to say, but ARRC cannot commit to any further discussions until we know what Mr. Slaiby has in mind.

Regards,

Andy

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Thursday, April 10, 2014 9:01 AM
To: Scordino, Steven; Andy Behrend

[Quoted text hidden]

[Quoted text hidden]

Letter to Roy Longacre re Slaibys' RRUP Comment.pdf
8746K

4-25-14

Potter Hill

Andy Behrend

- Slaiby thinks ARRC is out to get him
- Slaiby just made threats
  - Thinks will win their case

It was a non-starter

Andy writing letter Longacre

- Slaiby's ideas don't work
- recommend establish status quo
  - create a permit to use the land
  - agree to no fee while case pending

BISON CONNECT

Scordino, Steven <steven.scordino@sol.doi.gov>

Pletcher FOIA request

12 messages

Roy Longacre <roy@longacrelaw.com> Fri, May 23, 2014 at 4:36 PM
To: "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>

Hi Steve:

John Pletcher has included me in his BLM FOIA request. I understand there is material not available in the public documents that Dayle Sherba assembled and provided to you last week for review prior to release.

I understand you are swamped, but wanted to let you know of my involvement and to ask you to let me know if there is anything I can do on this end to help expedite the process.

Thanks, Roy

Scordino, Steven <steven.scordino@sol.doi.gov> Fri, May 23, 2014 at 4:47 PM
To: Roy Longacre <roy@longacrelaw.com>
Cc: "goose703@gmail.com" <goose703@gmail.com>
Bcc: Andy Behrend <BehrendA@akrr.com>

Roy,

There is nothing you can do to help me through the review of the FOIA documents.

Thank you,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Andy Behrend <BehrendA@akrr.com> Fri, May 23, 2014 at 5:07 PM
To: "Steve Scordino (steven.scordino@sol.doi.gov)" <steven.scordino@sol.doi.gov>

Steve:

Thanks for forwarding this to me. You should know that Roy asked us whether we had any old US DOT files in our records relating to the Potter Hill realignment. Our Real Estate office has a couple old federal files that mainly just hold deeds and other conveyance documents. Rather than withhold them and encourage Roy to file a Public Records Act request, we let him come in yesterday to review them. He seemed disappointed there was not more, asked for a few copies and left. I also told him of one file of federal Alaska Railroad documents regarding the Potter Hill realignment that is found at the National Archives. (That file contains mostly engineering documents; we are in the process of getting a copy of it.

In the realm of no good deed goes unpunished, Roy today asked us for a much broader universe of documents (i.e., everything related to the nature of ARRC's property interest in the ROW). A copy of my email exchange with Roy on this issue is attached. His idea, I guess, was that we gave him an inch as an accommodation, so he would try to take a mile. We will be responding to him later today explaining that our previous accommodation was based on the narrowness of his request and our holdings. As an agency subject to the Public Records Act, if he is going to make a broader, more burdensome request, he is going to have to do so through that Act and we will respond in due course under the PRA regulations. He will have to pay for our time and copies up front and comply with other aspect of the regulations. The timing and format of ARRC's response will also be guided by the regulations.

I am beginning to come around to your way of thinking that the extension of the time to reply is more about gathering information for later activities than an actual good faith attempt to settle this dispute. We made a proposal, they have not responded yet. I would be severely disinclined to grant any further extensions for the reply brief.

Thanks,

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Friday, May 23, 2014 12:47 PM
To: Roy Longacre
Cc: goose703@gmail.com
Subject: Re: Pletcher FOIA request

[Quoted text hidden]

---

noname.eml
15K

Scordino, Steven <steven.scordino@sol.doi.gov> Fri, May 23, 2014 at 5:27 PM
To: Andy Behrend <BehrendA@akrr.com>

Is there anything going on as far as negotiations?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Andy Behrend <BehrendA@akrr.com> Fri, May 23, 2014 at 6:09 PM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Steve:

I would have to say "no". I think the only party that is even saying settlement negotiations are ongoing is Slaiby. We made our permit proposal, which you have seen and they have made no substantive response. All they have done in response is seek documents. Oh, and they also once again asked how the residential use permit would differ from the grant of easement already in place for the encroaching house. They have tried before to expand the coverage of the grant of easement to the rest of the backyard and we have consistently shot that idea down. So we did so again.

For your information, I will be gone beginning tonight for the next two weeks. If something comes up on this (like Slaiby requesting another extension), please use Bill Hupprich as your contact. He is at hupprichw@akrr.com and 265-2455.

Have a great weekend,

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Friday, May 23, 2014 1:28 PM
To: Andy Behrend
Subject: Re: FW: Pletcher FOIA request

[Quoted text hidden]

Roy Longacre <roy@longacrelaw.com> Wed, May 28, 2014 at 5:57 PM
To: "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>

Hi Steve:

I understand the projected date BLM documents will be available is after June 4th which is after the existing June 2nd Reply deadline. Understandably I would like to look at the rest of the BLM documents prior to finalizing and filing the Reply. Would it be possible to obtain an extension for the Reply of 5 business days after the BLM documents are produced?

Roy

—— Original Message ——
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
Sent: 5/23/2014 12:47PM
Subject: Re: Pletcher FOIA request

Roy,

There is nothing you can do to help me through the review of the FOIA documents.

Thank you,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, May 23, 2014 at 4:36 PM, Roy Longacre <roy@longacrelaw.com> wrote:

> Hi Steve:
>
> John Pletcher has included me in his BLM FOIA request. I understand there is material not available in the public documents that Dayle Sherba assembled and provided to you last week for review prior to release.
>
> I understand you are swamped, but wanted to let you know of my involvement and to ask you to let me know if there is anything I can do on this end to help expedite the process.
>
> Thanks, Roy

Scordino, Steven <steven.scord[redacted]@sol.doi.gov> Wed, May 28, 2014 at 6:19 PM
To: *Roy Longacre* <roy@longacrelaw.com>
Cc: "goose703@gmail.com" <goose703@gmail.com>, Andy Behrend <BehrendA@akrr.com>

Roy,

I do not find it understandable that you would need additional time to file your reply based on the response time to the May 5, 2014, FOIA request. According to your representation of why you sought an extension, the FOIA should not be relevant to the need for an extension. Specifically, Andy Behrend responded to your request for a 3 week extension with the following: "I assume that your request for the extension is solely based on the time needed to consider ARRC's proposal and not the time necessary to finalize your reply. I say that because I have seen your draft reply brief, which is in draft form but was well along as of April 18. Based on that assumption, ARRC will not oppose your 3-week extension request." Without providing any clarification, you filed the request for extension stating that ARRC did not oppose the extension. You have had plenty of time to file a reply and I will oppose any future request for an extension.

Sincerely,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Wed, May 28, 2014 at 5:57 PM, Roy Longacre <roy@longacrelaw.com> wrote:

> Hi Steve:
>
> I understand the projected date BLM documents will be available is after June 4th which is after the existing June 2nd Reply deadline. Understandably I would like to look at the rest of the BLM documents prior to finalizing and filing the Reply. Would it be possible to obtain an extension for the Reply of 5 business days after the BLM documents are produced?
>
> Roy
>
> ----- Original Message -----
> **From:** Scordino, Steven <steven.scordino@sol.doi.gov>
> **To:** Roy Longacre
> **Sent:** 5/23/2014 12:47PM
> **Subject:** Re: Pletcher FOIA request
>
> Roy,
>
> There is nothing you can do to help me through the review of the FOIA documents.

Thank you,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, May 23, 2014 at 4:36 PM, Roy Longacre <roy@longacrelaw.com> wrote:

> Hi Steve:
>
> John Pletcher has included me in his BLM FOIA request. I understand there is material not available in the public documents that Dayle Sherba assembled and provided to you last week for review prior to release.
>
> I understand you are swamped, but wanted to let you know of my involvement and to ask you to let me know if there is anything I can do on this end to help expedite the process.
>
> Thanks, Roy

Roy Longacre <roy@longacrelaw.com> Thu, May 29, 2014 at 11:56 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>

Steve:

Sorry that I did not provide more background information, but I did not anticipate BLM would oppose an extension necessitated by BLM's delay in producing requested documents. The prior extension request was based on waiting for ARRC's settlement offer and the need to discuss same with my client.

During this time I became aware of Mr. Pletcher's FOIA request made while I was on vacation. When public documents were made available we immediately reviewed those documents April 29th and requested copies. I believe some of those documents are pivitol and will be included in the Reply; but important documents including emails were not made available to us and were required to go through a screening process. I have diligently worked with BLM's FOIA officer and contacted you to do all that is possible from this end in expediting the document production, including my May 20th advance $794 payment, which I made as soon as I understood it would help expedite document production.

If the documents had been provided, no further extension would be necessary, but I am not willing to file the reply without reviewing identified evidence, because BLM is busy. Hopefully this explanation will merit your reconsideration; it not, please let me know so that I may file an appropriate motion.

Roy

---- Original Message ----
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
[Quoted text hidden]
[Quoted text hidden]

---

john pletcher <goose703@gmail.com> Thu, May 29, 2014 at 12:14 PM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>
Cc: Roy Longacre <Roy@longacrelaw.com>

Steve,

I received your email of yesterday afternoon regarding the request of Mr. Longacre for an extension of a few days for the reply brief. Since it is my FOIA request that is at issue, indirectly, I thought I might make a few observations. The FOIA request was first sent by me about April 21, 2014. In a later conversation with Dayle Sherba she indicated that she was new in that office and was uncertain as to how to proceed. She asked that she treat the FOIA request as an informal request so that she could deal with it in a sort of shortcut method of some sort. I didn't understand exactly what she had in mind but agreed to it. Later, perhaps on the May 3 date mentioned by you it was agreed to treat the FOIA request in a formal fashion. This resulted in some delay I am afraid. It also delayed the time during which the response was due under FOIA if one treats the FOIA regulations in a technical fashion. I thought that I was accommodating Dayle. instead, it appears that I have created an opportunity for you to not respond so that the materials can be used in the reply. For this I am somewhat sorry.

In several conversations in recent days and in a conversation with Dayle, including in the morning of May 28 I was informed that materials and been sent to your office but that due to your schedule there was some delay in your review. For example in the discussion on the morning of May 28 she indicated that you were "swamped".

I certainly understand how busy attorneys can become swamped. But it does occur to me that this matter has been pending for quite some time and given the very slight amount of documents we have been given it doesn't look like to me there is a large volume of material. But of course I can't tell what is being reviewed and withheld either, and I suggested a detailed record of that be kept for future reference.

Quite frankly, I had anticipated, and I was led to believe at sometimes previous that the materials would be delivered some time ago. I am surprised that the material was not delivered in time for Mr. Longacre to incorporate the materials in his reply brief. However, as indicated above, I certainly understand how things can get busy.

My understanding of the larger review going on now is that the documents deal with exchanges between state attorneys and federal attorneys. If that is the case, in fact, I don't see that there is an attorney-client privilege. But there may be other materials involved and I don't know what those are.

Although I am not exactly a fair and impartial third-party viewing the situation, I think that Mr. Longacre's request is reasonable given the circumstances. The materials will be delivered at some point in time and if there is any interesting material things to me that the materials should be made a part of the record and the IBLA process.

The materials are certainly going to be a part of the record if this matter progresses to an appeal with the United States District Court. I trust that the Judge would view the handling by BLM is being fair.

I would like to ask you to reconsider the position that you have taken in the email.

John Pletcher

From: Roy Longacre <roy@longacrelaw.com>
Subject: Re: Pletcher FOIA request
Date: May 29, 2014 at 7:56:20 AM AKDT
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>
[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Thu, May 29, 2014 at 12:16 PM
To: Roy Longacre <roy@longacrelaw.com>
Cc: "goose703@gmail.com" <goose703@gmail.com>

Roy,

I will oppose an extension. If I need to file an opposition, I will include the email string where Andy and I asked the intent of the extension. I do not believe that those emails will reflect well on you and whether the reasons you have given should be trusted. I will also point out that Mr. Slaiby and you have been aware since at least January of 2013 that this action was likely to occur. There would be no need to grant an extension now to wait on a FOIA request when you had over a year to make a FOIA request which would have provided the information you sought in a timely fashion. I will also point out you state now that you did not know about Mr. Pletcher's FOIA request at the time you sought the extension. However, you were cc'd about the extension with the FOIA request on May 6, 2014. The next day you filed the extension, which means you should have known about the FOIA request prior to filing the request.

Steve

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Roy Longacre <roy@longacrelaw.com> Fri, May 30, 2014 at 12:52 PM
To: "hupprichw@akrr.com" <hupprichw@akrr.com>, "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>

Bill:

I am preparing an extension motion requesting the deadline be extended to five business days after receipt of BLM's FOIA documents.

Pursuant to 43 CFR 4.405(c), please let me know if ARRC opposes the motion.

Thanks, Roy

—— Original Message ——
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
[Quoted text hidden]
[Quoted text hidden]

William Hupprich <Hupprichw@akrr.com> Fri, May 30, 2014 at 1:25 PM
To: Roy Longacre <roy@longacrelaw.com>, "steven.scordino@sol.doi.gov" <steven.scordino@sol.doi.gov>
Cc: "goose703@gmail.com" <goose703@gmail.com>, Andy Behrend <BehrendA@akrr.com>

Roy, ARRC will oppose any extension request.

William R. Hupprich

Vice President & General Counsel

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Tel: (907) 265-2455 Fax: (907) 265-2443

Email: hupprichw@akrr.com

This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or coping of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Friday, May 30, 2014 8:52 AM
To: William Hupprich; steven.scordino@sol.doi.gov
Cc: goose703@gmail.com

[Quoted text hidden]

[Quoted text hidden]

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

PETER SLAIBY and REJANI SLAIBY,	)	IBLA DOCKET NO. IBLA-2014-0027
	)	Appeal of the Decision for the Alaska Railroad Selection Application AA-55129 (2658)(944) mjm/lga Anchorage, Alaska
Appellants.	)	

MOTION REQUESTING FOURTH EXTENSION OF TIME TO FILE REPLY TO ANSWERS OF ARRC AND BLM

Peter Slaiby and Rejani Slaiby (collectively, "Appellants"), by and through their counsel, Roy Longacre, Esq. move for a fourth extension of time to file their reply brief such that the reply brief will be due on or before five business days after receipt of BLM's FOIA information as more fully explained below.

Pursuant to 43 CFR §4.405(c), Appellants have emailed the Bureau Of Land Management (BLM), Alaska State Office and the Alaska Railroad Corporation (ARRC) counsel. Both have indicated that they oppose the extension.

The requested extension will not prejudice either the Bureau of Land Management or the Alaska Railroad Corporation. There is good cause for the requested extension because Appellant Peter Slaiby is waiting on BLM to produce requested FOIA documents prior to finalizing its reply.

Slaibys' third extension request was necessitated by the timing of ARRC's settlement offer. Those settlement discussions and offer were unsuccessful in resolving this matter. At about the same time as the third extension was requested and the undersigned counsel was leaving on vacation, another property owner John Pletcher, made a Freedom of Information Act

request on BLM. On return from vacation, Slaibys' counsel was invited by John Pletcher[1] to review public BLM files and immediately acted on the invitation and reviewed six volumes of public files on April 29, 2014. That review and subsequent investigation resulted in the discovery of new evidence of internal BLM communications that indicate Solicitors have taken a different position than asserted in the September 16, 2013 BLM Decision titled "Lands Found Proper for Conveyance to the Alaska Railroad Corporation relied on by both BLM and ARRC. A copy of Margaret McDaniel's communications indicating the BLM's patent process is improper and sample of other Solicitor opinions indicating that BLM should just convey what it has, nothing more, are attached hereto as Exhibit Two. Additionally the existence of a "working group" of attorneys who worked on the Alaska Railroad Transfer Act, 45 U.S.C. § 1201 et. seq. and possibly the Alaska Railroad Corporation Act, A.S. 42.40 et. seq. was discovered and their documents specifically requested. On May 6, 2014 Mr. Pletcher authorized Slaibys' counsel to receive FOIA response materials.

BLM has yet to provide what it describes as non-public documents including internal emails and "working group" of attorney documents, and the Slaibys believe review of this evidence is fundamental before finalization and filing of their reply. On information and belief a group of the documents consisting of about 50 pages was assembled by the FOIA officer, Dayle Sherba, and provided to the Solicitor for review on or about May 14, 2014, and then to assist with the Solicitor's review re-assembled and color coded. This group of documents and the remaining responsive documents have yet to be reviewed and/or released by the Solicitor[2]. Had the documents been released by this week, the Slaibys' reply could have been finalized and filed by the present June 2, 2014 deadline.

[1] A copy of Mr. Pletcher's FOIA request and latest email on the FOIA request is attached as Exhibit 1 hereto.
[2] In contrast, the Alaska Railroad Corporation has been prompt and thorough in responding to informal documents review and copy requests.

It is important to note that since the discovery of the existence of this evidence, Slaibys' counsel has acted immediately and without delay to review and obtain copies of what evidence has been provided; has diligently worked with the FOIA officer, Dayle Sherba[3], offered to help with the Solicitor's review[4], and at BLM's request advanced funds of $794.00[5] for BLM work and copy charges in producing the remaining evidence to expedite release of the documents.

Requiring the Slaibys to finalize and file their reply without review of this newly discovered, already in the process of being produced (and not having already been produced through no fault of the Slaibys), and having already been paid for evidence is prejudicial.

Respectfully submitted this May 30, 2014.

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
907-276-6354
907-279-4685 (fax)
Roy@LongacreLaw.com

Attorney for Peter Slaiby
and Rejani Slaiby

[3] I had contact with BLM and/or Mr. Pletcher about the status of the FOIA request on not less than April 28th, April 29th, May 1st, May 6th, May 7th, May 8th, May 9th, May 10th, May 14th, May 15th, May 19th, May 20th, May 23rd, May 28th, and May 29th, 2014.
[4] Exhibit Three hereto.
[5] Exhibit Four hereto.

CERTIFICATE OF SERVICE

I certify that on May 30, 2014, I served this Motion For Third Extension Of Time To File Reply

To Answers Of ARRC and BLM, as indicated below, upon:

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(by fax (703-235-8349))

Steve Scordino, Attorney Advisor for
Bureau of Land Management, Alaska State Office
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(by fax (907-271-4143) and email:steven.scordino@sol.doi.gov)

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
(by fax (265-2443) and email:BehrendA@akrr.com)

Roy Longacre

Roy L. Longacre, Esq.

----- Original Message -----
From: john pletcher <goose703@gmail.com>
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>
Sent: 5/29/2014 8:14AM
Subject: Fwd: Pletcher FOIA request

Steve,

I received your email of yesterday afternoon regarding the request of Mr. Longacre for an extension of a few days for the reply brief. Since it is my FOIA request that is at issue, indirectly, I thought I might make a few observations. The FOIA request was first sent by me about April 21, 2014. In a later conversation with Dayle Sherba she indicated that she was new in that office and was uncertain as to how to proceed. She asked that she treat the FOIA request as an informal request so that she could deal with it in a sort of shortcut method of some sort. I didn't understand exactly what she had in mind but agreed to it. Later, perhaps on the May 3 date mentioned by you it was agreed to treat the FOIA request in a formal fashion. This resulted in some delay I am afraid. It also delayed the time during which the response was due under FOIA if one treats the FOIA regulations in a technical fashion. I thought that I was accommodating Dayle. instead, it appears that I have created an opportunity for you to not respond so that the materials can be used in the reply. For this I am somewhat sorry.

In several conversations in recent days and in a conversation with Dayle, including in the morning of May 28 I was informed that materials and been sent to your office but that due to your schedule there was some delay in your review. For example in the disgussion on the morning of May 28 she indicated that you were "swamped".

I certainly understand how busy attorneys can become swamped. But it does occur to me that this matter has been pending for quite some time and given the very slight amount of documents we have been given it doesn't look like to me there is a large volume of material. But of course I can't tell what is being reviewed and withheld either, and I suggested a detailed record of that be kept for future reference.

Quite frankly, I had anticipated, and I was led to believe at sometimes previous that the materials would be delivered some time ago. I am surprised that the material was not delivered in time for Mr. Longacre to incorporate the materials in his reply brief. However, as indicated above, I certainly understand how things can get busy.

My understanding of the larger review going on now is that the documents deal with exchanges between state attorneys and federal attorneys. If that is the case, in fact, I don't see that there is an attorney-client privilege. But there may be other materials involved and I don't know what those are.

Although I am not exactly a fair and impartial third-party viewing the situation, I think that Mr. Longacre's request is reasonable given the circumstances. The materials will be delivered at some point in time and if there is any interesting material things to me that the materials should be made a part of the record and

EXHIBIT One
PAGE 1 OF 4

the IBLA process.

The materials are certainly going to be a part of the record if this matter progresses to an appeal with the United States District Court. I trust that the Judge would view the handling by BLM is being fair.

I would like to ask you to reconsider the position that you have taken in the email.

John Pletcher

6/ 25

5/30/2014

United States District Court. I trust that the Judge would view the handling by BLM is being fair.

EXHIBIT One
PAGE 2 OF 4

Alaska State Office
Rebekah Troxell
Acting FOIA Coordinator
222 West 7th Ave. Ste. 13
Anchorage, Alaska 99513

Re: Freedom of Information Act Request

Sent By Email
BLM_AK_FOIA@blm.gov

Dear Ms. Troxell:

This is a request under the Freedom of Information Act.

I request that a copy of documents from January 1, 1983 to the current date, (including emails, letters, or other communications with the Alaska Railroad Corporation) in written or digital format; pertaining to easements or exclusive-use easements, Peter Slaiby and/or Rejani Slaiby and/or the real property, in whole or in part, described as:

> Lots Thirteen (13) and Fourteen (14) of Block Three (3), of Sunset Hills West Subdivision, according to the recorded plat thereof, lying southwesterly of the line designated as "take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording District, Third Judicial District, State of Alaska.

Acronyms referred to herein: "ARRC" refers to the Alaska Railroad Corp., "Railroad Act" refers to the Alaska Railroad Act of Mar. 12, 1914, "ARTA" refers to the Alaska Railroad Transfer Act of 1982, 45 USC 1201 et seq. "ARCA" refers to the Alaska Railroad Corporation Act, AS 42.40.010 et seq., RRUP refers to the ARCA Railroad ROW Permit Program, "DOI" refers to the Department of the Interior, "BLM" refers to the Bureau of Land Management, "DOJ" refers to the US Dept. of Justice, "Congress" refers to any member of the US Congress, "Legislature" refers to the Alaska Legislature,.
Definitions used herein:
1)"non-conforming uses" means the use of the railroad easement created under the Railroad Act for any purpose potentially beyond or in excess or in non-compliance with the limited uses stated in the Railroad Act
2)"exclusive use" has the meaning of ARTA Sec. 1202(6).
3)"easement" refers to the easement described in the Alaska Railroad Act of Mar. 12, 1914, and any references to easements under ARTA, including, but not limited to, those references in Sec. 1202(6) and 1202(10)

EXHIBIT One
PAGE 1 OF 4

"ARTA" refers to the Alaska Railroad Transfer Act of 1982, 45 USC 1201

This request is intended to include any such documents and materials by, among or between any entity listed above and / or and any other person, corporation or entity. This request is also directed at 1) any attempts on the part of the railroad to lobby with any of the above-listed entities for an "exclusive use easement" or relative to an easement described in 45 US Code section 1202(10), or relative to the so-called "right of reversion" dealing with the easement, especially in connection with the revocation of Sec. 1209 of ARTA, or relative to the effect of ARTA Sec. 1212), any correspondence or material whatsoever in which past possible "nonconforming uses" of the easement are discussed or treated, (3 the subject of condemnation or "taking" of private property in conjunction with the ARTA transfer, is discussed or treated, 4) the subject of any particular private property owner affected by the easement is discussed or treated, 5) the subject of the political power or advantage of any of the entities described in "acronyms" above, or any division thereof compared with private individuals corporations, or entities affected by the ARTA transfer is discussed or treated, 6) the subject of the relative financial power of the railroad as compared to any other private individuals corporations or entities is discussed, 7) any and all similar documents or materials pertaining to the implementation of the residential right-of-way use permit program proposed and implemented by the Alaska Railroad) discussion relative to the prospect of the Dept. of Justice defense of the Alaska Railroad under the 1982 Alaska Railroad Transfer Act of 1982 in the event of dispute arising under that Act. 8) any such documents or materials described above relating to RRUP.

I would appreciate being provided this material on or before May1, 2014. In order to help to determine my status to assess fees, you should know that I am an affected party seeking information for use on behalf of myself as my interest may be affected by the administrative appeal of proposed BLM action as to Slaiby, as well as actions taken by the Alaska railroad and others listed above. I am willing to pay fees for this request up to a maximum of $250.00. If you estimate that the fees will exceed this limit, please inform me prior to processing request. I request that the information I seek be provided in electronic format, and I would like to receive it on a personal computer disk (or a CD-ROM). I may be called at the telephone number listed below to discuss my request, or contacted via the below email address, if necessary.

. I request that a copy of documents and materials from January 1, 1983 to the current date, (including emails, letters, or other communications or correspondence involving the Alaska railroad track easement in written oral, digital or other format.

Sincerely,

John W. Pletcher III
13608 Jarvi dr.
Anchorage, Alaska 99515
907 345-3981

EXHIBIT One
PAGE 4 OF 4

[Quoted text hidden]

McDaniel, Margaret <mmcdanie@blm.gov> Tue, Aug 6, 2013 at 6:00 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Steven – We do not issue patents for exclusive use only. They are issued for all right, title, and interest, that the federal government has, whatever that may be. It was decided early on by the attorney working group and others who were establishing the rules, and procedures in implementing the Transfer Act, that we would not determine if it was a fee interest, or an exclusive use interest. The copies of the patents I sent you are what was approved by all parties, and that has never been changed. I don't know if Dennis might have something in his railroad files that might shed ore light on this.

Margaret
[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Tue, Aug 6, 2013 at 8:03 AM
To: "McDaniel, Margaret" <mmcdanie@blm.gov>

I'll take a look. I have to finish writing a brief by the end of the week and I need to focus my attention on it. I hope to be able to review our files on the RR transfers by next Wednesday. Would that delay cause any harm?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

McDaniel, Margaret <mmcdanie@blm.gov> Tue, Aug 6, 2013 at 8:15 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Thanks, Steve, that will be fine.

Margaret
[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Wed, Aug 14, 2013 at 2:21 PM
To: "McDaniel, Margaret" <mmcdanie@blm.gov>

I doubt I will finish today, but I hope to finish tomorrow. My other projects are dominating my time right now.

EXHIBIT Two
PAGE 1 OF 12

used since the format was agreed upon by all parties. They state "Pursuant" Sec. 606(b)(4)(B) of ARTA the right, title, and interest granted by the United States .....shall be not less than an exclusive use easement as defined in Sec, 603(6) of ARTA"

Margaret

[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Wed, Jul 31, 2013 at 11:30 AM
To: "McDaniel, Margaret" <mmcdanie@blm.gov>

I would appreciate that, the fax number is 271-4143

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Fri, Aug 2, 2013 at 11:14 AM
To: "McDaniel, Margaret" <mmcdanie@blm.gov>

Margaret - Do you have any examples of deeds that were for only the exclusive use easement? I feel like there is something missing in the description. While it says Railroad Right of Way in the heading before the land description, it doesn't state in the land description that it is for an exclusive easement on those lands. I would like to know if it was done the same in the past.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

EXHIBIT Two
PAGE 2 OF 12

was done the same in the past.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

McDaniel, Margaret <mmcdanie@blm.gov> Thu, Aug 15, 2013 at 5:12 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

That is fine.
[Quoted text hidden]

Scordino, Steven <steven.scordino@sol.doi.gov> Thu, Aug 15, 2013 at 2:39 PM
To: "McDaniel, Margaret" <mmcdanie@blm.gov>

Margaret,

I am sorry it has taken me so long to look over the proposed decision and patent.

Our records of past right-of-way conveyances the heading before the land description is "Railroad Right-Of-Way as Defined by Section 603(11) of ARTA:" I do not have any examples where that was changed, but the most recent example I have is from the 1990's. Why has this changed? I recommend BLM use the full title rather than just "Railroad Right-of-Way" unless a clear reason for the change is provided.

In the Decision, you state "The proposed patent also identifies federal and third-party interests, if any." No interests are identified since it only recognizes those interests to which the right of way would be subject to. The normal language included in past deeds is, "The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to the conveyance:" The right-of-way is not subject to fee interest ownership of Jarvi's successors. However, based on the Decision a reader would expect to find their third-party interest (the fee title) somehow stated in the deed. Therefore, I recommend removing the sentence from the Decision.

With these two changes the Decision and draft Patent are ready to go without further review.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-

EXHIBIT Two
PAGE 7 OF 12

client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

McDaniel, Margaret <mmcdanie@blm.gov> Mon, Aug 26, 2013 at 9:06 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Good morning Steve -

Sorry I didn't get back to you sooner. I have never used that whole heading before the land description in a patent. We either used "Railroad Right-of-Way" or "Railroad Parcels" depending on whether we were conveying part of the right-of-way, or just a parcel. Is this wrong? Would we also need to change the heading for the parcels? Just let us know what you want us to do.

Thanks

Margaret
[Quoted text hidden]

McDaniel, Margaret <mmcdanie@blm.gov> Mon, Sep 9, 2013 at 6:47 AM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Steve - I don't know if you got my last e-mail or not. I had a couple of questions about the changes you suggested. They are in my August 26 e-mail to you, which is attached to this. Please let us know what you want us to do. Thanks

Margaret

[Quoted text hidden]

EXHIBIT Two
PAGE 4 OF 12

McDaniel, Margaret <mmcdanie@blm.gov>

Potter Hill

13 messages

McDaniel, Margaret <mmcdanie@blm.gov>
To: Steven Scordino <steven.scordino@sol.doi.gov>
Tue, Jul 30, 2013 at 5:53 AM

Earle Williams asked me to send you an e-mail asking if you need anymore information on this issue than you already have. I know Dennis had a lot of background information in his files. If you need anything, please let me know. Thank you.

Margaret McDaniel

Scordino, Steven <steven.scordino@sol.doi.gov>
To: "McDaniel, Margaret" <mmcdanie@blm.gov>
Wed, Jul 31, 2013 at 11:10 AM

Do you have examples of others patents which conveyed an exclusive easement?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Tue, Jul 30, 2013 at 5:53 AM, McDaniel, Margaret <mmcdanie@blm.gov> wrote:

> Earle Williams asked me to send you an e-mail asking if you need anymore information on this issue than you already have. I know Dennis had a lot of background information in his files. If you need anything, please let me know. Thank you.
>
> Margaret McDaniel

McDaniel, Margaret <mmcdanie@blm.gov>
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>
Wed, Jul 31, 2013 at 11:25 AM

I can fax you a couple of railroad patents that have that language in them. It is standard language that has been

EXHIBIT Two
PAGE 5 OF 12

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

DATE	TO	FROM	FOR
			C-64-2072 16A
			PREP. REPLY FOR MY SIG.
			ACTION
DEC 4 1964			COMMENT
COPIES TO:			RECOMMENDATION
			NOTE AND RETURN
			TALK TO ME

Memorandum

To: Regional Solicitor, Anchorage

From: Associate Solicitor, Territories, Wildlife and Parks

Subject: Relocation of Alaska Railroad right-of-way

This replies to your memorandum of November 6, 1964, which brought to our attention the case of A. J. Myers v. United States, 210 F. Supp. 695 (1962), involving a statute with a provision for highway right-of-ways which is similar to the right-of-way provisions in the Alaska Railroad Enabling Act (48 U.S.C. 305). The District Court's decision in that case had held that compensation could not be paid for an additional taking of land to expand a right-of-way for a highway when the existing right-of-way had been provided for in the basic statute and in the patents to the land.

We have reviewed this case with care and the Assistant Solicitor, Branch of Territories, has discussed the problem which it raises with Mr. Hochstein, the Attorney at the Department of Justice who has handled the Myers case for the United States. Mr. Hochstein agrees with our view that the Alaska Railroad situation is clearly distinguishable from the problem in the Myers case and feels that our position with respect to the Railroad right-of-way relocation would present no difficulties to the Department of Justice in handling of the Myers case.

The distinction which it is agreed is crucial lies in the fact that the highway statute involved in the Myers case, 48 U.S.C. 321d, does not prescribe a width for the highway right-of-way. Our statute, on the other hand, prescribes only a 200 foot right-of-way. For this reason, any taking by the Alaska Railroad beyond that 200 feet represents a taking beyond the statutory easement and therefore one for which just compensation must be paid.

In conclusion, the case of Myers v. United States presents no obstacle to your proceeding with the necessary acquisition on the basis suggested in the September 16, 1964, memorandum to you from the Assistant Solicitor, Branch of Territories.

FRhuland:jlh 11/25/64

cc: Secretary's Files
Territories' Files
Docket
Assoc. Sol. DTWP
Mr. Fitch, Rm 5129

(Sgd.) Lewis S. Flagg, III
Lewis S. Flagg, III
Associate Solicitor
Territories, Wildlife and Parks

Mr. J. Glen Cassity, Field Sol. for Alaska

EXHIBIT Two
PAGE 6 OF 12

Reproduced at the National Archives at Anchorage

Field Potter Hill relocation

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D.C.

G-64-2072.16A

Memorandum

SEP 16 1964

To: Regional Solicitor, Anchorage

From: Assistant Solicitor, Branch of Territories

Subject: Relocation of Alaska Railroad right-of-way

Thank you for your memorandum to the Solicitor dated September 11, 1964, bringing to our attention the actual situation which resulted in the Field Solicitor's request for an opinion of the Comptroller General concerning authority to pay for improvements on a relocated Alaska Railroad right-of-way. As you are aware, the question was posed to the General Accounting Office by letter dated August 24, 1964. Based on informal conversation with that agency, we anticipate an answer in the very near future. The information contained in your memorandum, however, makes it clear that the answer will be academic, albeit interesting.

The situation which you describe is entirely different from that which we had supposed. The additional land for a right-of-way which the Railroad must acquire is in no way related to the right-of-way provision in the patents. The Alaska Railroad already has taken up that right-of-way and is in possession of it. Nor does it seek to relinquish it. What it now seeks to acquire is additional land necessary for Railroad purposes. The authority for such an acquisition lies elsewhere than in the right-of-way provision.

We express at this time no opinion concerning the authority needed nor the payments which can be made to the landowners in connection with such an additional acquisition. It is our opinion, however, that the limitations pertinent to the right-of-way provision provided for in Sec. 1 of the Alaska Railroad Enabling Act would not be applicable. The Railroad can proceed with these necessary new acquisitions in the usual fashion. The expected opinion of the Comptroller General will have no bearing upon the manner in which this is accomplished, and, in our view, the actual situation does not appear to be such as to necessitate another GAO ruling. Please let us know if you do not agree with this conclusion.

Frank A. Rhuland, Jr.

FRhuland:jlh 9/16/64

Frank A. Rhuland, Jr.
Assistant Solicitor
Branch of Territories

cc: Secretary's Files
Docket
Mr. Fitch, Rm 5129
Mr. J. Glen Cassity, Field Solicitor for The Alaska Railroad, Anchorage
Assoc. Sol. Mins

EXHIBIT 7W-6
PAGE 7 OF 12

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

G-64-2072 16A

Anchorage Region
P. O. Box 166
Anchorage, Alaska 99501

September 11, 1964

Memorandum

To: Solicitor

From: Regional Solicitor, Anchorage

Subject: Relocation of Alaska Railroad right-of-way

The proposed relocation of a portion of the right-of-way of the Alaska Railroad was the subject of a letter from the Administrative Assistant Secretary to the Comptroller General on August 24, 1964. The letter quotes section 1 of the Alaska Railroad Enabling Act (48 U.S.C. sec. 305) which provides that in all patents for lands taken up in Alaska after March 12, 1914, there shall be reserved to the United States a right-of-way for the construction of railroads to the extent of one hundred feet on either side of the center line of any such road. The Comptroller General was asked whether the reservation permitted payment to be made for homes, structures and other improvements within the right-of-way. Obviously, this question should be resolved. However, the letter states:

> "In our opinion the above-quoted language precludes payment of compensation for the taking of land for the new right-of-way patented after March 12, 1914."

The submission to the Comptroller General was suggested in a memorandum dated July 18, 1964 from the Field Solicitor for the Alaska Railroad, wherein he voiced the opinion that the United States would be precluded by the reservation in the patents from paying for the right-of-way. He did not, however, take into consideration the fact that the Alaska Railroad is retaining the land traversed by the original right-of-way. Thus, while the transaction in question has been termed a "relocation", it is really the acquisition of additional land for the existing right-of-way and will result in a right-of-way more than two hundred feet wide.

The lands traversed by the right-of-way were patented to the following persons:

Melvell S. Clements	Patent No. 1125832	May 16, 1949
Edwin A. Jarvi	Patent No. 1127889	September 6, 1950
William T. Hancock	Patent No. 1132369	July 19, 1951

EXHIBIT Two
PAGE 8 OF 12

Reproduced at the National Archives at Anchorage

Each patent contains a reservation of a right-of-way for construction of railroads, telegraph and telephone lines.

At the time these patents were issued, there was an existing right-of-way traversing each tract of land. Subsequently, these tracts were subdivided into lots which front on the Seward Highway or a connecting road and which are bounded on the rear by the existing railroad right-of-way. The effect of the relocation will be to place from one-fourth to three-fourths of each lot in the right-of-way.

Since the lands were traversed by a right-of-way of the maximum statutory width at the time of patent, I question whether the United States can take additional land for railroad purposes without compensating the owners, particularly where the right-of-way originally established is to be retained by the Alaska Railroad. At any rate, I think this should be brought to the attention of the Comptroller General and that his opinion should be requested on this point. We can be certain that the owners of these lots will strenuously resist any attempt to take up to three-fourths of their respective properties without compensation.

In further explanation of this problem, I am attaching a memorandum to me from the General Manager of the Alaska Railroad.

Your assistance in this matter will be greatly appreciated.

William W. Richmond
Regional Solicitor

Attachment

cc: General Manager, The Alaska Railroad

Reproduced at the National Archives at Anchorage

EXHIBIT Two
PAGE 9 OF 12

Jonathan C. Lang, RPLS
Lang & Associates, Inc.
Professional Land Surveyors

11500 Daryl Avenue
Anchorage, Alaska 99515-3049

(907) 522-6476 Office
(907) 522-4625 Fax
jonathan@langsurvey.com E-mail

/ 25

On Mon, Aug 13, 2012 at 12:18 PM, Schoder, Michael <mschoder@blm.gov> wrote:

Mr. Lang,

BLM has the responsibility to transfer the Federal interest in the real property for the Alaska Railroad under the authority of the Railroad Transfer Act. Most all of the conveyance for the ARR system from the US to the State of Alaska Railroad within the state has been done. We continue to work on some remaining pieces of federal interest to transfer, including the interest in the Federal re-acquired property you are referencing.

My position holds the delegated authority among other things to "Approve Requests for Surveys or Resurveys (SC 9600 9601, 9610), "Determination of Survey Requirement (SC 9601)", "Verify legal descriptions for acquisitions and exchanges (SC 9601, 9623)" and Approving all Cadastral Surveys for Federal Interest Lands and all legally required steps in that process for lands under the BLM Alaska State Office jurisdiction.

BLM will convey all rights, title and interest in the subject property that the US acquired under the conveyance instrument you cited (deed from Jarvi to US). The Right of Way Acquisition Plat (P 64-105) is basically a summary of the individual acquisitions that were acquired by deed transfers, and in my opinion provides no further encumbrance or dedication of real property as it lacks the elements of authority based on State Statutory platting law to do so.

BLM Alaska is in the process of completing the conveyance to the ARR, and is currently working on the Potter Hill property interest area. I had assigned Mr. McDonald who is my subordinate employee the task in researching documents and land status to assist me in fulfilling my responsibility in our conveyance task. His work is complete, and I am working with the BLM Alaska staff to finalize our conveyance for this property to the ARR. BLM Alaska Conveyance Division staff are working this conveyance, and we are seeking affirmation from our Regional Solicitors Office as to the proper form of conveyance to the State Alaska Railroad for the subject interest. Unfortunately I cannot offer you any specific time schedule for completion of the conveyance. The remaining work under my authority and responsibility lies with ensuring the correct description of lands in the conveyance instruments and to provide any official federal survey, if required. I have not yet seen a need for official federal survey, but have not made a final determination in that matter.

...for lands under the BLM Alaska State Office jurisdiction.

EXHIBIT Two
PAGE 10 OF 12

Your opinion of the title is noted, but I am not in a position to offer any affirmation of your position as it is a matter of outside my delegated authority to offer such opinion. Again, the deed from Jarvi to US is where our federal interest for the Alaska Railroad is vested.

Michael H. Schoder, PLS

BLM Alaska State Office

Deputy State Director AK-920

Alaska Cadastral Survey Chief

222 W. 7th Ave, #13

Anchorage, AK 99513

(907) 271-5481 (Phone)

(907) 240-1494 (Mobile)

(907) 271-4549 (Fax)

From: Jonathan Lang [mailto:jonathan@langsurvey.com]
Sent: Thursday, August 09, 2012 1:46 PM
To: McDonald, Christopher P
Cc: Kenneth Lang; Schoder, Michael
Subject: Potter Hill Taking

Mr. McDonald -

My firm represents Peter and Rejani Slaiby who own Lots 13 and 14, Block 3, Sunset Hills West Subdivision. The Slaibys are in the process of replatting their two lots into one. While researching their replat I opened the "can of worms" at the Alaska Railroad revolving around the Potter Hill Relocation (Plat No. 64-105).

In discussions with Patrick Kelly at Alaska Railroad it is the Railroad's position that the Potter Hill Relocation plat was a fee taking on the Saliby's property. Based on the deed from the original homesteader Jarvi to United States of America (Book 305, Pages 170 and 171, Anchorage Recording District) our opinion is that on the Saliby's parcels there is merely an easement. It is my understanding that Alaska Railroad was not transferred title to any of the Potter Hill Relocation parcels as part of US Survey 9015 or via any other document which leaves these easements in the possession of the Federal Government.

McDonald, Christopher P
Schoder, Michael

EXHIBIT Two
PAGE 11 OF 12

Can you give me an update of the status of your review of this case and a timeline for resolution? The Stalby's have a large remodel of their home that is hinging upon the outcome of this situation and winter will be upon us all too soon.

- Jon

Jonathan C. Lang, RPLS
Lang & Associates, inc.
Professional Land Surveyors

11500 Daryl Avenue
Anchorage, Alaska 99515-3049

(907) 522-6476 Office
(907) 522-4625 Fax
jonathan@langsurvey.com E-mail

EXHIBIT Two
PAGE 12 OF 12

5/29/2014

From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
Cc: goose703@gmail.com
Sent: 5/29/2014 8:16AM
Subject: Re: Pletcher FOIA request

Roy,

I will oppose an extension. If I need to file an opposition, I will include the email string where Andy and I asked the intent of the extension. I do not believe that those emails will reflect well on you and whether the reasons you have given should be trusted. I will also point out that Mr. Slaiby and you have been aware since at least January of 2013 that this action was likely to occur. There would be no need to grant an extension now to wait on a FOIA request when you had over a year to make a FOIA request which would have provided the information you sought in a timely fashion. I will also point out you state now that you did not know about Mr. Pletcher's FOIA request at the time you sought the extension. However, you were cc'd about the extension with the FOIA request on May 6, 2014. The next day you filed the extension, which means you should have known about the FOIA request prior to filing the request.

Steve

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Thu, May 29, 2014 at 11:56 AM, Roy Longacre <roy@longacrelaw.com> wrote:

Steve:

Sorry that I did not provide more background information, but I did not anticipate BLM would oppose an extension necessitated by BLM's delay in producing requested documents. The prior extension request was based on waiting for ARRC's settlement offer and the need to discuss same with my client.

During this time I became aware of Mr. Pletcher's FOIA request made while I was on vacation. When public documents were made available we immediately reviewed those documents April 29th and requested copies. I believe some of those documents are pivitol and will be included in the Reply; but important documents including emails were not made available to us and were required to go through a screening process. I have diligently worked with BLM's FOIA officer and contacted you to do all that is

EXHIBIT Three
PAGE 1 OF 4

5/29/2014

possible from this end in expediting the document production, including my May 20th advance $794 payment, which I made as soon as I understood it would help expedite document production.

If the documents had been provided, no further extension would be necessary, but I am not willing to file the reply without reviewing identified evidence, because BLM is busy. Hopefully this explanation will merit your reconsideration; it not, please let me know so that I may file an appropriate motion.

Roy

----- Original Message -----
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
Sent: 5/28/2014 2:20PM
Subject: Re: Pletcher FOIA request

Roy,

I do not find it understandable that you would need additional time to file your reply based on the response time to the May 5, 2014, FOIA request. According to your representation of why you sought an extension, the FOIA should not be relevant to the need for an extension. Specifically, Andy Behrend responded to your request for a 3 week extension with the following: "I assume that your request for the extension is solely based on the time needed to consider ARRC's proposal and not the time necessary to finalize your reply. I say that because I have seen your draft reply brief, which is in draft form but was well along as of April 18. Based on that assumption, ARRC will not oppose your 3-week extension request." Without providing any clarification, you filed the request for extension stating that ARRC did not oppose the extension. You have had plenty of time to file a reply and I will oppose any future request for an extension.

Sincerely,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Wed, May 28, 2014 at 5:57 PM, Roy Longacre <roy@longacrelaw.com> wrote:

EXHIBIT Knaa
PAGE 2 OF 4

5/29/2014

Hi Steve:

I understand the projected date BLM documents will be available is after June 4th which is after the existing June 2nd Reply deadline. Understandably I would like to look at the rest of the BLM documents prior to finalizing and filing the Reply. Would it be possible to obtain an extension for the Reply of 5 business days after the BLM documents are produced?

Roy

----- Original Message -----
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre
Sent: 5/23/2014 12:47PM
Subject: Re: Pletcher FOIA request

Roy,

There is nothing you can do to help me through the review of the FOIA documents.

Thank you,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, May 23, 2014 at 4:36 PM, Roy Longacre <roy@longacrelaw.com> wrote:

Hi Steve:

John Pletcher has included me in his BLM FOIA request. I understand there is material not available in the public documents that Dayle Sherba assembled and provided to you last week for review prior to release.

I understand you are swamped, but wanted to let you know of my involvement and to ask you to let me know if there is anything I can do on this end to help expedite the

EXHIBIT Three
PAGE 1 OF 4

I understand you are swamped, but wanted to let you know of my
[illegible] know if there is [illegible]

5/29/2014

process.

Thanks, Roy

EXHIBIT Three
PAGE 4 OF 4

Receipt

United States Department of the Interior
Bureau of Land Management
DIV OF SUPPORT SERVICES
222 WEST 7TH AVENUE #13
ANCHORAGE, AK 99513 -7599
Phone: (907) 271-5960

Receipt No: 3037214

Transaction #: 3127741
Date of Transaction: 05/20/2014

LINE #	QTY	DESCRIPTION	REMARKS	UNIT PRICE	TOTAL
1	8.00	IAC PRODUCTS / SERVICE/ADMIN CHARGES / RESEARCH (NON-FOIA AND FOIA) / MANAGER-GS 13 & ABOVE (PER 1/4 HR) AFTER 01/01/14		15.25	122.00
2	64.00	IAC PRODUCTS / SERVICE/ADMIN CHARGES / RESEARCH (NON-FOIA AND FOIA) / PROFESSIONAL GS 8-12 (PER 1/4 HR) AFTER 08/01/2010		10.50	672.00
				TOTAL:	**$794.00**

PAYMENT INFORMATION				
NOTE: Items will appear on credit card statement as "Bureau of Land Mgmt CO".				
1	AMOUNT:	794.00	POSTMARKED:	N/A
	TYPE:	CREDIT CARD	RECEIVED:	05/20/2014
	NAME:	LONGACRE, ROY 425 G STREET STE 910 ANCHORAGE AK 99501		
	CARD NO:	XXXXXXXXXXXX7071	AUTH CODE:	03171G
	NAME ON CARD:	LONGACRE ROY		
	EXPIRES:	10/2014		
	SIGNATURE:	Phone Order		

REMARKS

This receipt was generated by the automated BLM Collections and Billing System and is a paper representation of a portion of the official electronic record contained therein.

PAYMENT INFORMATION

EXHIBIT Four
PAGE 1 OF 1

5/20/2014

RECEIVED
JUN - 4 2014

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

PETER SLAIBY and REJANI SLAIBY, Appellants.	IBLA DOCKET NO. IBLA-2014-0027 Appeal of the Decision for the Alaska Railroad Selection Application AA-55129 (2658)(944) mjm/lga Anchorage, Alaska

RESPONSE TO OPPOSITIONS TO MOTION REQUESTING FOURTH EXTENSION OF TIME TO FILE REPLY TO ANSWERS OF ARRC AND BLM

Peter Slaiby and Rejani Slaiby (collectively, "Appellants"), by and through their counsel, Roy Longacre, Esq. herein respond to the oppositions of the Bureau Of Land Management Alaska State Office (BLM), and the Alaska Railroad Corporation (ARRC) to the fourth extension request for Appellants' reply.

It should be noted that neither BLM or ARRC dispute that requiring Appellants to file their reply without the opportunity to review the requested FOIA documents is prejudicial; and neither have provided any reason for BLM's delay in producing the requested FOIA documents.

The first basis of objection is that the FOIA evidence cannot be used because new arguments cannot be raised in a reply. Appellants do not know what new issues could be raised from BLM's documents because they have not seen the FOIA documents, but instead intend to use the new evidence to address issues raised in the *Statement of Reasons* and the respective *Answers* of BLM and ARRC. As illustrated by the documents submitted with the 4th extension request, the new evidence undermines BLM and ARRC's position on the already raised issues of a) the character of the easement (perpetual limited-use easement or exclusive-use easement), and

b) the suitability of a patent (as opposed to an assignment) to transfer an existing easement interest. There is no prohibition to using newly discovered evidence to address existing issues.

The second basis of objection is that the reasons for the 4th request are duplicitous of reasons for the 3rd extension request. This is incorrect. As set forth in the 3rd extension motion, and the email string attached to BLM's opposition, there were pending settlement discussions. Due to scheduling conflicts the initial settlement meeting did not occur until April 18, 2014; and then it took ARRC another 11 days to respond with its April 29, 2014 settlement offer. However, Mr. Slaiby was not in the State of Alaska and so an extension was requested to allow for an attorney-client discussion on ARRC's settlement offer which took place May 12, 2014 and resulted in a May 14th email to ARRC asking for clarification of its settlement offer.

BLM and ARRC further suggest in their oppositions that Appellants have not negotiated in good-faith. Nothing could be farther from the truth. As further illustrated by the May 7, 2014 email attached as BLM's Exhibit C from Slaiby's counsel to ARRC, those settlement discussions were understood by Slaiby to encompass Slaiby's dropping all of its claims against ARRC. Unfortunately it was determined, as manifest in the accompanying May 16, 2014 email response from ARRC, that **ARRC's settlement offer did not propose to settle Appellants' claims**, but only provided interim relief in the form of a permit – likely identical to the RRUP permit being offered all other adjoining landowners: "We believe that the proposed residential use permit is a good way to allow your clients to use the ROW for residential purposes while the appeal process is ongoing." As a result, settlement has not occurred.

BLM and ARRC do not deny there are long-outstanding FOIA requests for documents on the pending issues. BLM has not explained its delay in providing the information. The status now is that some 177 pages were provided last night in what is understood to be the first of a

three-part response with the other two parts being provided today. Then all that is understood to remain is the documents on the "working group" of attorneys who crafted ARTA and ARCA.

Respectfully submitted this June 4, 2014.

/s/ Roy Longacre

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
907-276-6354
907-279-4685 (fax)

Attorney for Peter Slaiby
and Rejani Slaiby

PAGE. 3/ 4

CERTIFICATE OF SERVICE

I certify that on June 4, 2014, I served this Response to Oppositions to Motion for Third Extension Of Time To File Reply To Answers Of ARRC and BLM, as indicated below, upon:

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(by fax (703-235-8349))

Steve Scordino, Attorney Advisor for
Bureau of Land Management, Alaska State Office
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(by fax (907-271-4143) and email:steven.scordino@sol.doi.gov)

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
(by fax (265-2443) and email:BehrendA@akrr.com)

/s/ Roy Longacre

Roy L. Longacre, Esq.

----- Original Message -----
From: Andy Behrend <BehrendA@akrr.com>
To: Roy Longacre
Sent: 5/16/2014 3:48PM
Subject: RE: Slaiby

Roy:

This message responds to the first question you ask in your message below. You ask how ARRC's proposed residential use permit would provide the Slaibys with more than they already have under the Grant of Easement entered into by the parties in 2013. That question appears to be based on the same misconception about the Grant of Easement that I discussed in my letter to you of November 18, 2013. In your letter of November 12, 2013, you asserted that the Grant of Easement provided the Slaibys with the right to use all the land within the ARRC ROW that falls within Lots 13 and 14 in any manner that did not interfere with railroad operations. As I explained in my November 18 letter, however, that description of the rights granted to the Slaibys by the Grant of Easement greatly overstated the letter and intent of that document. The Grant of Easement was intended to provide an easement to allow the encroaching portions of the Slaibys' house to exist in the ARRC ROW for the life of that part of the house, along with use rights in the ROW limited to accessing, occupying, using, maintaining and repairing the encroaching portion of the house. My November 18 letter explains in greater detail the narrow nature of the Grant of Easement. I have attached a copy of that letter. (I send it without attachments other than the Grant of Easement itself in order to reduce the volume of the document).

Whereas the Grant of Easement is narrowly limited to the encroaching portions of the house, the proposed residential use permit would allow use of the land within the ROW that does not lie near the tracks for "lawn and/or garden and associated uses, including but not limited to existing lawns, gardens, fences, walls, landscaping, storage sheds and/or other non-habitable residential use structures." Those use rights are much broader both in type and area of use than the limited rights granted under the Grant of Easement. As you will recall, ARRC initially proposed a residential use permit along with the draft Grant of Easement in order to cover all these use rights. You chose to proceed with negotiations solely on the Grant of Easement at that time.

As we have discussed over the past two years, ARRC asserts that an exclusive use easement for railroad, communication and transmission purposes in the ARRC ROW portion of Lots 13 and 14. We understand that your clients dispute the exclusive nature of ARRC's property right. That is what the ongoing IBLA appeal is about. We believe that the proposed residential use permit is a good way to allow your clients to use the ROW for residential purposes while the appeal process is ongoing.

Please let me know if you have any questions about the above. As I mentioned in my email yesterday, I am looking into the status of the federal file you have requested.

Regards,
Andy

EXHIBIT One
PAGE 1 OF 1

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

IBLA 2014-0027	)	AA-55129
	)	
PETER SLAIBY and REJANI SLAIBY,	)	Land Conveyance
	)	
Appellants.	)	
	)	

RECEIVED
JUN 16 2014
Office of Regional Solicitor
Alaska Region

APPELLANTS' REPLY TO ARRC AND BLM ANSWERS

Peter Slaiby and Rejani Slaiby (collectively, "Appellants"), by and through their counsel, Roy Longacre, Esq. herein reply to the Answers respectively filed by the Alaska Railroad Corporation ("ARRC") and Bureau of Land Management ("BLM")[1].

I. INTRODUCTION.

It should first be noted what ARRC and BLM have not disputed:

1. The Alaska Railroad Transfer Act ("ARTA")[2] expressly states in Sections 1203(c)(1) and 1212(b)[3] that the United States shall transfer all reservations, including those expressed in a document of title such as the 1965 Warranty Deed[4].

2. The ownership property interest consisting of a bundle of sticks was already conveyed by the original patent on the Slaiby property includes the "limited-use" easement burden on the fee simple title which BLM is now attempting, in part, to substantively change by re-patent.

3. Slaibys' interpretation of ARTA and the Alaska Railroad Corporation Act[5], ("ARCA") results in no conflict; while ARRC and BLM's interpretations result in several conflicts including but not limited to:
    a. Alteration of the rights held by the United States, which are to remain without change as stated in § 1203(c)(1) and 1212(b);

---

[1] BLM's FOIA responses have dribbled in over the past two months since the request. As stated in Exhibit 18 (Appellants' exhibits are numbered sequentially from their Statement of Reasons) hereto, the current status is that the FOIA Officer advised June 4th the final 90 some pages had been submitted to Mr. Scordino for review prior to release; but as of this filing have not been received by Appellants. Additionally, Appellants have requested a copy of the November 5, 2013 Administrative Record from BLM.

[2] 45 U.S.C. § 1201 et. seq.

[3] Paraphrased §1212(b) states: "The enactment of this chapter, actions taken during the transition period, and transfer of rail properties; Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land...."

[4] In other words exactly what *A.J. Myers*, 210 F.Supp. 695, 702 (D. Alaska 1962) says – follow the rights and law at the time of the reservation, not a subsequent law.

[5] A.S. 42.40 et. seq.

BLM. 4458
A

b. A violation of the "no theft" principal recognized by the United States when it was required to purchase a new easement for the railroad realignment following the 1964 earthquake, acknowledging the application and authority of the *A.J. Myers* decision, and the resulting "professional way" of negotiating a reposition of the easement rather than just taking it.
    i. Defense obligation of BLM in protecting conveyance of rights to ARRC that BLM does not have to convey.
c. Existence and need to meet A.S. 42.40.285 ("Section .285") requirements requiring State legislative pre-approval of exclusive easement rights;

Each of these undisputed points, alone, are enough to defeat BLM's proposed re-patent of an exclusive-use easement on the Slaibys' property.

BLM and ARRC[6] approach the "unique" and "difficult" issues that "complicate" the analysis[7] legal questions as if it were a law school exam question in a Property Law class[8], but their analysis is backwards asking first what property interest they want ARTA to transfer, and then interpretation of ARTA in an attempt to find support for the desired result; before first answering the question of what property interests exist to transfer. As set forth below, (a) BLM, the mere owner of an easement on private land, cannot re-patent Lots 13 and 14, (b) ARTA conveyed the Federal Government's existing easement holder status on Lots 13 and 14, nothing more; (c) the Slaibys, undisputed owners of Lots 13 and 14, have standing to object to the theft of property rights by the proposed BLM re-patent of an exclusive-use easement on their property; and (d) neither BLM or ARRC are exempt from Alaska law.

[6] The Answers reveal why ARRC and BLM are desperate to have an exclusive easement on Slaibys' property. Since the 1982 ARTA, as illustrated by ARRC's list of land patents obtained, Exhibit 19 hereto, BLM has been incorrectly conveying by patent an "exclusive-use" easement on private property (private property such as the Slaibys' property would by definition have already been surveyed). As to the public property between BLM and ARRC, there has been no third party to point out that an "exclusive easement" is inappropriate or to object. With over thirty years of transfers in place; neither BLM or ARRC want a determination that their practice has been incorrect or illegal; that future right-of-way conveyances need to take a different route; or that ARRC's published Residential Right-of-Way Use Policy6 ("RRUP") policy is not well grounded in law with respect to the assumption that BLM and the ARRC have made to their use of private property belonging to individual landowners.

[7] ARRC Sept. 13 2012 email to BLM, Exhibit 20 hereto.

[8] See, Sept. 14, 2012 ARRC email to BLM, Exhibit 21 hereto.

II. ARGUMENT.

a. BLM, the Mere Owner of a Limited-Use Easement On Private Land Cannot Re-patent the Property.

In 1951 Jarvi received a patent of land[9]. Once patented the land becomes private land with the "highest evidence of title and is conclusive against the government"[10] and "something upon which the holder can rely for peace and security in his possession"[11], is "unassailable"[12]; just as if a quitclaim deed had been issued.[13] All title and control of the land passes[14] to the patent holder[15], and "divests the government of title."[16] Once "set" a federal patent with an easement reservation cannot be changed at the whim of BLM/DOI and the transferee of the easement. Nothing in ARTA suggests its intent is to re-patent Lots 13 and 14. Indeed BLM's file indicates that when first asked. BLM's Margaret McDaniel's who has been working at BLM since before 1982, institutional knowledge resulted in the Answer that the property could not be re-patented[17]. As recognized in the recent *Marvin M. Brandt Revocable Trust v. United States*, Opinion No. 12-1173 (U.S. Supreme Court March 10, 2014) decision, and *A.J. Myers, supra.*, the patent remains unaffected even by subsequent legislation[18]. Just as the electric company having an easement across residential property cannot "re-patent" the easement; BLM cannot re-patent its easement to ARRC. As stated in *Brown v. NHRRA*, 732 N.W.2d 732 (S.D. 2007), a patent is conclusive against the government which loses its jurisdiction over the land on patent issuance[19]. *See also, Anderson v. Andrews*, 625 P.2d 282 (Alaska 1981); and Alfred Jay Schritter, 171 IBLA 123 (Feb. 21,

---

[9] The patent, App. Ex. 4, included a 1914 railroad easement, but that easement which is not the subject of BLM's proposed patent, was adjacent to and was not part of the subdivided Lots 13 and 14 which then did not have an easement.

[10] *Stone v. United States*, 69 US 525 (1864).

[11] *Brown v, N Hills Regional Railroad Authority*, 732 N.W.2d 732 (S.D. 2007).

[12] *Stanford v. Stanford*, 139 U.S. 642 (1891).

[13] *City of Anchorage v. Nesbett*, 530 P.2d 1324 (AK 1975).

[14] Even when patent is erroneously issued. *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 49 (1983)(footnote 9).

[15] *Swendig v. Washington Water Power Co.*, 265 U.S. 322 (1924).

[16] *Boesche v. Udall*, 373 U.S. 472, 477 (1963).

[17] *See*, Ms. McDaniels' note which is Exhibit 22 hereto.

[18] Such as the 1922 Abandonment Act and ARTA. ARTA cannot change the 1951 Jarvi patent.

[19] "We find *Beres* and *Hash* to be the more persuasive authorities. These federal cases recognize the significant role a land patent plays in establishing title to property. 'A Patent to land, issued by the United States under authority of law, is the highest evidence of title, something upon which the holder can rely for peace and security in his possession. ....The United States Supreme Court has stated that 'when a patent issues in accordance with governing statutes, all title and control of the land passes from the United States (citations omitted)".

2007)[20]. What is required is only that the Government convey what it owns, by Assignment or Deed (just as it acquired the easement), as Margaret McDaniels states in her August 6, 2013 email[21].

b. ARTA Conveyed the Existing Perpetual Easement on Lots 13 and 14 and Did Not Take Other Property Rights from the Landowner.

The key to ARTA (45 U.S.C. §1201 et. seq.) **is understanding its intent to not convey lands under existing selection statutes[22] but to convey existing Private and Public railroad real property[23] interests consisting of[24]:**

1) **Private real property interests (which would necessarily have already been surveyed and patented) including a) title of property owed outright and b) rights-of-way (both fee ownership and easements) such as the easement on Lots 13 and 14[25] and that are not subject to "unresolved claims of valid existing rights"** (§ 1203 (b)(1)(B)) **as they existed** (§ 1203(c)(1) and 1212(b)),

2) **Public real property interests (which would necessarily have not been surveyed and patented) including a) title of property owed outright and b) rights-of-way (both fee ownership and easements) such as the easement on Lots 13 and 14[26] and that are not subject to "unresolved claims of valid existing rights"** (§ 1203 (b)(1)(B)) **as they existed** (§ 1203(c)(1) and 1212(b)), **and**

3) **An exclusive license on Public real property (not yet surveyed[27] or patented) on which there existed "unresolved claims of valid existing rights"** (Sec. 1203 (b)(1)(C))[28].
    a. **ARTA then goes on to provide with a settlement process for the "unresolved claims of valid existing rights"** (§ 1205(b)).
        i. **A priority[29] settlement procedure for Village Corporation unresolved claims is established by** (§ 1205(b)(1) &(3));
        ii. **A settlement procedure for other than Village Corporation unresolved claims is established by** (§ 1205(b)(2));

---

[20] "A railroad patent passes fee simple title to publish land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law."
[21] Exhibit 22 hereto.
[22] Alaska Native Claims Settlement Act (43 U.S.C. § 1611); Alaska National Interest Lands Conservation Act (Public Law 96-487), and land generally available for a claim or selection (45 U.S.C. § 1205(a)).
[23] And intangible and tangible personal property (§ 1203 (b)(1)(A)) and exclusive license to use (§ 1203 (b)(1)(D).
[24] And for the railroad line on Denali National Park and Preserve, the special "exclusive-use" easement.
[25] § 1205 (c) expressly states this includes existing rights-of-way.
[26] § 1205 (c) expressly states this includes existing rights-of-way.
[27] The survey on lands not yet surveyed was to be "completed". §1205(b)(2) – does not mention patent as cited by BLM on Page 6 or ARRC on Page 16, of their respective Answers.
[28] This Public property on which there are unresolved claims of valid existing rights is what is authorized to be conveyed by patent after the survey. §1203(b)(2).
[29] § 1205(b)(2).

b. **ARTA then provides that if the Village Corporation's "unresolved claims of valid existing rights" are not settled (§ 1205(b)(4) nor relinquished (§ 1205(b)(4)(A)(i)):**
   i. **exclusive control[30] is necessary (§ 1205(b)(4)(A)(ii)); and**
   ii. **an "exclusive use" easement[31] is to be conveyed (§ 1205(b)(4)(B));**

On Private and Public[32] real property where there is no valid unresolved Village Corporation claim, the existing "limited-use" easement was to be conveyed[33].

ARTA Does Not Authorize Nor Rewrite The 1965 Warranty Deed Creating The Railroad's Easement. After the 1964 earthquake, the Alaska Railroad needed to move its track onto Lots 13 and 14. BLM at that time recognized that the law[34] required it to negotiate and purchase[35] with the 1965 Warranty Deed[36] a new easement location from Public onto Private property, but the same scope (bundle of sticks of property interests analogy)[37]:

---

[30] Claims belonging to the Village Corporation are denied and the Village Corporation has NO interest in the right-of-way land.

[31] Others claim(s), such as individual claims that must be processed by the Village Corporation (43 U.S.C. § 1613(c)), if not settled, take the land subject to the exclusive-use easement burden.

[32] **On Public land where there was an existing unresolved claim, if successfully resolved than the land would become "2) Public real property" above; but prior to conveyance would need to be surveyed and patented to take the land out of the public domain. If not successfully resolved as an obvious settlement inducement, ARTA authorizes the retention of more of the property interest bundle of sticks and provides for unique statutorily defined exclusive control, exclusive possession and exclusive use. The drafters did not call attention to this disparate treatment in the § 1201 Findings, or elsewhere.**

[33] **Unfortunately the drafters did not anticipate the need to protect private real property owners from overreaching by the Alaska Railroad's attempt 30 years later to re-write the law so that all right-of-ways, even non-legislatively created (purchased) easements without unresolved claims would be re-written and burdened with subsequently (to the government's purchase) created exclusive-use easement.**

[34] The documents (Archives box 78, United States District Court for the District of Alaska, First Division (Anchorage, Alaska); Records of the District Courts of the United States, Record Group No. 322 (AKRR 322-73-A959); National Archives and Records Administration-Pacific Alaska Region, Anchorage, AK) attached as Exhibit 23 hereto are from the National Archives and provide evidence that pursuant to *A.J. Myers v. U.S.*, 210 F.Supp 695 (1962), BLM was required to negotiate and purchase new easement rights.

[35] ARRC misleads by asserting taking the $24,115.00 purchase price the Federal Government paid for the 1965 Warranty Deed, extrapolating that amount based on an arbitrary interest rate, to a 2014 value; but does not mention that the perpetual limited-use easement on Lots 13 and 14 is only a fraction of the property interests purchased with the 1965 Warranty Deed which included fee simple title to several other lots.

[36] The 1965 Warranty Deed that created a perpetual use easement arose from a need to move the railroad track location and right-of-way from land abutting Lots 13 and 14, onto, Lots 13 and 14. See Affidavit of Jon Lang and accompanying material from ARRC's file and from the National Archives. The 1965 Warranty Deed also conveyed fee simple title to several other lots.

[37] *See,* Exhibit 23 hereto from the National Archives.

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below:...[38]

Indeed Ms. McDaniels knew from her institutional knowledge that this limited-use patent could not be transformed by ARTA into a different bundle of property rights of:

> an "exclusive-use easement", ...which affords to the easement holder the following:[39]
>
> d. the exclusive right to use, possess, and enjoy the surface estate of the lands subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
> e. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for transportation, communication, and transmission purposes and the associated support functions for which the surface of the lands is used;
> f. subjacent and lateral support of the lands subject to the easement; and
> g. the right (in the easement holders discretion) to fence all or part of the lands subject to this easement, and to affix track, fixtures, and structures to such lands, and to exclude other persons from all or part of such lands.

The easement rights are determined by the plain language of the Warranty Deed and well as the intent of the parties[40].

Statutory Construction. In interpreting a statute, the plain meaning of the specific limited-use easement words used in the statute controls[41] , because the four corners of the Warranty Deed easement are unambiguous[42] and only open to one reasonable interpretation[43]. Prior to ARTA[44], the Alaska

---

[38] App. Ex. 6 (from Statement of Reasons). This is the same easement description as was on the old railroad ROW arising from the 1914 Act which abutted Lots 13 and 14. The character and scope of the easement was not enlarged nor did it morph into an "exclusive-use easement" defined by statute 20 years later. The intent of the Federal Government in purchasing the 1965 Warranty Deed was to realign the 1914 easement with the necessity, under *A.J. Myers*, to pay compensation for the change. The scope of an easement is determined by State law. *Beres v. U.S.*, 64 Fed.C. 403 (Fed.Cl. 2005). *See also, Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940).

[39] App. Ex. 1 (from Statement of Reasons).

[40] Ms. McDaniels' opinion is supported by the law *Ahtna, Inc. v. State of Alaska DOT&PF*, 296 P.3d 3, 12 (2013).

[41] *Simon v. State of Alaska*, 996 P.2d 1211, Appendix (Alaska 2000)(citing *Aladdin Petroleum Corp. v. Gold Crown Properties*, 561 P.2d 818, 822 (Kan. 1977); *Anderson v. Edwards*, 625 P.2d 282, 286 (Alaska 1981).

[42] There is no argument, no evidence, and indeed nobody could maintain that the intent of either BLM or Jarvi in 1965 was to create a statutorily defined "exclusive-use easement" which came into existence 20 years later, much broader in scope than the property rights BLM and Jarvi negotiated in the 1965 Warranty Deed.

[43] *Dias v. State of Alaska DOT&PF*, 240 P.3d 272 274 (Alaska 2010).

[44] In construing a statute it is proper to "refer to the history of the times when [the statute] was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it." *United States v. Union Pacific R. Co.*, 91 U.S. 72, 29 (1875). What was meant by the framers of the pertinent statutes can be established by reference to the discussion that took place at the time.

Railroad Act of 1914 provided for the construction and operation of a railroad on its land[45]. With individual property ownership and statehood in 1959, and the claims of indigenous (Native) people[46]; the railroad no longer operated exclusively on Federal land. ARTA addresses the many complex issued for transfer of the Alaska Railroad real property, personal property and operation to the State of Alaska[47] including right-of-way track areas where there was no uncertainty of ownership (such as Lots 13 and 14 on which the Federal Government had purchased a limited use easement); and track areas where there was uncertainty[48] created by existing unresolved claims.

"ARTA §1203. Transfer authorization" sets out the authority and method of transfer of the Alaska Railroad. The Federal Government's limited-use perpetual easement on Lots 13 and 14 was transferred pursuant to ARTA §1203(b)(1)(B) which provides:

> (B) deliver to the state an interim conveyance of the rail properties[49] of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph [non-real property interests] and are not subject to unresolved claims of valid existing rights;

No other transfer method applies[50]. The fundamental flaw[51] in BLM's (and ARRC's) statutory construction is on Pages 4 & 5 of BLM's Answer where it admits that subparagraph A is limited by the introductory paragraph, , but then asserts that subparagraph B is not limited by the same introductory paragraph §1205(b)(4)(A) which states:

---

[45] Accompanying this *Reply* are excerpts from *The Building of Railroads in Alaska, Hearings Before the Committee on the Territories, House of Representatives, Sixty-third Congress, First Session*, Exhibit 24 hereto.

[46] For a summary of Native claim issues, see *The Alaska Native Claims Settlement Act At 35: Delivering on the Promise*, by James D. Linxwiler, Exhibit 25 hereto:

[47] GAO Report, Exhibit 26 hereto.

[48] This uncertainty is illustrated by the very existence of §1205. Lands to be transferred starts out with what is not available (§1205(a)) and then follows with a procedure for dealing with existing unresolved claims (§1205(b)).

[49] 45 U.S.C. 1202(10) is the definition[49] of "rail properties of the Alaska Railroad" (emphasis added) while 1202(6) is the definition of "exclusive-use easement". These easement definitions are exact, define completely different property interests and each phrase only means what is set out in the definition when used in the statute, nothing else, more or less.

[50] The other options include §1203(b)(1)(A) apply to property interests other than in real estate; §1203(b)(1)(C) apply to an exclusive use license for other than "rail properties" defined in §1202(10) to mean "all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property...."; §1203(b)(1)(D) which provides an specific **exclusive-use easement** in Denali National Park and Preserve.

[51] The application of 1202(10) rather than 1202(6) is consistent with the historic evolution of railroad rights-of-way; with the discussion taking place at the time ARTA and ARCA were enacted; as well as the United States Supreme Court' recent *Brandt, supra,* decision. This also ties in with A.S. 42.40.285(5)(c) which clearly differentiates between §1202 "exclusive use" (6), and rail properties (10). ARTA prohibits exactly what is attempted here: an exclusive use easement in a municipality without legislative approval.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights[52] filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way: [emphasis added].

This language simply does not apply to the non-Village Corporation private property perpetual limited use easement purchased by the Federal Government with the 1965 Warranty Deed on Lots 13 and 14 on which there were no unresolved claims.

BLM[53] and ARRC rely on the 2013 BLM Memorandum[54] for authority to re-patent an exclusive-use easement on Lots 13 and 14. The BLM Memorandum is in stark contrast to (1) the process used by the Federal Government to purchase the easement, and (2) to the opinion of BLM's Margaret McDaniel (Exhibit 22 hereto). The 2013 BLM Memorandum makes the astonishing conclusion that the 1965 Warranty Deed perpetual limited-use easement does not mean what it says and is instead an exclusive-use easement[55], defined by a statute (ARTA) enacted twenty years later, by illogically reasoning:

1. The property is physically and legally subject to an existing railroad easement;

2. Railroad easements are by their nature both broad and exclusive [not since 1871 as established by the March 10, 2014 United States Supreme Court *Brandt* decision];

3. Exclusive control [of the railroad operation] is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm;

---

[52] "Valid existing rights" has a particular meaning and refers to Alaska Native allotment claims. *See,* 43 U.S.C. § 1634; *See also,* www.elips.doi.gov/ELIPS/0/doc/1794/Page1.aspx &

[53] The FOIA correspondence makes it look like the "perpetual" easement was nevertheless just a realignment of the 1914 reservation in Jarvi's patent, recognizing *A.J. Myers* rejects change without compensation.

[54] App. Ex. 1.

[55] Exclusive easements, by law, must be specific. *Garrett v. O'Dowd,* 775 N.W.2d 549 (Wis.App. 2009); *Fedorko Propeties, Inc. v. CF Zurn & Assoc.,* 720 A.2d 147 (Pa.Super. 1998); Exclusive easements, which give the dominant landowner the right to exclude the servient landowner (whose land is burdened by the easement), are disfavored by courts (see Hurd v Lis, 92 Ad.2d 653, 654; Hoffman v Capitol Cablevision Sys., 52 Ad.2d 313, 315; see also 1 Rasch, New York Law and Practice of Real Property § 18.41 [2d ed.]; 49 NY Jur 2d, Easements § 32). For that reason, an easement will be deemed nonexclusive "unless the opposite intent unequivocally appears" (Hurd v Lis, 92 Ad.2d at 654; *see* Hoffman v Capitol Cablevision Sys., 52 AD3d at 315). To the contrary, "exclusive" is used by ARRC in its own easements/leases as a burden on the grantee ("ARRC grants to [Flamingo Brothers] the exclusive right and privilege, at any and all times during the term of this agreement, to enter upon, produce, excavate, screen and remove gravel....") as a restriction on the grantee, like the 3 ways mentioned in *Laverty v. Alaska Railroad Corporation,* 13 P.3d 725, 735-36 (Alaska 2000). Alaska Railroad's overreaching was also clipped in *Native Village of Eklutna v. Alaska Railroad,* 87 P.3d 41 (Alaska 2004) (Affirmed 142 P.3d 1192 (Alaska 2006).

4. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement [not since 1871 as established by the March 10, 2014 United States Supreme Court *Brandt* decision]; and [but the two easement terms, set forth on the first page, are vastly different].

5. The terms of the Jarvi deed should be construed to match the specific terms of the exclusive-use easement defined in ARTA.

ARRC also relies on an earlier December 20, 2012 BLM Memorandum Opinion[56] which addressed Ms. McDaniels questions about the railroad's easement on private property. That opinion initiates the backward approach taken by BLM and ARRC by skipping over the question of what federal property interest existed and incorrectly focusing on the "exclusive-use easement" definition in ARTA. The 2012 Opinion's illogic is that:

1. the Jarvi Warranty Deed language is for an easement, (even though not exclusive),

2. incorrectly[57] cites 74 C.J.S. *Railroads* § 225 (2002),

3. a different concept of exclusive control is necessary,

4. inaccurately states that the Jarvi Warranty Deed limited-use easement language "mirrors the general terms" of the statute specifically-defined "exclusive-use" easement,

5. concludes that even if the federal interest is less, the "exclusive-use easement" mandated by ARTA for unresolved claims,

6. mistakenly says the federal government has title[58] to the property (when it clearly only has an easement (right to use), and

7. concludes a patent procedure should be applied to the federal government's transfer of easements on private property, Lots 13 and 14; even though the property was already patented 61 years earlier.

ARRC ignores the plain meaning of the statutes and resorts to inappropriately taking selections of various sections and trying to piece them together to create a different meaning[59]. An exclusive-use

---

[56] App. Exhibit 12.

[57] CJ (which has not been published since 1937), AmJur and similar treatises are secondary sources and should not be directly cited [insert legal cite]. The obvious reason is that they make conclusions based on cases that may later be bad law. The exclusive control concept quoted was actually found at § 214 and relies on *State v. Preseault*, 652 A.2d 1001 (1994), *State v. Beeson*, 232 S.W.3d 265 (Tex.App. Eastland 2007), and Seaboard Air Line Ry. V. Banks, 92 So. 117 (1921) – none of which have application to a private easement obtained by warranty deed (as opposed to legislation), or ARTA. These referenced holdings have been overruled by *Brandt, supra, Beres v. U.S.*, 64 Fed.Cl. 403 (Fed.Cl. 2005), *Hash v. United States*, 403 F.3d 1308 (Fed. Cir. 2005) *and Leo Sheep v. United States*, 440 U.S. 668 (1979).

[58] BLM's confusion is created by the fact that the Jarvi Warranty Deed conveys title to some lots, but only a limited easement as to Lots 13 and 14.

easement has to be created using specific language[60]. If ARTA actually intended that the existing limited-use easement for "railroad, telephone and telegraph" was to be changed to an exclusive-use easement, that would have been clearly stated[61]. This is especially true because it triggers *A.J. Myers* and requires compensation as the FOIA letters demonstrate and as recognized in 1965 by BLM/DOI; ARTA's §1203(c)(1) would not state all reservations by document of title shall be conveyed, and, § 1212(b) would not state that "reservations" made under the 1914 Act remain; are not "revoked" by the operation of ARTA. The misleading statements in ARRC's Answer are never ending[62]. Unwinding all of the confusing, misleading conclusory statements in ARRC circular repetitive arguments would be exhaustive

---

[59] ARRC inserts the phase "exclusive control" into the Congressional Record at ARRC's Footnote 15 where it is nowhere to be found. Of course the Alaska Railroad should have exclusive control over its own daily operations but that does not equate to the Alaska Railroad having the defined exclusive-use property rights on Lots 13 and 14 where it has only a "perpetual" (i.e. long duration) limited-use easement. ARRC states at Page 9 of its Answer, "To that end, the United States is required to convey to the State at least an exclusive-use easement in all portions of the ROW that left federal ownership before January 14, 1983 ...", which would include Slaibys' property but does not provide any legal support for its conclusory statement. On that same Page 4 in the first full paragraph, ARRC mixes "exclusive control" to be the same as "exclusive use easement. But the authority[59] cited in ARRC's Footnote 32 (other than the above discussed ARRC Ex. D., at 2) from 45 U.S.C. §1205(b)(4) is expressly limited to **"valid existing rights filed by Village Corporations"**. Clearly this does not apply to Slaiby's privately owned Lots 13 and 14. Shortly thereafter, ARRC cites the statutory definition of "exclusive-use easement" in support for its statement that "ARTA therefore required the United States to convey to the State, at a minimum, the exclusive right to use and occupy the ROW for transportation, communication and transmission purposes, including the right to exclude all other persons and entities from all or any of the ROW.

ARRC asserts conclusory statements not supported by law. For example at Page 1 it asserts that ARTA requires BLM to convey at least an exclusive-use easement, but for authority references Section "Section II.A.2 of its own argument. But Section II.A.2 of ARRC's argument does not provide the requisite authority, it circuitously refers back at Footnote 17 to ARRC's Exhibit D, Page 2 – which supports Appellant Slaibys' interpretation that the "exclusive-use easement is limited to the special easement the State of Alaska was to receive in Denali National Park and other "land owned in fee by the Federal Government – NOT privately held land such as Slaibys' property. The applicable section (starting on the far-right column of ARRC's Exhibit D, Page 2) reads:
The concept of an exclusive use easement also is introduced in the substitute [bill]. This defined interest represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process. Of course, completion of the process may also result in the conveyance of more than just the easement. It also is the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State. (emphasis added).

[60] Unless the instrument creating an easement expressly creates an exclusive easement, the rights of the easement holder are nonexclusive. *Ericsson v. Braukman*, 824 P.2d 1174 (OR 1992); The courts look to the express words used to determine what respective uses were contemplated. *Minto v. Salem Water, Light & Power Co.*, 250 P. 722 (1926).

[61] Rules of construction cannot be invoked to contract plain language which is decisive of limits of easement. *Minto v. Salem Water, Light & Poser Co.*, 250 P. 722 (OR 1926);

[62] This faulty reasoning is akin to *Brandt's, supra* at Page 8, rejection of the Government's argument that, "the similarity in the language of the 1875 Act and the pre-1871 statutes shows that Congress intended to reserve a reversionary interest in the lands granted under the 1875 Act, just as it did in the pre-1871 statutes."

and so an illustrative chart outlining ARRC's legal analysis accompanies this Reply[63]. The merit of ARRC's "exclusive-use easement" argument is akin to arguing "π" (the algebra irrational infinite which = 3.14) is the same thing as "pie" (a dessert) because they sound similar.

ARRC makes inconsistent arguments[64]. ARRC contends that (1) the Slaiby easement is sui generis[65], unlike other easements such as a telephone line to a house, and the BLM's proposed patent of an "exclusive-use easement" is not inconsistent with the original easement; but (2) argues that the 1965 Jarvi deed purchased the additional bundle of sticks property rights necessary to make the original mere limited-use easement into an exclusive-use easement even though there are no such words in the Jarvi deed; (3) ARRC then argues that Section 1205 of ARTA dictates that the scope of the easement be changed to an exclusive easement; but (4) then concludes its brief admitting that if the easement on Slaiby's property was not an exclusive-use easement, or was not required to be changed to an exclusive-use easement; nevertheless ARTA mandates the Department of Interior ("DOI") re-acquire some of the bundle of sticks of property easement burden held by the landowner, so that it can convey an exclusive-use easement[66].

Finally, in the event it can convince us the statute is ambiguous; ARRC relies on outdated secondary sources[67] and case law[68] in an attempt to piece together some support[69] for its conclusion that

---

[63] Exhibit 27 hereto.

[64] Another inconsistent argument is found at Section II.C. where ARRC makes much of BLM Memorandum already addressed above. Then as a back door, ARRC argues at Page 27 that "ARRC's eligibility to receive the exclusive-use easement is irrelevant to BLM's decision. This is the analysis that ARRC[64] and BLM rely on to take[64] property interests from hundreds of railroad-adjoining property owners – the public they each serve.

[65] Contrary to the *Brandt* decision; *See,* Sotomayor dissent in 8-1 *Brandt* decision.

[66] A position contrary to § 1203(c)(1) and 1212(b) which leaves existing easements unrevoked by ARTA.

[67] 65 AmJur2d §62 cited in ARRC's Answer relies on *City of Charlotte v. BMJ*, 675 S.E.2d 59 (2009); *State v. Preseault*, 652 A.2d 1001 (1994); *Hanson Indiana v. County Spokane,* 58 P.3d 910 (Div. 3. 2002); and *State v. Beeson*, 232 S.W.3d 265 (Tex.App. Eastland 2007) all of which were overruled by *Brandt*; *Gustin v. Steele*, 549 N.W.2d 135 (1996) which does not make and exclusive use finding; and *Attorney General v. Pere Marquette Ry. Co.*, 248 N.W. 860 (1933) which deals with exclusive rights, not the statutorily defined exclusive-use easement.

[68] Attached hereto as Exhibit 28 are ARRC communications asserting changing arguments, most noticeably after the United States *Brandt* decision. But these analyses deal with easements created by federal legislation, NOT an easement created by a contractual Warranty Deed and then transferred by federal legislation. As with other Alaska homesteads, the Jarvi homestead patent contained a reservation under the 1914 Act for "railroad, telephone and telegraph." This description is the model of the simple common law easement described in *Brant.* Indeed, incorrectly, ARRC and BLM in their prior legal analysis heavily depended on pre-1871 authority[68]. The United States Supreme Court's March 10, 2014 *Brandt, supra* decision answers the question about statutory construction,

the intent of ARTA as it applies to the Warranty Deed limited-use easement on Lots 13 and 14 is to ignore the *A.J. Myers* recognition that once a patent has been issued, the federal government can no longer simply take but must negotiate and acquire new property rights. ARRC's legal arguments as to why it is entitled to an exclusive-use easement on Lots 13 and 14 keep changing. Prior to the February 2014 United States Supreme Court case, *Brandt, supra,* ARRC and BLM heavily relied on incorrect interpretations of outdated railroad easement law. Now ARRC, references the cases overruled by *Brandt* at Pages 19 and 20 of its brief[70], but incredulously in contradiction to that argument, asserts that the 1875 and 1914 laws which are the basis for those court rulings, as well as the *Brandt* decision itself, are irrelevant[71].

c. **The Slaibys' Have Standing To Object To The Theft of their Property Rights.**

ARRC has further clouded what should be a legitimate dialog with its factual misleading argument about the status of the title to the Slaibys' property[72]. ARRC asserts as a fact that the Slaibys' have no title interest in the right-of-way and therefore no basis to object to the proposed illegal patent because the

---

rejects the sui generis concept and the pre-1871 authority on which ARRC and BLM rely. It holds that there was a major shift in congressional policy concerning railroad land grants in 1875, such that post-1871 easements such as the 1914 easement are "wholly inconsistent" with a grant of a fee interest and of a limited fee. *Brandt* calls the statutory construction that the right of way is more than a mere easement "improbable" and "self-serving." *Brandt, supra,* validates the Slaibys' argument which relies heavily on the *Great Northern R Co. v. US,* 315 U.S. 262 decision cited by Slaibys in their *Statement of Reasons*[68]. *Brandt* holds: An easement is a "nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement." Restatement (Third) of Property: Servitudes §1.2(1)(1998). And Sections 912 and 940 "plainly evince Congress's intent to divest the government of any title or interest it had retained to railroad ROW and to vest that interest in individuals to whom the underlying land had been patented.... As in *Brandt*, the determination in this matter should be that the 1965 Warranty Deed conveyed fee simple title to the right-of-way land "with all the rights, privileges, immunities, and appurtenances, of whatsoever nature...burdened by a limited simple easement; not something more in the nature of a limited fee, or as it is called here, an exclusive-use easement.

[69] The Commentaries on The Modern Law Of Real Property Vol. 2 by George W. Thompson does not even support ARRC's argument; it states at Page 504 "[d]eeds for railroad rights-of-way are usually construed as giving a mere right-of-way...."

[70] *For example, Western Union Telegraph Company v. Pennsylvania Railroad Company,* 195 U.S. 540 (1904) which is specifically cited in the dissent to *Brandt*; *State of Idaho v. Oregon Short Line Railroad Company,* 617 F.Supp. 207 (D.Idaho 1985) which cites the *Great Northern Railroad Co. v. U.S.,* 315 U.S. 262, 263 (1942) relied on by Appellants and by *Brandt*; and *Vieux v. East Bay Regional Park District* 906 F.2d 1330 (9th Cir. 1990) which deals with a legislative easement reservation; not an easement created by Warranty Deed.

[71] *See ARRC Memorandum finding Brandt irrelevant to these issues.*

[72] Indeed, the jurisdiction of IBLA over this matter is called into question by ARTA § 1212(1): "The provisions of ...the Administrative Procedures Act,....shall not apply to actions taken pursuant to this chapter...."

limited-use easement was mistakenly not included[73] in the prior 1972 transfer before Slaibys came into title[74]. However, ARRC buries in its Footnote 46 that its own title report reveals that this was corrected by the subsequent 2012 Quitclaim deed[75] which had the explicit INCLUSION of the limited-use easement. Regardless, the Landowner of Lots 13 and 14 retained all the property rights in the property rights consisting of the bundle of sticks not conveyed by the limited use perpetual easement conveyed to the Federal Government by the 1965 Warranty Deed – those non-easement property rights in the right-of-way land were never obtained by the Federal Government, nor transferred to ARRC, but remain with the prior landowner[76], the other person "whose land is burdened" by the easement[77]. *See, Brandt.*

d. Neither BLM nor ARRC are Exempt from A.S. 42.40.285

Section 285(5) of Alaska Railroad Corporation Act, A.S. 42.25 *et. seq.* ("ARCA") states:

> Unless the legislature approves the action by law, the [Alaska Railroad] corporation may not .... (5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes...

ARRC argues that it is exempt pursuant to 42.40.285(5)(C):

> ...this paragraph does not apply to the application for or acceptance of a grant of federal land associated with ... (C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI. P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in *45 U.S.C. 1202(10)*.[emphasis added].

This exemption is further proof that the conveyance to the State of the 1965 Warranty Deed perpetual limited use easement was a 1202(10) conveyance for which no pre-legislative finding is required that the federal [not private] land is essential for railroad purposes is necessary.) . This .285 exemption only

---

[73] Even if this were true, the law contains a remedy to correct the title. *See, Groff v. Kohler*, 922 P.2d 870 (Alaska 1996); *Diaz v. Home Federal Savings and Loan Assn of Elgin*, 786 N.E.2d 1033 (Ill.App. 2002); *Dean v. MOD Properties, Ltd.*, 528 So.2d 432 (5th Dist. Florida 1988).

[74] A.S. 34.15.070 imposes conveyance of all real estate interests.

[75] App. Ex. 16 at 64.

[76] If ARRC is correct, then BLM's notice of the proposed patent was not sent to all affected parties and the process needs to start over again. As in *Laverty, supra,* ARRC cannot have it both ways.

[77] If as ARRC asserts, the effect of the title documents are an issue beyond the scope of the appeal; why does ARRC make this argument and attempt to "derail" the appeal with a standing argument? Indeed the Municipality of Anchorage has recently recognized the Slaibys' fee simple ("full title as referenced by BLM at Page 3 of its brief) ownership of the property, including the right-of-way[77].

applies to § 1202(10) rail properties,[78] not to a 1202(6) conveyance. However, the proposed BLM patent does not contain a 1202(10) conveyance; it clearly contains a 1202(6) exclusive-use easement conveyance. If the State of Alaska truly thought by statutory fiat it was obtaining am easement of broader scope than the existing limited-use easement in the form of an exclusive easement, why was it necessary to include Section 285 in its enabling statute, ARCA? There would be no distinction between the scope of the easement being created (at the uncompensated expense of the private land owner) and the "exclusive easement" requiring legislative approval when in a municipality.

ARRC is clearly not exempt from ARCA's requirement for an exclusive-use easement. Legislative approval under § 285 has not been obtained.[79] No legislative finding that the federal land is required for essential railroad purposes, for an expanded easement on the Appellants' property has been made, or even requested. No such finding can legally be made since the easement in question is unquestionably on private land.

[78] As in *Laverty, supra,* ARRC cannot have it both ways.

[79] To the extent either ARRC or BLM suggest they are not obligated to meet State law requirements, *See, Laverty v. ARRC*, 13 P.3d 725 (Alaska 2000)("Finally, ARRC contends that its lands cannot be state lands because the federal government conveyed them directly to ARRC, and ARRC holds title to them in its own name. But the Alaska Railroad Transfer Act shows just the opposite, establishing that Congress transferred railroad ownership to Alaska in a way that made federal railroad lands state lands. The Act gave the Secretary of Transportation authority to "transfer all rail properties of the Alaska Railroad to the State," defining "State" to mean, "the State of Alaska or the State-owned railroad as the context requires." In essence, then, the transaction was a federal-to-state grant: the federal government gave Alaska all of the federal railroad's lands, allowing the state to designate the form of the state entity that would receive them. The way the state chose to take title, hold, and manage those lands is immaterial to whether they are governed by the Alaska Constitution's mandate.") ARTA does not transfer railroad properties to the ARRC, it transfers them to the State of Alaska. How the railroad properties are held is determined by State law. Whether ARRC is allowed to have exclusive easements in a municipality is decided by the State; not ARRC nor ARTA and ARRC is not allowed this easement transfer in its present form.

III. CONCLUSION.

BLM and ARRC's approach is piecemeal and misleading to the public they serve. When the ARTA and ARCA statutes are read in context, and with reference to the hearings which lead to enactment of ARTA, there was no exclusive-use easement being created by the Federal Government when it transferred what it owned, nothing more, to the State of Alaska, and no creation by the State of Alaska of an exclusive-use easement when it established ARCA to operate the railroad. BLM's proposed patent cannot proceed because:

(1) BLM (the Federal Government) holds a perpetual limited-use easement defined by its purchase document, the 1965 Warranty Deed;

(2) ARTA provides for the Federal Government to transfer what it owns. ARTA does not contain a condemnation procedure providing for re-acquisition of sticks from the bundle of property interests, to allow a greater conveyance of property rights, an exclusive-use easement to ARRC;

(3) The requirements of A.S. 42.40.285(5) have not been met.

(4) The patent procedure in ARTA is for property interests not previously surveyed or patented; not for re-patent of private fee simple property which had already been surveyed and patented. The appropriate vehicle for transfer of an easement on private fee simple land already patented, is an assignment of the easement property interest, a simple, legal, and expeditious transfer as compared to the "land grab" approach now underway.

Respectfully submitted this June 13, 2014.

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
907-276-6354
907-279-4685 (fax)

Attorney for Peter Slaiby
and Rejani Slaiby

CERTIFICATE OF SERVICE

I certify that on June 13, 2014, I served this Appellants' Reply, as indicated below, upon:

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(by mail)

Steve Scordino, Attorney Advisor for
Bureau of Land Management, Alaska State Office
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(by mail)

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
(by mail)

Roy Longacre

Roy L. Longacre, Esq.

Scordino, Steven <steven.scordino@sol.doi.gov>

Slaiby - Answer to Supplemental

5 messages

Scordino, Steven <steven.scordino@sol.doi.gov> Thu, Jun 4, 2015 at 4:24 PM
To: Andy Behrend <BehrendA@akrr.com>

I have worked hard to remove my sarcasm and obvious irritation from this brief. I think that is still a work in progress. I plan to file this next week and will be out of the office tomorrow.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

Slaiby - Answer to Supplemental SOR.docx
33K

Andy Behrend <BehrendA@akrr.com> Thu, Jun 4, 2015 at 6:04 PM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Thanks, Steve.

I will be drafting tomorrow, circulating for internal comment on Monday and should have a draft for you by Monday afternoon. I will provide you with any comments on your draft once I have reviewed it tomorrow. I believe the brief is due for filing on or before next Wednesday.

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell 907.350.3042

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, June 04, 2015 4:25 PM
To: Andy Behrend
Subject: Slaiby - Answer to Supplemental

[Quoted text hidden]

Andy Behrend <BehrendA@akrr.com> Mon, Jun 8, 2015 at 6:49 PM
To: "Steve Scordino (steven.scordino@sol.doi.gov)" <steven.scordino@sol.doi.gov>

Steve:

Attached is our initial draft of the answer to the appellants' supplemental statement of reasons. Any thoughts would be appreciated.

I liked your draft brief. It was straight to the point. I did not think you let much sarcasm or irritation show. On that note, do you think I am being too strong in stating that their brief mischaracterizes the holding of the 1982 decision? I think it does, especially to the extent they say the Board made its holding based on the light burden of a non-exclusive easement. That's just wishful thinking at best. Also, is my objection footnote at the end too strident?

I did see a couple minor typos in your brief, but do not have them in front of me right now. I will check your draft tomorrow and let you know. I am guessing you caught them in proofing.

I calculate that this brief must be filed by Wednesday. Our working plan is to file it that day or late tomorrow if we get it together by then.

Thanks,

Andy

From: Andy Behrend
Sent: Thursday, June 04, 2015 6:05 PM
To: 'Scordino, Steven'
Subject: RE: Slaiby - Answer to Supplemental

STEVEN SCORDINO, Attorney-Advisor
Office of the Solicitor – Alaska Region
United States Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508-4626
(907) 271-4131/Fax (907) 271-4143

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

IBLA 2014-27	)	
	)	AA-55129
PETER SLAIBY AND REJANI SLAIBY	)	

ANSWER TO SUPPLEMENTAL STATEMENT OF REASONS

The Board granted the Appellants' motion to file a supplemental statement of reasons. The Appellants took the opportunity to address The Alaska Railroad, 65 IBLA 376 (1982). In its original Answer to the Appellant's Statement of Reasons, the Bureau of Land Management (BLM) addressed only the arguments posited by the Appellants that were relevant to the issue before the Board. BLM explained it avoided red herring arguments, like the extent of the interest conveyed in the 1965 Right of Way Deed, because that issue is beyond the scope of the question before the Board. (BLM Answer at fn. 5.) However, the BLM will address The Alaska Railroad to clarify why arguments regarding the interests conveyed by the United States in the Act of 1914 establishing the Alaska Railroad right of way and, specifically, The Alaska Railroad decision have no relevance to this case.

A

I. The Alaska Railroad

The Board should find The Alaska Railroad has no relevance to this case. First, the land interest conveyed by BLM pursuant to the ARTA in the current case was a right of way purchased by the United States in 1965. The question of what interests were created by the Act of 1914 is not in any way before the Board.[1] This is a pure red herring argument.[2] Second, The Alaska Railroad was not decided by the Board until July 20, 1982. 65 IBLA 376. The ARTA was enacted on January 14, 1983. Pub.L. 97-468, 96 Stat. 2556 (January 14, 1983), codified at 45 U.S.C. § 1201 et. seq. Therefore, it would be impossible for The Alaska Railroad decision to provide any authority on what interest the ARTA required the United States to convey to the Alaska Railroad. The Alaska Railroad neither provides guidance on the scope of interests created by the right of at issue in this case nor what ARTA requires the BLM to convey. Therefore, this decision has absolutely no bearing on this case.

The issue decided in The Alaska Railroad was "whether the land within the right-of-way granted to the Alaska Railroad [pursuant to the Act of March 12, 1914] is occupied, appropriated, and/or reserved so as to be exempt from State selection [under section 6(b) of the Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 340]." 65 IBLA at 377. The Board looked to the "nature of the rights of way granted by similar statutes." Id. at 378. First, the

[1] The Appellants note that BLM did not join ARRC in asserting that "since 1914 the (sic) Railroad's the right-of-way has never consisted of a simple right-of-way or easement...but instead is a much broader property interest." (Supp. Statement or Reasons at 2.) The BLM does not believe that this question is before the Board and therefore did not respond to these arguments. To the extent the Board addresses this question, BLM agrees with ARRC that railroad rights-of-way in general give the railroad exclusive use of the right-of-way. See Ex. 1 (Hopewell Memo). ARRC aptly cited the relevant authorities on the interests conveyed in a railroad right of way. See ARRC Answer at 18-21.

[2] Even the Appellants recognize the right of way at issue was not created by the Act of 1914. See Supp. Statement of Reasons at 6 ("And, this is even clearer for the situation here, **where the easement was not created by the 1914 Act, or other statute, but by a commercial real property transaction, the 1964 Warranty Deed.**)(emphasis added). Given the Appellants admission that the easement was not created by the 1914 Act, it is not clear why the Appellants raise The Alaska Railroad.

Board considered the General Railroad Right of Way Act of March 3, 1875, which granted "a similar right-of-way for railroad across the public lands outside Alaska [that] has been held to convey only an easement[3] and not a fee interest in the land." Id. (citing Great Northern Railway Co. v. United States, 315 U.S. 262 (1942)). The Board found it was accepted that post-1871 railroad right-of-ways did not separate the servient estate, citing to the Tenth Circuit decision in State of Wyoming v. Udall, 379 F.2d 635, 639-40 (10th Cir. 1967).

Next the Board considered the Acts of 1862 and 1864, which granted broader interests to the railroads which the Board described as "limited or qualified fee interest." The Alaska Railroad, 65 IBLA at 379. The Board relied on State of Wyoming v. Andrus, 602 F.2d 1379 (10th Cir. 1979), for the proposition that:

> Despite the broader limited or qualified fee interest[4] granted by the earlier railroad right-of-way Acts of 1862 and 1864, the court held that lands with school sections granted to the states which were subject to such rights-of-way were not otherwise disposed of so as to entitle the State of Wyoming to indemnity selections for such lands.

---

[3] Great Northern Railway Co. does conclude that the 1875 Act granted a right of way in determining that the railway company did not have the right to drill for oil, but it does not address whether the right of way included exclusive use of the surface estate. That question has been addressed in many other cases, including this recent opinion from the California Court of Appeals:

> The 1875 Act granted more than a "mere" easement, if that term is used to mean an old-fashioned, temporary passageway that is incorporeal in nature. To operate its trains, a railroad needs, and has, more than that. ... As to rights-of-way granted by Congress in 1875 and beyond, the Railroad has exclusive rights to the surface and, in addition, 'broad and extensive rights of sub-lateral and subjacent support to prohibit interference with railroad operations and maintenance.'"

Union Pac. R.R. v. Santa Fe Pac. Pipelines, 231 Cal. App. 4th 134, 163 (Cal. Ct. App. 2014)(quoting Energy Transportation Systems, Inc. v. Union Pac. R.R. Co., 435 F.Supp. 313, 317 (D. Wyo. 1977)).

[4] The limited fee concept was explained by the Udall court.

> For the purposes of this case, we are not impressed with the labels applied to the title of the railroads in their rights-of-way across the public lands of the United States. The concept of "limited fee" was no doubt applied in [N. Pac. Ry. Co. v. United States, 277 F.2d 615 (10th Cir. 1960] because under the common law an easement was an incorporeal hereditament which did not give an exclusive right of possession. With the expansion of the meaning of easement to include, so far as railroads are concerned, a right in perpetuity to exclusive use and possession the need for the "limited fee" label disappeared.

Wyoming v. Udall, 379 F.2d at 639 (citing to Midland Valley Ry. Co. v. Sutter, 28 F.2d 163, 168 (8th Cir. 1928)). BLM agrees with ARRC that the interest granted by the railroad easement by the Jarvis included exclusive use by the Alaska Railroad. See Ex. 1.

The Alaska Railroad, 65 IBLA at 379.

The Board determined that "based on the cases decided under other railroad right-of-way statutes" that the lands embraced by the rights of way at issue were not appropriated or reserved and that "a right of way for railroad shall be reserved in any State selection patent issued."[5] Id. The Board found that even the most restrictive rights of way under the Acts of 1862 and 1864 did not dispose of the title to the land. Id. Therefore, the Board had no reason to make any determinations on the extent of interests conveyed by the Act of 1914.

The Appellants contend The Alaska Railroad "defined the nature and extent of the federal Alaska Railroad's land interest under the 1914 Act." (Supp. Statement of Reasons at 4.) Further, the Board never "concludes that because of the specific purposes and the light, non-exclusive burden of the 1914 easement, its presence did not disqualify that land from selection by the State of Alaska." Id. In fact, the cases cited by the Board actually explain that railroad rights-of-way, in general, have the right to exclusive use. See footnote 4 *supra*; see also State of Wyoming v. Andrus, 602 F.2d at 1383 (quotes from Wyoming v. Udall, 379 F.2d at 639). In relying upon those cases, the Board found that despite the exclusive use of the surface rights by the railroad, and the even greater rights issued by the 1862 and 1864 Acts, the lands were still not disposed where the State could receive the servient estate. The Alaska Railroad, 65 IBLA at 379.

Therefore, the Board should find the Appellants arguments based on The Alaska Railroad both irrelevant to this case and completely off base.

[5] Considering the limited issue before the Board in The Alaska Railroad and the limited holding, the United States had no reason to discuss this case in the prior briefing. Despite the Appellants' contention otherwise (Supp. Statement of Reasons at 2.), nothing argued in the United States' or ARRC's Answer to the Statement of Reasons was contrary to the holding in The Alaska Railroad.

II. Effect of ARTA

The BLM stands by its original Answer to the Statement of Reasons in the explanation of how ARTA operates and why it compels the BLM to convey an exclusive use easement.[6] 45 U.S.C. 1205(b)(4)(B). This is a case of simple statutory construction and the Appellants have not suggested any basis of statutory construction to show the BLM was incorrect.

III. Conclusion

The Alaska Railroad decision has no bearing on the present appeal. The decision is not relevant because it focuses on rights of way granted under the 1914 Act creating the Alaska Railroad instead of private acquisitions of railroad rights of way and because the decision does not interpret ARTA. Even if the Board chooses to consider The Alaska Railroad, it will find that the decision never defines the extent of interest granted for rights of way under the 1914 Act.

The Appellants have not supplied any legitimate arguments through this supplemental briefing. Instead, the Appellants have continued to raise red herring arguments that lose sight of the issue of this case – whether BLM faithfully complied with ARTA when it conveyed an exclusive use easement for the right of way at issue pursuant to 45 U.S.C. 1205(b)(4)(B). The

[6] An exclusive use easement is defined by ARTA at 45 U.S.C. § 1202(6).

Board should find BLM's Answer to the Statement of Reasons focuses on the only relevant issue to this case and provides the only plausible statutory construction.

Dated June 10, 2015.

Steve Scordino
Steve Scordino
Attorney Advisor

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the office of the Regional Solicitor, Alaska Region, and I am a person of such age and discretion as to be competent to serve papers. I further certify that on June 10, 2015, the foregoing Answer to Supplemental Statement of Reasons was served in accordance with applicable rules by certified mail, return receipt requested, postage prepaid on the Interior Board of Land Appeals, 801 North Quincy St., Suite 300, Arlington, VA 22203, with a copy of the same to the following:

CERTIFIED MAIL (RRR)

Andrew Behrend
Alaska Railroad Corporation
PO Box 107500
Anchorage, AK 99510

Roy Longacre, Esq.
425 G Street, Suite 910
Anchorage, AK 99501

Lorraine Carter
Lorraine Carter
Administrative Assistant

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION

4230 University Drive
Suite 300
Anchorage, Alaska 99508–4626
(907) 271–4131

BLM.AK.4458
(LLAK944200)

December 20, 2012

Memorandum

To: Margaret McDaniel, Land Law Examiner,
Bureau of Land Management, Alaska State Office

From: Dennis J. Hopewell, Senior Attorney

Subject: Alaska Railroad Transfer – Potter Hill

Introduction

You requested my opinion on the conveyance of seven[1] lots in the Potter Hill area of Anchorage to the Alaska Railroad Corporation (ARRC) under the Alaska Railroad Transfer Act (ARTA), Pub. Law 97-468, 45 U.S.C. §§ 1201-1214. The United States still holds legal title to the railroad easements for these seven lots and you want advice on how to proceed. Three main issues are implicated: 1) what level of title should be conveyed; 2) what process should be used for the conveyance; and 3) what legal description should be used.

Short Answer

The short answer to your questions is ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive-use easement. The Bureau of Land Management (BLM) should use its normal process for conveying property to ARRC, namely a decision to do so with copies served on all appropriate parties. Following issuance of the decision, the property can be conveyed by patent using the same legal description used in the acquisition of the land by the United States.

[1] Initially the inquiry included eight lots. However, it was determined that one of the lots, Lot 19 of Block 3, Sunset Hills West Subdivision, was included in a prior interim conveyance to the ARRC. Therefore, no legal advice is needed on for that particular piece of property and it is not addressed in this memorandum.

EXHIBIT
1

Background

The seven lots in question were acquired from private parties in two separate transactions by the Alaska Railroad in 1965. At that time the Alaska Railroad was still owned and operated by the United States. The acquisitions were part of a realignment of the Alaska Railroad necessitated by the 1964 earthquake.

Portions of Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision[2] were acquired from Edwin and Yula Jarvi by a warranty deed dated July 2, 1965. Portions of Lots 15-18 and 20 were acquired from William Hancock by a warranty deed for perpetual easement of November 4, 1965.

The Jarvi deed included Lots 4, 13 and 14 as Parcel 4 of the legal description. The interest conveyed in Parcel 4 was described as:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described ... [Parcel 4].

The Hancock deed lumped Lots 15-18 and 20 together as Parcel 3. By its express terms the deed conveyed:

> ... the right privilege, and easement of using for railroad purposes authorized under the Act of March 12, 1914, 38 Stat. 304, as amended, 48 USC 301-308, exclusive of any other person or persons, as parties of the second part [United States of America] shall solely determine, in perpetuity, without hindrance, over and on those certain strips of parcels of land situate, lying and being in the Anchorage Recording Precinct, Third Judicial District, State of Alaska, and more particularly described as ... [Parcel 3].

Applicable Law

Several provisions of ARTA control this matter. Where private property is involved, the federal interest in the property must be determined even though ARTA requires the federal government to convey at least an exclusive-use easement to the Alaska Railroad Corporation. Section 606(b)(4)(B) of ARTA, 45 U.S.C.A. § 1205(b)(4)(B) (2011), sets out the requirement for conveyance of at least an exclusive-use easement as follows:

> (B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to

[2] All references to lots and blocks in this memorandum are to Block 3 of the Sunset Hills West Subdivision. The portions of the lots acquired in 1965 which will be conveyed under ARTA can be more particularly described as: those portions of Lots 3, 13-18 and 20 of Block 3 of Sunset Hills West Subdivision, according to the recorded plat thereof, lying southwesterly of the line designated as the "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, Alaska.

a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. (Emphasis added.)

The minimum conveyance required by ARTA is defined in section 603(6), 45 U.S.C.A. § 1202(6) (2011), as:

(6) "exclusive-use easement" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

Finally, section 604(b)(2), 45 U.S.C.A. § 1203(b)(2) (2011), requires:

(2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 1205 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

Analysis

Since ARTA requires the conveyance of all federal interest in rail properties and at least an exclusive-use easement, the starting point of our analysis is to determine and identify the federal interests in each of the parcels under consideration.

By its terms, as well as its title, the Hancock deed conveyed a perpetual railroad easement. The terms of that deed, quoted above, are essentially equivalent to the ARTA definition of exclusive-use easement, also quoted above. The perpetual easement is for railroad purposes. It is also exclusive of non-railroad parties and it is the United States and its assigns that have the authority to determine how others can use land within the easement.

The Jarvi deed also granted a perpetual easement for railroad purposes. The wording of that easement, quoted above, contains terms and provisions very similar to the requirements of an exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C.A. § 1202(6), quoted above. Both the deed and the statute provide the right to use the land to operate and maintain a railroad line, to lay (construct) more tracks and to use the easement for communication purposes such as telephone lines. But the terms of the Jarvi deed are not as detailed as the ARTA definition and the deed does not specify that the easement is exclusive of all other uses. Still, there is no doubt the property is physically and legally subject to an easement for an existing railroad easement. Railroad easements are by their nature both broad and exclusive. 74 C.J.S. *Railroads* § 225 (2002).[3] Exclusive control is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be construed to match the specific terms of the exclusive-use definition in ARTA. Even if the Jarvi deed were construed to grant less interest than the exclusive-use easement of ARTA, conveyance of at least an exclusive-use easement is still required by that Act. 45 U.S.C.A. § 1205(b)(4)(B) (2011).

Conclusion

Based on the above background, referenced law and analysis, the BLM should proceed with a decision to convey to the ARRC the following lots in Block 3 of the Sunset Hills West Subdivision:

1. Exclusive-use easement to portions of lots 4, 13 and 14 (Jarvis deed); and
2. Exclusive-use easement to a portions of Lots 15-18 and 20 (Hancock deed).

The process for conveyance is the normal one. The BLM should issue a decision approving conveyance to the ARRC pursuant to ARTA. Copies of the approval decision must be served on interested parties including the successors in interest to the Jarvi and Hancock deeds. The actual conveyance must wait until the appeal period plus applicable grace period has run. If there is an appeal, the appeal must be resolved before the lots can be conveyed to the ARRC.

The legal descriptions used to acquire the land in 1965 are sufficient for conveyance under ARTA. Those legal descriptions were based on a proper state survey and are shown on an accepted and recorded state subdivision plat. Carefully matching the legal descriptions is the

[3] Since it may help in understanding the comparison to a general railroad right-of-way, in 74 C.J.S. *Railroads* § 225, it is explained: "Generally, after a railroad company's right of way has been located and constructed, it has the right to the uninterrupted and exclusive possession, use, and control of the surface of the land constituting its right of way and necessary for conducting its business, ... As long as the railroad company occupies any portion of its right of way, it has the exclusive use and right of control coextensive with its boundaries. [footnotes omitted]."

best way to ensure BLM is conveying all of the federal interests in those parcels. It also creates the best title record because it makes clear that the property previously acquired by the United States is the land being conveyed to the ARRC. Moreover, use of the existing survey description is consistent with section 604(b)(2) of ARTA which provides for issuance of a patent when the land is surveyed. 45 U.S.C.A. § 1203(b)(2) (2011). Accordingly, when the time for conveyance arrives, BLM should prepare and issue a patent for the lots at issue using the same descriptions under which title was acquired by the United States.

While this opinion memorandum is covered by the attorney-client privilege and can be kept confidential, BLM may decide to release copies to nonfederal parties, such as the ARRC and the interested landowners.

If you have any questions, please do not hesitate to contact me or, in my absence, Steve Scordino, Attorney-Advisor, or Joe Darnell, Acting Regional Solicitor, at 907 271-4131.

[Quoted text hidden]

Slaiby - ARRC's Answer to Supplemental Statement of Reasons.docx
38K

Scordino, Steven <steven.scordino@sol.doi.gov> Wed, Jun 10, 2015 at 1:01 PM
To: Andy Behrend <BehrendA@akrr.com>

I just read your brief. It hits nearly the same points that I hit, so it must be brilliant.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

[Quoted text hidden]

Andy Behrend <BehrendA@akrr.com> Wed, Jun 10, 2015 at 1:08 PM
To: "Scordino, Steven" <steven.scordino@sol.doi.gov>

Steve:

That's not a coincidence. The truth always sounds the same . . .

I appreciated seeing your draft brief. It helped me organize my thoughts. And I outright stole the 2014 California case you cited; lots of the cases relating to exclusive use are older (because that issue was decided so long ago), so it is nice to have fresh new renditions of that issue. I hadn't seen that case before.

We will likely be sending our brief out today.

Thanks,

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]

Sent: Wednesday, June 10, 2015 . PM
To: Andy Behrend
Subject: Re: FW: Slaiby - Answer to Supplemental

[Quoted text hidden]

DRAFT

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA 2014-27	)	AA-55129
	)	
PETER SLAIBY AND REJANI SLAIBY,	)	Land Conveyance
	)	
Appellants.	)	
	)	

INTERVENOR ALASKA RAILROAD CORPORATION'S ANSWER TO APPELLANTS' SUPPLEMENTAL STATEMENT OF REASONS

The Appellants requested and were granted leave to file a brief addressing a 1982 Board decision entitled *The Alaska Railroad*, 65 IBLA 376 (1982) ("1982 Decision") in the context of this appeal. In their Supplemental Statement of Reasons, Appellants contend that the 1982 Decision somehow undermines the decision of the Bureau of Land Management ("BLM") to issue the a patent to Intervenor Alaska Railroad Corporation ("ARRC") for right-of-way ("ROW") land that is at issue in this case.[1] But Appellants are wrong for several reasons.

First, the 1982 Decision is irrelevant to the determinative issue in this appeal, which is whether BLM complied with the Alaska Railroad Transfer Act ("ARTA")[2] when it issued its decision approving a patent to ARRC that is the subject of this appeal. Second, the discussion in the 1982 Decision regarding the 1914 Act that led to the creation of the Alaska Railroad is irrelevant to the property interest in the ROW that was conveyed to ARRC in the property at issue here. That property interest was purchased by the federal Alaska Railroad via a warranty deed in 1965; it was not created pursuant to the 1914 Act. Third, even if the 1982 Decision was relevant to the issues in this appeal, Appellants mischaracterize its holdings. The 1982

[1] Appellants' Supplemental Statement of Reasons ("Supp. SOR") at 3-7.
[2] Pub.L. 97-468, 96 Stat. 2556 (January 14, 1983), codified at 45 U.S.C. §§ 1201 et seq.

Decision simply does not support the contentions made by Appellants about the nature of ARRC's interest in the subject ROW property.

A. The 1982 Decision is Irrelevant to Whether BLM Complied with ARTA.

Most critically, the 1982 Decision bears no relevance to the question of whether BLM complied with ARTA when it entered Decision No. AA-55129-20 ("Decision") approving the patent to ARRC for the ROW land that is the subject of this appeal (the "Proposed Patent"). In ARTA, Congress provided detailed requirements and instructions to BLM for conveying federal interests in Alaska Railroad lands to the State of Alaska. As both ARRC and BLM demonstrated in their initial Answers to Appellants' Statement of Reasons, the determinative question in this appeal is whether BLM complied with those requirements of ARTA when it issued the Decision.[3]

The 1982 Decision had nothing to do with compliance under ARTA for two very simple reasons. First, ARTA had not even been enacted in 1982. Second, the 1982 Decision decided a narrow issue arising under the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 340 ("Statehood Act") that is unrelated to ARTA.

ARTA was not enacted until January 1983.[4] The 1982 Decision, by contrast, was decided on July 20, 1982, and involved the appeal from a 1981 BLM decision.[5] The issue decided on appeal in the 1982 Decision was whether BLM correctly determined that land within the federally-owned Alaska Railroad ROW was available for selection by the State of Alaska

---

[3] *See* BLM's Answer to Appellants' Statement of Reasons ("BLM Answer"), at __; Intervenor Alaska Railroad Corporation Answer to Appellants' Statement of Reasons ("ARRC Answer") at 1-2, 14; *see also id.* at 6-8, 14-17 (describing ARTA's provisions relating to the transfer of federal Alaska Railroad lands to the State of Alaska and BLM's compliance with those provisions with respect to the subject property).

[4] *See* Pub.L. 97-468, 96 Stat. 2556, enacted January 14, 1983.

[5] *See* 1982 Decision, 65 IBLA at 376.

under the Statehood Act because it was not "occupied, appropriated, and/or reserved" so as to be exempt from selection under Section 6(b) of the Statehood Act.[6] The 1982 Decision addressed only this narrow issue under the Statehood Act, which is unrelated to ARTA, which in turn did not even exist at the time of the 1982 Decision.

ARTA supplies the rule of decision for this appeal. ARTA's requirements as to the minimum property interest BLM must convey to ARRC in federal Alaska Railroad ROW lands and how BLM must proceed in effectuating those conveyances are very specific.[7] Except in a few exceptional cases, such as ROW in Denali Park and through military bases, BLM must issue a patent to ARRC conveying the entire federal interest in the ROW lands, but that interest must be not less than an exclusive use easement as defined in ARTA.[8] And ARTA does not leave the particulars of the required exclusive use easement to the imagination, instead setting out a very detailed definition of what that interest entails.[9]

In deciding to grant the Proposed Patent to ARRC that is at issue here, BLM complied with these requirements of ARTA.[10] Nothing in the Appellants' briefs to date, including their Supplemental Statement of Reasons, undermines that conclusion. For that reason alone, the Board should hold that the BLM Decision was proper.

B. Appellants' Arguments Relating to the 1914 Act Do Not Apply to the Land at Issue Here.

Just as they did in their initial Statement of Reasons, Appellants devote the lion's share of their Supplemental Statement of Reasons to arguments relating to the Act of March 12, 1914 ("Act of 1914") that led to the creation of the Alaska Railroad, which was both owned and

---

[6] *See* 65 IBLA at 377-78.
[7] *See* ARRC Answer at 6-10.
[8] *See id.* at 7-10, 15-16.
[9] *See* 45 U.S.C. §1202(6) (quoted in full in ARRC Answer at 9-10).
[10] *See* ARRC Answer at 14-17.

operated by the federal government.[11] Although Appellants' arguments relating to the Act of 1914 are unavailing on their merits,[12] those arguments are also irrelevant to the issues in this appeal for two reasons. First, the Act of 1914 has no bearing on whether BLM complied with the conveyance requirements of ARTA. Second, even if the Act of 1914 was relevant to the issues in this appeal, which it is not, the Act of 1914 bears no relationship to the property interest the federal government seeks to convey to ARRC in the Proposed Patent.

As described in greater detail in ARRC's initial Answer, the federal government purchased its interest in the property at issue in this appeal from an adjoining residential landowner via warranty deed in 1965.[13] That purchase was necessitated by the need to reconstitute the ARRC ROW in the area, which was devastated by the Good Friday Earthquake of 1964. The federal government's property interest in the subject property, therefore, arose from the warranty deed obtained in 1965. That warranty deed (the "Jarvi Deed"), which conveyed "[a] perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines," does not invoke or otherwise refer to the 1914 Act.[14] The federal government's property interest in the subject property, therefore, was not created pursuant to the 1914 Act but solely by the 1965 Jarvi Deed. The 1914 Act simply is not relevant to the scope or nature of that property interest.

Although the nature of the property interest conveyed to the federal government under the Jarvi Deed is not relevant to the determinative issue on appeal of whether BLM complied with ARTA in deciding to issue the Proposed Patent, the Jarvi Deed did, in fact, convey an exclusive use easement to the federal Alaska Railroad. As described in ARRC's initial Answer,

---

[11] *See* Supp. SOR at 2-7.
[12] *See* ARRC Answer at 21-23; *see also* Section C, *infra*.
[13] *See* ARRC Answer at 10-11.
[14] *See* Appellants' Exhibit ("App. Ex.") 12, at 2; ARRC Answer at 11.

a legal opinion obtained by BLM prior to its issuance of the Decision confirmed both ARTA's requirement that BLM convey at least an exclusive use easement to ARRC and that the Jarvi Deed conveyed an exclusive use easement meeting the minimum property interest requirement of ARTA.[15]

C. Appellants Mischaracterize the Holding in the 1982 Decision, Which Would Fail to Support Their Position Even if it Were Relevant Here.

Appellants contend in their Supplemental Statement of Reasons that the 1982 Decision "defined the nature and extent of the federal Alaska Railroad's land interest under the 1914 Act."[16] They further contend that in the 1982 Decision, the Board "conclude[d] that because of the specific purposes and the light, non-exclusive burden of the 1914 easement, its presence did not disqualify that land from selection by the State of Alaska."[17] With all due respect, these descriptions of the 1982 Decision misstate the Board's actually holdings in that decision.

Although the Board discussed the 1914 Act and its relationship to previous federal acts granting railroad ROWs, the Board nowhere in the 1982 Decision made a definitive finding about the nature and extent of the federal Alaska Railroad's interests in lands designated as ROW under the 1914 Act. The Board considered "the nature of the right-of-way granted by similar statutes" as a means of obtaining guidance on the question of whether the Alaska Railroad ROW was "occupied, appropriated and/or reserved so as to be exempt from State selection."[18] In doing so, the Board considered cases relating to both pre-1871 and post-1871 railroad ROW grants. The Board noted that pre-1871 grants were sometimes characterized as granting ROWs that were in the nature of limited fee interests, while some post-1871 grants were determined to have granted easements that did not rise to the level of a fee interest.[19] The

---

[15] *See* ARRC Answer at 12-13; 20-21 (citing App. Ex. 12).
[16] Supp. SOR at 4.
[17] *Id.*
[18] *See* 65 IBLA at 378.

Board considered whether these various ROW grants rendered the granted ROW lands occupied, appropriated or reserved so as to be exempt under statehood acts. In the end, the Board identified cases in which courts held that neither pre-1871 nor post-1871 railroad ROW grants were exempt from statehood act selections.[20] With respect to pre-1871 ROW grants, the Board stated that:

> Despite the broader limited or qualified fee interest granted by the earlier railroad right-of-way Acts of 1862 and 1864, the court held that lands within school section granted to the states which were subject to such rights-of-way were not otherwise disposed of so as to entitle the State of Wyoming to indemnity selections for such lands. Rather, the court held it was the intent of Congress that Wyoming take the sections subject to the railroad right of way.[21]

Based on those authorities, the Board held that Alaska Railroad ROW should not be considered to be appropriated or reserved and therefore not exempt from State of Alaska selection under the Statehood Act.[22]

Nowhere in the 1982 Decision, however, did the Board either expressly or implicitly conclude, as Appellants argue, that either "the specific purposes of the 1914 Act" or any "light, non-exclusive burden of the 1914 easement" rendered the Alaska Railroad ROW open for selection under the Statehood Act. For one thing, the Board did not discuss the specific purposes of the 1914 Act. If it had, it would have had to compare and contrast the designation of the Alaska Railroad ROW from federal land for use by a federally constructed, owned and operated railroad under the 1914 Act with the granting of railroad ROWs to privately owned and operated, for-profit railroads under other railroad ROW statutes.[23]

---

[19] *Id.* at 378-79.
[20] *Id.*
[21] *Id.* at 379 (citing *State of Wyoming v. Andrus*, 602 F.2d 1379, 1385 (10th Cir. 1979)).
[22] *Id.*
[23] *See* ARRC Answer at 21 (comparing the purposes of the 1914 Act and the 1875 Act).

that Congress recognized how critical exclusive control of the Alaska Railroad ROW would be to operating the Alaska Railroad after it was transferred to the State of Alaska.[27]

D. Conclusion.

For the reasons stated above, neither the 1982 Decision itself nor anything in Appellants' Supplemental Statement of Reasons undermines in any way the Decision at issue in this appeal.[28] BLM complied with the requirements of ARTA in issuing the Decision and the Proposed Patent. Consequently, the Decision should be upheld by the Board and BLM should issue a final patent for the ROW land at issue here.

DATED this ____ day of June, 2015.

Andrew F. Behrend
Senior Attorney, Real Estate & Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
behrenda@akrr.com
907.265.2305
907.265.2443 (Facsimile)

[27] See ARRC Answer at 5-6, 9-10, 23-26.

[28] ARRC objects to the insinuation by Appellants that it is somehow improper that the 1982 Decision was not raised by ARRC or BLM in their initial Answers. There is no basis for such a criticism. As discussed in this brief, the 1982 Decision is neither relevant to the determinative issues in this appeal nor supportive of Appellants' positions. Appellants' criticism also rings hollow given that they did not raise the 1982 Decision in either their initial Statement of Reasons or their reply brief despite the fact that the decision is publically and readily available.

And nowhere in the 1982 Decision did the Board find that the Alaska Railroad ROW consisted of an easement with a "light, non-exclusive burden." Instead, as described above, the Board made the general finding that federally-granted railroad ROWs, whether granted as limited fee interests or as easements, were not exempt from state selection under statehood acts. Nowhere, even in its discussions of post-1871 railroad ROW grants that it characterized as being in the nature of easements, did the Board address the exclusivity of such easements, much less find that such easements were non-exclusive. The idea that the Board held that the Alaska Railroad ROW was a non-exclusive easement has been created by the Appellants from whole cloth. The Board certainly never made any such finding or ruling.

Indeed, as ARRC demonstrated in its initial Answer, railroad ROWs, even when characterized as "easements," provide railroads with exclusive control over the surface. As has been recognized by many courts and commentators, exclusive control over railroad ROWs is crucial to the safe and economic functioning of the railroads that use them.[24] This is true whether a railroad ROW is described as a "limited fee" or an "easement." As explained by the Tenth Circuit in one of the cases relied upon by the Board in the 1982 Decision, the concept of a "limited fee" interest in railroad ROWs is no longer necessary in order to denote exclusive use and possession.[25] Instead, '[w]ith the expansion of the meaning of easement to include, so far as railroads are concerned, a right in perpetuity to exclusive use and possession the need for the "limited fee" label disappeared."[26] Both ARTA itself and its legislative history demonstrate

---

[24] *See* ARRC Answer at 18-21 (citing authorities regarding exclusive control of ROWs by railroads); *see also Union Pacific R.R. v. Santa Fe Pacific Pipelines*, 231 Cal.App. 4th 134, 163 (Cal. Ct. App. 2014) ("As to rights-of-way granted by Congress in 1875 and beyond, the Rairoad has exclusive rights to the surface and, in addition, 'broad and extensive rights of sub-lateral and subjacent support to prohibit interference with railroad operations and maintenance.'"). The legal opinion obtained by BLM prior to its decision to issue the Proposed Patent concurred that railroad ROWs are exclusive to railroads. *See* App. Ex. 12 at 4.

[25] *See Wyoming v. Udall*, 379 F.2d at 639 (citations omitted).

[26] *Id.*

CERTIFICATE OF FILING AND SERVICE

I certify that on June __, 2015, I filed and served this Answer to Appellants' Supplemental Statement of Reasons, as indicated below, on:

FILED:
United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, Virginia 22203
[via U.S. Express Mail]

SERVED:
Roy Longacre, Esq.
Counsel for Appellants
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
[via Electronic Roy@LongacreLaw.com and U. S. Mail]

Steve Scordino, Esq.
Attorney Advisor for Bureau of Land Management, Alaska State Office
U.S. Department of the Interior, Office of the Solicitor, Alaska Region
4320 University Drive, Suite 300
Anchorage, Alaska 99508
[via Electronic steven.scordino@sol.doi.gov and U.S. Mail]

Andrew F. Behrend
Alaska Railroad Corporation
907.265.2305
behrenda@akrr.com

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203

703-235-3750 703-235-8349 (fax)

RECEIVED
SEP 14 2015
TAKE PRIDE INAMERICA
Office of Regional Solicitor
Alaska Region

PETER SLAIBY & REJANI SLAIBY

IBLA 2014-27 Decided September 10, 2015

Appeal from a decision by the Alaska State Office, Bureau of Land Management, to convey not less than an exclusive-use easement on private lands to the Alaska Railroad Corporation, pursuant to the Alaska Railroad Transfer Act of 1982, 45 U.S.C. §§ 1201-1214 (2012). AA-55129-20.

Affirmed.

1. Alaska: Generally–Conveyances: Interest Conveyed–Rights-of-Way: Nature of Decision

The Alaska Railroad Transfer Act of 1982, 45 U.S.C. §§ 1201 - 1214 (2012), requires the United States to convey no less than an exclusive-use easement to the State of Alaska (or a State-owned railroad) if land within a Federal railroad right-of-way was conveyed out of Federal ownership prior to January 14, 1983. Since that requirement applies without regard to whether the United States actually owns an exclusive-use easement, we affirm BLM determining it proper for the U.S. Secretary of Transportation to issue a patent for an exclusive-use easement to the Alaska Railroad Corporation, a State-owned railroad.

APPEARANCES: Roy L. Longacre, Esq., Anchorage, Alaska, for Appellants; Andrew F. Behrend, Esq., Anchorage, Alaska, for the Alaska Railroad Corporation; and Steve Scordino, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Peter and Rejani Slaiby, husband and wife, appeal from a decision dated September 16, 2013, by the Alaska State Office, Bureau of Land Management (BLM), under the caption "Lands Found Proper for Conveyance to the Alaska Railroad Corporation" (Decision). BLM was then acting pursuant to the Alaska Railroad

BLM.4458
A

Transfer Act of 1982 (ARTA), 45 U.S.C. §§ 1201 - 1214 (2012), which directed the U.S. Secretary of Transportation, after consultation with the Secretary of the Interior, to transfer all "rail properties of the Alaska Railroad[1] to the State" or the Alaska Railroad Corporation (ARRC), a State-owned railroad.[2] 45 U.S.C. § 1203(a); *see* 45 U.S.C. §§ 1202(1) (definition of "Alaska Railroad"), (10) (definition of "rail properties of the Alaska Railroad"), (14) (definition of "State-owned railroad"); *see also* Report to Congress, "Alaska Railroad: Federal Role Should End; Some Management Problems Remain" (General Accounting Office, Feb. 25, 1982), Ex. 26 (GAO Report). BLM found it proper for the Secretary of Transportation to grant a patent to ARRC for an "exclusive-use easement" over Appellants' residential property, which is on and adjacent to a portion of the Alaska Railroad's right-of-way (ROW). Decision at 1 (citing 45 U.S.C. § 1202(6)).[3] The Board granted ARRC's motion to

---

[1] The Alaska Railroad, a Federal railroad, was created by the Act of Mar. 12, 1914, commonly referred to as the Alaska Railroad Act, 38 Stat. 305, 43 U.S.C. § 975 (1980). The Act granted the power of eminent domain to the Alaska Railroad and authorized it to purchase real and personal property for a railroad to aid in developing the Territory of Alaska. Although originally administered by this Department, the Alaska Railroad was transferred to the U.S. Department of Transportation in 1966 and subsequently became the responsibility of its Federal Railroad Administration.

[2] The Department of Transportation will issue the patent at issue, but it will do so only if this Department (BLM) finds it proper under the ARTA. Thus, BLM's finding it proper to convey an exclusive-use easement to ARRC constitutes an appealable decision.

[3] An "exclusive-use easement" is defined by ARTA as an easement granting to Alaska or a state-owned railroad (ARRC):

> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes; (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used; (C) subjacent and lateral support of the lands subject to the easement; and (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix tracks, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

45 U.S.C. § 1202(6).

intervene in this appeal, by Order dated December 5, 2013.[4] For the reasons discussed below, we affirm BLM's decision under ARTA.

Legal and Factual Background

After over 50 years of Federal ownership and operation of the Alaska Railroad, Congress enacted the ARTA, "pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States." 45 U.S.C. § 1201(4) (2012). ARTA required the U.S. Secretary of Transportation to "transfer all rail properties of the Alaska Railroad to the State" on the date of transfer (*i.e.*, the day he simultaneously delivers to the State the bill of sale, interim conveyance, exclusive license, and deed described in 45 U.S.C. § 1203(b)(1)[5]). 45 U.S.C. § 1203(a); *see* 45 U.S.C. § 1202(4). The Act broadly defines "rail properties of the Alaska Railroad" and established a transition period for identifying, inspecting, and determining their fair market value.[6]

---

[4] Appellants filed a statement of reasons (SOR), with numbered exhibits. BLM responded on Mar. 20, 2014 (Answer), as did ARRC (ARRC Answer), with lettered exhibits. The Slaibys replied on June 16, 2014 (Reply), with additional exhibits. For simplicity, we cite these exhibits by number or letter. BLM also supplied the Board with its case file for AA055129/D (Case File). Pursuant to Order dated May 5, 2015, Appellants filed a supplemental SOR (SSOR), which BLM and ARRC responded to. This matter is now ripe for review and decision by the Board.

[5] 45 U.S.C. § 1203(b)(1) states in relevant part:

> On the date of transfer, the Secretary shall simultaneously: (A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property; (B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) and this paragraph and are not subject to unresolved claims of valid existing rights; (C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad . . . pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights; (D) convey to the State a deed granting the State . . . an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park.

[6] Despite ARTA's prescriptive procedures, the record does not include any document identifying or valuing the ROW at issue under 45 U.S.C. § 1204 (a), (d), or an interim conveyance of that real property interest on the date of transfer, as required by 45 U.S.C. § 1203(b)(1)(B), or an exclusive license pending resolution of valid existing rights under 45 U.S.C. § 1203(b)(1)(C).

See 45 U.S.C. §§ 1202(10), 1204(a), (b), (d). Based on that valuation by the United States Railway Association, the State paid $22.7 million to the United States for the rail properties of the Alaska Railroad. *See* 45 U.S.C. § 1203(d)(5).

Edwin A. Jarvi was granted patent to 150 acres of public land on September 6, 1950. *See* Ex. 5. After the catastrophic Good Friday 1964 earthquake, trackage in southern Alaska needed to be realigned and reconstructed. As part of that process, the Alaska Railroad purchased three parcels of land from Jarvi on July 2, 1965, plus a "perpetual right of way and easement [ROW] to construct, reconstruct, operate and maintain a railroad line and appurtenances" on Lots 4, 13, and 14, Block 3, Sunset Hills West Subdivision (plat of survey filed July 17, 1961), which were all in T. 12 N., R. 3 W., Seward Meridian, Alaska. More than 30 years later, the Slaibys acquired a home at 14200 Jarvi Drive, Anchorage, Alaska, which is on Lots 13 and 14 of the Sunset Hills West Subdivision. *See* Exs. 4, 16 at 51-65.

In apparent response to comments on impacts to the Slaibys' property under a proposed ARRC Residential Right-of-Way Use Policy, its counsel explained that the Alaska Railroad had acquired a real property interest in their property because the 1964 earthquake "caused the bluff in the vicinity of what is now Jarvi Drive to slide" and "the federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area." ARRC Letter dated July 24, 2012 (copy to Deputy BLM State Director (DSD)), Ex. 28 at 22. Counsel stated ARRC has an exclusive right of use and occupancy, including "the right to prohibit or to require a permit for any residential uses of or structures" within its ROW, and while that ROW is still owned by the Federal government, the "intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA." *Id.* at 22, 23; *see* DSD email dated Aug. 13, 2012 (Case File) ("I am working with the BLM Alaska staff to finalize our conveyance for this property to the ARR."); ARRC email to Dennis J. Hopewell, Esq., Office of the Regional Solicitor (copy to DSD), dated Sept. 13, 2012, Ex. 21 at 3-4.

The Slaibys responded to ARRC counsel on December 6, 2012, who forwarded their response to Hopewell (copy to DSD). He then replied to them on December 21, 2012 (copy to Hopewell and DSD). *See* Case File. Meanwhile, based on the July 2012 ARRC response, the Slaibys wrote to the DSD to urge BLM not to grant an "exclusive use easement" and to grant ARRC only what had been acquired by the United States in 1965, a "limited easement." Letter dated Dec. 19, 2012 (Case File) at 3.[7] At about that same time, Hopewell issued an opinion in which he stated:

[7] "A few feet behind their house is a 50 foot 30 degree bluff at the bottom of which there is 30 feet of property on their lot on which the railroad lies." Letter dated Dec. 19, 2012 (Case File), at 1. Since the 1965 grant of a limited ROW "has been more than sufficient for railroad purposes since it was authorized in 1914," the Slaibys (... continued)

"ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive-use easement." Memorandum dated Dec. 20, 2012 (Case File), at 1; *see id.* ("the property can be conveyed by patent using the same legal description used in the acquisition of the land by the United States").

By decision dated September 16, 2013, BLM found it proper to convey "the full and complete right, title, and interest of the United States in and to" the Slaibys' residential property, which "shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA [45 U.S.C. § 1202(6)]." Decision at 1 (citing 45 U.S.C. § 1205(b)(4)(B)). Attached to its decision was a draft patent to be executed by the Secretary of Transportation. This appeal timely followed.

Discussion

Appellants contend that the "exclusive-use easement" defined in 45 U.S.C. § 1202(6) is significantly and substantially more than the limited ROW acquired by the United States in 1965 for the realignment and reconstruction of the Alaska Railroad. *See* SOR at 9-10; Reply at 3-7; *supra* note 2. They contend that since the United States cannot convey what it does not own, BLM erred in finding it proper to grant ARRC a patent to an "exclusive-use easement" over their residential property. *See* SOR at 13-14; Reply at 8-12. BLM counters by claiming "this case turns on the construction of 45 U.S.C. 1205(b)(4)(B).[8]" Answer at 4. Moreover, according to BLM: "Appellants may ask for the Board to determine the extent of the interest conveyed in the 1965 Deed. However, this is beyond the scope of the question before the Board. ARTA requires BLM to convey all Federal interest to the lands within the Alaska Railroad right-of-way, but at a minimum an exclusive use easement." *Id.* at 7 (citing 45 U.S.C. § 1205(b)(4)(B)); *see id.* at 4 ("ARTA requires the United States to issue a

---

(... continued)
feared that granting an exclusive-use easement to ARRC under the ARTA would result in its building a fence and requiring them to pay fees to use their land on the bluff. *Id.*

[8] 45 U.S.C. § 1205(b)(4)(B) provides, "to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way," that

> Where lands within the right-of-way . . . have been conveyed from Federal ownership prior to January 14, 1983, . . . the conveyance to the State [under 45 U.S.C. § 1203(b)(1)(B)] shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by [45 U.S.C. § 1203(b)].

patent for the lands. 45 U.S.C. § 1205(b)(2)."). The ARRC response is substantially similar.[9] *See* ARRC Answer at 14-16, 23-26.

[1] ARTA states that if lands within a railroad ROW were conveyed out of Federal ownership prior to January 14, 1983, the U.S. Secretary of Transportation "shall grant not less than an exclusive-use easement in such properties [to ARRC]." 45 U.S.C. § 1205(b)(4)(B). Appellants' property was patented to Jarvi "prior to January 14, 1983," and the ROW he granted to the Alaska Railroad in 1965 is a rail property subject to transfer under 45 U.S.C. § 1203(b)(1)(B). The language of ARTA is clear. Under such circumstances, where the lands have been surveyed, the U.S. Secretary of Transportation must issue a patent to ARRC for not less than an "exclusive-use easement." *See* 45 U.S.C. § 1203(b)(3) ("the Secretary shall issue a patent therefor"). We therefore affirm the Decision, but in doing so, we express no view as to what was acquired by the United States in 1965 (*e.g.*, whether its acquisition of that real property interest included the right to erect a fence and/or exclude successors-in-interest from their land on the top of the bluff). *See* 45 U.S.C. § 1202(6); *supra* note 2. As to those and other issues, the parties may wish to have their rights determined by an appropriate court. *See, e.g., Dias v. State of Alaska*, 240 P.3d 272 (Alaska 2010).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

James K. Jackson
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge

[9] However, ARRC separately claims the ROW acquired "from the Jarvis in 1965 meets ARTA's definition of an exclusive use easement," but even if it does not, BLM would still be obligated "to convey to ARRC at least an exclusive use easement." ARRC Answer at 18; *see id.* at 18-23.

ATTACHMENT

Corrections to Draft Conveyance Document
Draft Interim Conveyance for
~~T. 22 N., R. 4 W., S.M.~~

A. On Page 1, the complete description for Sec. 32 should be deleted. These lands will be conveyed to the ARR when the Draft Interim Conveyance document dated August 19, 1985, becomes final.

B. On Page 2, first paragraph, the only ARTA citation appropriate is Sec. 604(b)(3) which provides for issuing a patent to IC'd land once it is surveyed. Sec. 604(b)(2) establishes a process and authority for lands described in an Exclusive License (Sec. 604(b)(1)(c)) that become available for conveyance to be Interim Conveyed or Patented immediately after adjudication of the unresolved claim(s). Once the lands have been interim conveyed, the process and authority for survey and patenting is contained only in Sec. 604(b)(3) and those contained in Sec. 604(b)(2) become inappropriate.

C. On Page 2, in 1.a., the line which reads - "or at the option of the State (as defined in Sec. 603(14) of ARTA)" should be changed to read as follows:

"or at the option of the State or State-owned railroad (as defined in Sec. 603(13) and 603(14) or ARTA)".

Paragraph B has comments from the state regarding the citations;

5153H

INTERIM CONVEYANCE

Right-of-way

The area conveyed is that portion of the following described lands within the Alaska Railroad right-of-way as defined by Section 603 (A) and (B) of ARTA. The interest conveyed is identified below and is not less than an exclusive use easement:

Seward Meridian

T. 15 N., R. 1 W.

Sec. 5

All Federal Interests

Lot 15
SE1/4SW1/4SE1/4

All Minerals

Lots 4, 13, 18, 32, 40, 41, 48, 49, 52 and 63

Oil and Gas

Lots 64 and 66

Exclusive Use Easement

Lots 3, 14, 17, 25, 26, 31, 53 and 65

Sec. 7

All Minerals

Lots 7, 20 and 64

Exclusive Use Easement

E1/2NENE
Lots 8, 19, 24, 25, 34, 35, 40, 41, 63, 70, 71, 91 and 92

Sec. 18

All Minerals

Lots 10, 41, 58, 75, 89, 107, 119, 137, 145, 161, 165, 184, 186, 199 and 201

Exclusive Use Easement

Lots 11, 27, 28, 42, 57, 76, 88, 108, 118, 138, 144, 162, 164, 185 and 200

Sec. 19

Exclusive Use Easement

Lot 4

INTERIM CONVEYANCE

Right-of-way

The area conveyed is that portion of the following described lands within the Alaska Railroad right-of-way as defined by Section 603 (A) and (B) of ARTA. The interest conveyed is identified below and is not less than an exclusive use easement:

Seward Meridian, Alaska	Interest conveyed herein
T. 15 N., R 1 W.	
Sec. 5,	
Lot 3	Exclusive use easement
Lot 4, and 13	All minerals
Lot 14	Exclusive use easement
Lot 15	All Federal interests
Lot 17	Exclusive use easement
Lot 18	All minerals
Lots 25, 26, and 31	Exclusive use easement
Lots 32, 40, 41, 46, 48 and 49	All minerals
Lot 53	Exclusive use easement
Lots 52, and 63	All minerals
Lot 64	Oil and gas
Lot 65	Exclusive use easement
Lot 66	Oil and gas
SE1/4SW1/4SW1/4	All Federal interests

Seward Meridaina, Alaska	Interest conveyed herein
T. 15 N., R. 1 W.	
Sec. 7	
E1/2NE1/4NE1/4	Exclusive use easment
Lot 7	All minerals
Lots 8, 19	Exclusive use easement
Lot 20	All minerals
Lots 24, 25, 34, 35, 40, 41 and 63	Exclusive use easement
Lot 64	All minerals
Lots 70, 71, 91, and 92	Exclusive use easement
Sec. 18	
Lot 10	All minerals
Lots 11, 27, 28	Exclusive use easement
Lot 41	All minerals
Lots 42 and 57	Exclusive use easement
Lots 58 and 75	All minerals
Lots 76 and 88	Exclusive use easement
Lots 89 and 107	All minerals
Lots 108 and 118	Exclusive use easement
Lots 119 and 137	All minerals
Lots 138 and 144	Exclusive use easement
Lots 145 and 161	All minerals
Lots 162 and 164	Exclusive use easement
Lots 165 and 184	All minerals
Lots 185	Exclusive use easement
Lots 186 and 199	All minerals
Lot 200	Exclusive use easement
Lot 201	All minerals
Sec. 19	
Lot 4	Exclusive use easement

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504
http://www.blm.gov

DRAFT DRAFT DRAFT

In Reply Refer to:
1410 (944200)
AA-55129

Roy Longacre, Esq.
Longacre Law Offices, Ltd.
425 G St, Suite 910
Anchorage, Alaska 99501

Dear Mr. Longacre:

We have received your letter dated December 19, 2012, regarding the Alaska Railroad Corporation (ARRC) right-of-way across property owned by Peter and Rejani Slaiby. The subject lands are Lots 13 and 14, Block 3, Sunset Hills West Subdivision located at 14200 Jarvi Drive in Anchorage, Alaska.

The BLM administers the conveyance of lands to the ARRC as required by the Alaska Railroad Transfer Act (ARTA). Pub. Law 97-468, 45 U.S.C. §§ 1201-1214. Section 606(b)(4)(B) of ARTA, 45 U.S.C.A. § 1205(b)(4)(B) (2011) requires that the BLM convey at least an exclusive use easement as defined in ARTA section 603(5) 45 U.S.C.A § 1202(6) (2011). Our research indicates that such interests were acquired by the United States when the Alaska Railroad purchased a warranty deed from Edwin and Yula Jarvi dated July 2, 1965. Accordingly the BLM will proceed at a future date with conveying all Federal interests in these lands to the ARRC.

Please find enclosed a copy of the solicitor's opinion BLM.AK.4458 detailing the background and analysis informing our position. If you have any questions regarding this analysis please contact Joseph Darnell, Acting Regional Solicitor, at the following address:

U.S. Department of the Interior
Office of the Regional Solicitor, Alaska Region
4230 University Drive, Suite 300
Anchorage, Alaska 99508-4626
(907)271-4131

As stated in the opinion, the next step for the BLM is to issue a decision to all interested parties approving conveyance of the land interests to the ARRC. Interested parties such as your clients will then have the opportunity to appeal the decision to the Interior Board of Land Appeals

(IBLA). Instructions for how to submit an appeal to the IBLA will be included in the notice of decision. If the decision is not appealed or the decision is appealed and upheld then the BLM will issue a patent to the ARRC.

If you have further questions regarding this conveyance action please contact Earle Williams, Project Manager for the Land Transfer Project Office, at (907)271-5762.

Sincerely,

Bud C. Cribley
State Director

Cc: Hon. Don Young
Hon. Lisa Murkowski
Hon. Mark Begich
Andy Behrend, Esq., ARRC
Peter E. and Rejani Slaiby

FAXED

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ► 2

To Phyliss Johnson	From D. Hopewell
Dept./Agency	Phone # 271-4131
Fax # 265-2443	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

This responds to your letter of January 24, 1985, asking for the Department of the Interior's position on the level of title held by the United States in the Alaska Railroad right-of-way which was transferred to the State of Alaska on January 5, 1985. You are particularly interested in our position on whether the Alaska Railroad right-of-way was formerly a full fee interest or some lesser interest. For the reasons set out below, it is the Department of the Interior's position that the right-of-way was never a fee interest and was always an easement of a very exclusive nature.

FOR POSS. USE AS HANDOUT

As you point out in your letter, these questions need to be considered at this time since the Department of the Interior, through the Department of Justice, has been given the responsibility of defending any litigation contesting the validity or existence of the railroad right-of-way recently conveyed to the State of Alaska. Section 606(b)(4)(B) of the Alaska Railroad Transfer Act (ARTA), 45 U.S.C. § 1205(b)(4)(B). The level of ownership in the right-of-way which was conveyed to the State of Alaska varies depending on the status of the land at the time of transfer. Where the United States owned the land in fee, a fee interest was

conveyed to the State and no potential liability exists. However, in those instances where the underlying land had been fully or partially conveyed out of federal ownership, the minimum interest conveyed to the State of Alaska was an exclusive-use easement. Section 606(b)(4)(B) of ARTA, 45 U.S.C. § 1205(b)(4)(B). Generally, the right-of-way conveyed is 200 feet wide unless one of the exceptions set out in section 603(11) of ARTA, 45 U.S.C. § 1202(11), apply. ~~Potential liability exists in such instances if the United States' level of title was not equivalent to or greater than an exclusive-use easement 200 feet in width.~~ Rather than restricting the United States' position to a set interest and width, the conveyance documents used in the transfer convey a "railroad right-of-way as defined by section 603(11) of ARTA." In many instances the exact width and location will not be precisely established until survey.

To fully understand the nature of the Alaska Railroad right-of-way it is necessary to consider the historical development of that right-of-way. The Act of March 12, 1914, 38 Stat. 305, codified with some differences in language at 43 U.S.C. §§ 975-975g, authorizes the use of public lands for right-of-way purposes and requires a reservation in most patents issued after passage of the Act of a 200-foot wide right-of-way for construction of railroads.[1] While there is debate as to whether these provisions apply only to rights-of-way built after conveyance out of federal ownership, the provision does indicate that Congress generally viewed the right-of-way as being 200 feet wide. No public land orders were issued establishing the exact location, width or nature of the railroad right-of-way. Rather, the public lands were appropriated for that purpose as authorized by the Act of March 12, 1914 and general principles of appropriation. See, Wilcox v. Jackson, 38 U.S. (13 Pet.) 498 (1839).

The scope of interest gained by mere appropriation of a right-of-way is dealt with generally in the instructions set out at 44 L.D. 359 (1915), and 44 L.D. 513 (1916). Those

---

1/ The requirement applies to "lands hereafter taken up, entered or located" and it has been held that the reservation does not apply to the 44 million acres to be conveyed under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664 (D. Alas. 1977).

(b) (5)

[redacted]

---

disc O'Leary - in 3 stat^s DOA orig'l record - thot maybe DOA had dec^d not to pursue - I sd they got into the draft^s but ~~we~~ I'd tell BLM they did come out or be modified per cmmt!
- wants Secty to be corrected re schd. refer to mult. lec^s -
- on townsite Q' - believes 3(e) process will resolve all issues other than Moose Pass wh. is at least partially st. sel^d
- told Greg that there wasn't same pro on Ranch townsite. pro was w. st^s & alleys & those w/i reserve wd go to State - Greg sd St didn't want st^s & alleys outside townsite
- asked who, per my ltr, was a sufficntly high rnkg DOI offcl - I sd Horn, Arndorfer, SD or Allen -
- these were only cmmt^s on my ltr & status of trnsfr.

Darnell, Joseph <joe.darnell@sol.doi.gov>

Re: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

1 message

Williams, Earle <e1willia@blm.gov> Mon, Jan 7, 2013 at 3:01 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>
Cc: Steven Scordino <steven.scordino@sol.doi.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5) [redacted]

Thanks,
Earle

On Fri, Jan 4, 2013 at 6:27 AM, Joseph Darnell <joe.darnell@sol.doi.gov> wrote:

Earl. I am unavailable Friday. Steve and I will call you Monday. Joe Darnell

---

From: Williams, Earle [mailto:e1willia@blm.gov]
Sent: Thursday, January 03, 2013 03:31 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>; Steven Scordino <steven.scordino@sol.doi.gov>
Cc: Michael Schoder <mschoder@blm.gov>
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

Joe,

(b) (5) [redacted]

Many thanks,
Earle

-------- Forwarded message --------
From: **Schoder, Michael** <mschoder@blm.gov>
Date: Thu, Dec 27, 2012 at 12:18 PM
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way
To: Joseph Darnell <joe.darnell@sol.doi.gov>, Earle Williams <e1willia@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, June Lowery <jlowery@blm.gov>, Ruth McCoard <rmccoard@blm.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5) [redacted]

——— Forwarded message ———
From: **Andy Behrend** <BehrendA@akrr.com>
Date: Fri, Dec 21, 2012 at 3:10 PM
Subject: RE: Letter to Roy Longacre re ARRC Right-of-Way
To: "Schoder, Michael" <mschoder@blm.gov>
Cc: Ruth McCoard <rmccoard@blm.gov>, Bud Cribley <bcribley@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, William Hupprich <Hupprichw@akrr.com>, James Kubitz <Kubitzj@akrr.com>, Karen Morrissey <Morrisseyk@akrr.com>, Robert Hahn <Hahnr@akrr.com>

Michael:

Thank you for your quick response. I appreciate your interest in and efforts regarding this issue. I spoke with Dennis Hopewell at length about a week ago (b) (5) [redacted]

(b) (5) [redacted]

Merry Christmas,

Andy

From: Schoder, Michael [mailto:mschoder@blm.gov]
Sent: Friday, December 21, 2012 3:05 PM
To: Andy Behrend
Cc: Ruth McCoard; Bud Cribley; Robert Lloyd
Subject: Re: Letter to Roy Longacre re ARRC Right-of-Way

Andy,

Merry Christmas for all of us I guess.

My position of responsibility at BLM Alaska does not cover the points of issue Longacre makes in his demands as I am in charge of the Federal Authority Surveys in the State. In fact due to organizational changes I am no longer a Deputy State Director. I have forwarded this letter to our Office of

Communications(OC), Division of Lands and Cadastral Deputy State Director and the Lands Branch Chief. The OC needs an early alert due to the copy of Longacre to the Congressional delegation as that undoubtedly will generate a Congressional Inquiry(s) to us on this matter.

Due to the holidays, there is a fair amount of upcoming absence of key people here for their holiday leave. All Federal government will not be working on Monday the 24th. I will be acting State Director the 26th to either the 28th or January 7. Since I am versed in this matter I will ensure the proper people here respond, but I imagine our timelines will be driven by any Congressional inquiry as we have specific time requirements for these in which we must respond. Our cousel from Dennis Hopewell to date on this matter makes me beileve that we are still on solid footing.

If you are in next week feel free to call me and we can chat.

On Fri, Dec 21, 2012 at 2:30 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Michael:

Attached to this email is a copy of a letter to Roy Longacre, attorney to Peter and Rejani Slaiby, responding to a letter Mr. Longacre submitted to the Alaska Railroad Corporation (ARRC) on December 6, 2012, which also was copied to you. I previously forwarded to you a copy of my July 24, 2012, letter to Mr. Longacre. The correspondence between ARRC and Mr. Longacre relates to the property rights of the Slaibys, ARRC and the United States in the portion of the ARRC ROW that adjoins the Slaibys' property on Jarvi Drive. We have separately forwarded a hard copy of the attached letter to you today via U.S. mail.

Regards,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

–

Michael H. Schoder, PLS

BLM Alaska State Office

Alaska Cadastral Survey Chief

Division of Lands and Cadastral Survey

222 W. 7th Ave, #13

Anchorage, AK 99513

(907) 271-5481 (Phone)

(b) (6) (Mobile)

(907) 271-4549 (Fax)

Michael H. Schoder, PLS

BLM Alaska State Office
Alaska Cadastral Survey Chief
Division of Lands and Cadastral Survey
222 W. 7th Ave, #13
Anchorage, AK 99513

(907) 271-5481 (Phone)
(b) (6) (Mobile)
(907) 271-4549 (Fax)

2 attachments

20121219_Longacre_LetterToSchoder_re_Slaiby.pdf
165K

20130107_DRAFT_BLM_Response_to_Longacre_re_Slaiby_ARRC.pdf
107K

Darnell, Joseph <joe.darnell@sol.doi.gov>

Re: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

1 message

Williams, Earle <e1willia@blm.gov> Mon, Jan 7, 2013 at 3:01 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>
Cc: Steven Scordino <steven.scordino@sol.doi.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5)

[redacted]

Thanks,
Earle

On Fri, Jan 4, 2013 at 6:27 AM, Joseph Darnell <joe.darnell@sol.doi.gov> wrote:

Earl. I am unavailable Friday. Steve and I will call you Monday. Joe Darnell

---

From: Williams, Earle [mailto:e1willia@blm.gov]
Sent: Thursday, January 03, 2013 03:31 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>; Steven Scordino <steven.scordino@sol.doi.gov>
Cc: Michael Schoder <mschoder@blm.gov>
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

Joe,

(b) (5)

[redacted]

Many thanks,
Earle

-------- Forwarded message --------
From: **Schoder, Michael** <mschoder@blm.gov>
Date: Thu, Dec 27, 2012 at 12:18 PM
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way
To: Joseph Darnell <joe.darnell@sol.doi.gov>, Earle Williams <e1willia@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, June Lowery <jlowery@blm.gov>, Ruth McCoard <rmccoard@blm.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5) [redacted]

——— Forwarded message ———
From: **Andy Behrend** <BehrendA@akrr.com>
Date: Fri, Dec 21, 2012 at 3:10 PM
Subject: RE: Letter to Roy Longacre re ARRC Right-of-Way
To: "Schoder, Michael" <mschoder@blm.gov>
Cc: Ruth McCoard <rmccoard@blm.gov>, Bud Cribley <bcribley@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, William Hupprich <Hupprichw@akrr.com>, James Kubitz <Kubitzj@akrr.com>, Karen Morrissey <Morrisseyk@akrr.com>, Robert Hahn <Hahnr@akrr.com>

Michael:

Thank you for your quick response. I appreciate your interest in and efforts regarding this issue. I spoke with Dennis Hopewell at length about a week ago (b) (5) [redacted]

(b) (5) [redacted]

Merry Christmas,

Andy

From: Schoder, Michael [mailto:mschoder@blm.gov]
Sent: Friday, December 21, 2012 3:05 PM
To: Andy Behrend
Cc: Ruth McCoard; Bud Cribley; Robert Lloyd
Subject: Re: Letter to Roy Longacre re ARRC Right-of-Way

Andy,

Merry Christmas for all of us I guess.

My position of responsibility at BLM Alaska does not cover the points of issue Longacre makes in his demands as I am in charge of the Federal Authority Surveys in the State. In fact due to organizational changes I am no longer a Deputy State Director. I have forwarded this letter to our Office of

Communications(OC), Division of Lands and Cadastral Deputy State Director and the Lands Branch Chief. The OC needs an early alert due to the copy of Longacre to the Congressional delegation as that undoubtedly will generate a Congressional Inquiry(s) to us on this matter.

Due to the holidays, there is a fair amount of upcoming absence of key people here for their holiday leave. All Federal government will not be working on Monday the 24th. I will be acting State Director the 26th to either the 28th or January 7. Since I am versed in this matter I will ensure the proper people here respond, but I imagine our timelines will be driven by any Congressional inquiry as we have specific time requirements for these in which we must respond. Our cousel from Dennis Hopewell to date on this matter makes me beileve that we are still on solid footing.

If you are in next week feel free to call me and we can chat.

On Fri, Dec 21, 2012 at 2:30 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Michael:

Attached to this email is a copy of a letter to Roy Longacre, attorney to Peter and Rejani Slaiby, responding to a letter Mr. Longacre submitted to the Alaska Railroad Corporation (ARRC) on December 6, 2012, which also was copied to you. I previously forwarded to you a copy of my July 24, 2012, letter to Mr. Longacre. The correspondence between ARRC and Mr. Longacre relates to the property rights of the Slaibys, ARRC and the United States in the portion of the ARRC ROW that adjoins the Slaibys' property on Jarvi Drive. We have separately forwarded a hard copy of the attached letter to you today via U.S. mail.

Regards,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

—

Michael H. Schoder, PLS

BLM Alaska State Office

Alaska Cadastral Survey Chief

Division of Lands and Cadastral Survey

222 W. 7th Ave, #13

Anchorage, AK 99513

(907) 271-5481 (Phone)

(b) (6) (Mobile)

(907) 271-4549 (Fax)

Michael H. Schoder, PLS

BLM Alaska State Office
Alaska Cadastral Survey Chief
Division of Lands and Cadastral Survey
222 W. 7th Ave, #13
Anchorage, AK 99513

(907) 271-5481 (Phone)
(b) (6) (Mobile)
(907) 271-4549 (Fax)

2 attachments

20121219_Longacre_LetterToSchoder_re_Slaiby.pdf
165K

20130107_DRAFT_BLM_Response_to_Longacre_re_Slaiby_ARRC.pdf
107K

Darnell, Joseph <joe.darnell@sol.doi.gov>

Re: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

1 message

Darnell, Joseph <joe.darnell@sol.doi.gov> Thu, Jan 10, 2013 at 10:49 AM
To: "Williams, Earle" <e1willia@blm.gov>
Cc: Steven Scordino <steven.scordino@sol.doi.gov>, Ronald Dunton <rdunton@blm.gov>

Earle -

(b) (5) [redacted]

Joe

Joseph D. Darnell
Acting Regional Solicitor
Alaska Region - Dept. of the Interior
Anchorage, Alaska
Wk (907) 271-4118 / fax (907) 271-4143
(b) (6) [redacted]

On Mon, Jan 7, 2013 at 3:01 PM, Williams, Earle <e1willia@blm.gov> wrote:

Joe,

(b) (5) [redacted]

Thanks,
Earle

On Fri, Jan 4, 2013 at 6:27 AM, Joseph Darnell <joe.darnell@sol.doi.gov> wrote:

Earl. I am unavailable Friday. Steve and I will call you Monday. Joe Darnell

---

From: Williams, Earle [mailto:e1willia@blm.gov]
Sent: Thursday, January 03, 2013 03:31 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>; Steven Scordino <steven.scordino@sol.doi.gov>
Cc: Michael Schoder <mschoder@blm.gov>
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

Joe,

(b) (5) [redacted]

Many thanks,
Earle

——— Forwarded message ———
From: **Schoder, Michael** <mschoder@blm.gov>
Date: Thu, Dec 27, 2012 at 12:18 PM
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way
To: Joseph Darnell <joe.darnell@sol.doi.gov>, Earle Williams <e1willia@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, June Lowery <jlowery@blm.gov>, Ruth McCoard <rmccoard@blm.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5) [redacted]

——— Forwarded message ———
From: **Andy Behrend** <BehrendA@akrr.com>
Date: Fri, Dec 21, 2012 at 3:10 PM
Subject: RE: Letter to Roy Longacre re ARRC Right-of-Way
To: "Schoder, Michael" <mschoder@blm.gov>
Cc: Ruth McCoard <rmccoard@blm.gov>, Bud Cribley <bcribley@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, William Hupprich <Hupprichw@akrr.com>, James Kubitz <Kubitzj@akrr.com>, Karen Morrissey <Morrisseyk@akrr.com>, Robert Hahn <Hahnr@akrr.com>

Michael:

Thank you for your quick response. I appreciate your interest in and efforts regarding this issue. I spoke with Dennis Hopewell at length about a week ago and (b) (5) [redacted]
(b) (5) [redacted]

Merry Christmas,

Andy

From: Schoder, Michael [mailto:mschoder@blm.gov]

Sent: Friday, December 21, 2012 3:05 PM
To: Andy Behrend
Cc: Ruth McCoard; Bud Cribley; Robert Lloyd
Subject: Re: Letter to Roy Longacre re ARRC Right-of-Way

Andy,

Merry Christmas for all of us I guess.

My position of responsibility at BLM Alaska does not cover the points of issue Longacre makes in his demands as I am in charge of the Federal Authority Surveys in the State. In fact due to organizational changes I am no longer a Deputy State Director. I have forwarded this letter to our Office of Communications(OC), Division of Lands and Cadastral Deputy State Director, and the Lands Branch Chief. The OC needs an early alert due to the copy of Longacre to the Congressional delegation as that undoubtedly will generate a Congressional Inquiry(s) to us on this matter.

Due to the holidays, there is a fair amount of upcoming absence of key people here for their holiday leave. All Federal government will not be working on Monday the 24th. I will be acting State Director the 26th to either the 28th or January 7. Since I am versed in this matter I will ensure the proper people here respond, but I imagine our timelines will be driven by any Congressional inquiry as we have specific time requirements for these in which we must respond. Our cousel from Dennis Hopewell to date on this matter makes me beileve that we are still on solid footing.

If you are in next week feel free to call me and we can chat.

On Fri, Dec 21, 2012 at 2:30 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Michael:

Attached to this email is a copy of a letter to Roy Longacre, attorney to Peter and Rejani Slaiby, responding to a letter Mr. Longacre submitted to the Alaska Railroad Corporation (ARRC) on December 6, 2012, which also was copied to you. I previously forwarded to you a copy of my July 24, 2012, letter to Mr. Longacre. The correspondence between ARRC and Mr. Longacre relates to the property rights of the Slaibys, ARRC and the United States in the portion of the ARRC ROW that adjoins the Slaibys' property on Jarvi Drive. We have separately forwarded a hard copy of the attached letter to you today via U.S. mail.

Regards,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

Michael H. Schoder, PLS

BLM Alaska State Office

Alaska Cadastral Survey Chief

Division of Lands and Cadastral Survey

222 W. 7th Ave, #13

Anchorage, AK 99513

(907) 271-5481 (Phone)

(b) (6) [redacted] (Mobile)

(907) 271-4549 (Fax)

Michael H. Schoder, PLS

BLM Alaska State Office
Alaska Cadastral Survey Chief
Division of Lands and Cadastral Survey
222 W. 7th Ave, #13
Anchorage, AK 99513

(907) 271-5481 (Phone)
(b) (6) [redacted] Mobile)
(907) 271-4549 (Fax)

Darnell, Joseph <joe.darnell@sol.doi.gov>

Re: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

1 message

Darnell, Joseph <joe.darnell@sol.doi.gov> Thu, Jan 10, 2013 at 10:49 AM
To: "Williams, Earle" <e1willia@blm.gov>
Cc: Steven Scordino <steven.scordino@sol.doi.gov>, Ronald Dunton <rdunton@blm.gov>

Earle -

[redacted]

Joe

Joseph D. Darnell
Acting Regional Solicitor
Alaska Region - Dept. of the Interior
Anchorage, Alaska
Wk (907) 271-4118 / fax (907) 271-4143
(b) (6) [redacted]

On Mon, Jan 7, 2013 at 3:01 PM, Williams, Earle <e1willia@blm.gov> wrote:

Joe,

(b) (5) [redacted]

Thanks,
Earle

On Fri, Jan 4, 2013 at 6:27 AM, Joseph Darnell <joe.darnell@sol.doi.gov> wrote:

Earl. I am unavailable Friday. Steve and I will call you Monday. Joe Darnell

---

From: Williams, Earle [mailto:e1willia@blm.gov]
Sent: Thursday, January 03, 2013 03:31 PM
To: Joseph Darnell <joe.darnell@sol.doi.gov>; Steven Scordino <steven.scordino@sol.doi.gov>
Cc: Michael Schoder <mschoder@blm.gov>
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way

Joe,

(b) (5) [redacted]

Many thanks,
Earle

——— Forwarded message ———
From: **Schoder, Michael** <mschoder@blm.gov>
Date: Thu, Dec 27, 2012 at 12:18 PM
Subject: Fwd: Letter to Roy Longacre re ARRC Right-of-Way
To: Joseph Darnell <joe.darnell@sol.doi.gov>, Earle Williams <e1willia@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, June Lowery <jlowery@blm.gov>, Ruth McCoard <rmccoard@blm.gov>, Ronald Dunton <rdunton@blm.gov>

Joe,

(b) (5) [redacted]

——— Forwarded message ———
From: **Andy Behrend** <BehrendA@akrr.com>
Date: Fri, Dec 21, 2012 at 3:10 PM
Subject: RE: Letter to Roy Longacre re ARRC Right-of-Way
To: "Schoder, Michael" <mschoder@blm.gov>
Cc: Ruth McCoard <rmccoard@blm.gov>, Bud Cribley <bcribley@blm.gov>, Robert Lloyd <rlloyd@blm.gov>, William Hupprich <Hupprichw@akrr.com>, James Kubitz <Kubitzj@akrr.com>, Karen Morrissey <Morrisseyk@akrr.com>, Robert Hahn <Hahnr@akrr.com>

Michael:

Thank you for your quick response. I appreciate your interest in and efforts regarding this issue. I spoke with Dennis Hopewell at length about a week ago and (b) (5) [redacted]

(b) (5) [redacted]

Merry Christmas,

Andy

From: Schoder, Michael [mailto:mschoder@blm.gov]

Sent: Friday, December 21, 2012 3:05 PM
To: Andy Behrend
Cc: Ruth McCoard; Bud Cribley; Robert Lloyd
Subject: Re: Letter to Roy Longacre re ARRC Right-of-Way

Andy,

Merry Christmas for all of us I guess.

My position of responsibility at BLM Alaska does not cover the points of issue Longacre makes in his demands as I am in charge of the Federal Authority Surveys in the State. In fact due to organizational changes I am no longer a Deputy State Director. I have forwarded this letter to our Office of Communications(OC), Division of Lands and Cadastral Deputy State Director, and the Lands Branch Chief. The OC needs an early alert due to the copy of Longacre to the Congressional delegation as that undoubtedly will generate a Congressional Inquiry(s) to us on this matter.

Due to the holidays, there is a fair amount of upcoming absence of key people here for their holiday leave. All Federal government will not be working on Monday the 24th. I will be acting State Director the 26th to either the 28th or January 7. Since I am versed in this matter I will ensure the proper people here respond, but I imagine our timelines will be driven by any Congressional inquiry as we have specific time requirements for these in which we must respond. Our cousel from Dennis Hopewell to date on this matter makes me beileve that we are still on solid footing.

If you are in next week feel free to call me and we can chat.

On Fri, Dec 21, 2012 at 2:30 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Michael:

Attached to this email is a copy of a letter to Roy Longacre, attorney to Peter and Rejani Slaiby, responding to a letter Mr. Longacre submitted to the Alaska Railroad Corporation (ARRC) on December 6, 2012, which also was copied to you. I previously forwarded to you a copy of my July 24, 2012, letter to Mr. Longacre. The correspondence between ARRC and Mr. Longacre relates to the property rights of the Slaibys, ARRC and the United States in the portion of the ARRC ROW that adjoins the Slaibys' property on Jarvi Drive. We have separately forwarded a hard copy of the attached letter to you today via U.S. mail.

Regards,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6)

Michael H. Schoder, PLS

BLM Alaska State Office

Alaska Cadastral Survey Chief

Division of Lands and Cadastral Survey

222 W. 7th Ave, #13

Anchorage, AK 99513

(907) 271-5481 (Phone)

(b) (6) (Mobile)

(907) 271-4549 (Fax)

Michael H. Schoder, PLS

BLM Alaska State Office
Alaska Cadastral Survey Chief
Division of Lands and Cadastral Survey
222 W. 7th Ave, #13
Anchorage, AK 99513

(907) 271-5481 (Phone)
(b) (6) Mobile)
(907) 271-4549 (Fax)

From: Andy Behrend
To: Schoder, Michael
Cc: McDaniel, Margaret; Hopewell, Dennis
Subject: RE: Potter Hill
Date: Friday, September 14, 2012 12:20:32 PM

Michael:

Thank you for the update. I will pass on your message to Rob Hahn and Karen Morrissey. And thanks also for your attention to these transfer issues and for making them a priority.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Schoder, Michael [mailto:mschoder@blm.gov]
Sent: Friday, September 14, 2012 6:25 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Hopewell, Dennis
Subject: RE: Potter Hill

Andy,

Thank you for including me in your email. We are committed to bring any of the transfer documents to the top of our attention in my Division for review once Margaret has them drafted. Our new national and state policy require us to do a (b) (5) [redacted] It sounds like we are all in concurrence with the transfer documents using the land description referenced to the deeds of which the title was reacquired by the U.S. I would anticipate no more than a two day turnaround on such review.

Michael H. Schoder, PLS

BLM Alaska State Office
Deputy State Director AK-920
Alaska Cadastral Survey Chief
222 W. 7th Ave, #13
Anchorage, AK 99513

(907) 271-5481 (Phone)
(b) (6) [redacted] (Mobile)
(907) 271-4549 (Fax)

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Thursday, September 13, 2012 4:23 PM

To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); McDaniel, Margaret
Cc: Schoder, Michael
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14,

Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From: Andy Behrend
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill
Date: Friday, September 14, 2012 2:35:19 PM

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.)

and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend

Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From:	Hopewell, Dennis
To:	Andy Behrend
Cc:	McDaniel, Margaret; Schoder, Michael
Subject:	RE: Potter Hill
Date:	Monday, November 19, 2012 9:35:11 PM

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't

give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they

have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From: Andy Behrend
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill
Date: Tuesday, November 20, 2012 11:50:26 AM

Dennis:

Thank you for the update. Rob Hahn, our Land Services Manager, has been keeping in touch with Margaret and Michael recently, so I knew that your efforts were ongoing. I would be happy to provide you with our thoughts on any draft opinion. I will generally be in the office the balance of this week (which means today and tomorrow, I guess), next week and for the foreseeable future.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Monday, November 19, 2012 5:35 PM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis

Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some

unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6)

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From:	Andy Behrend
To:	Hopewell, Dennis (Dennis.Hopewell@sol.doi.gov)
Cc:	Margaret McDaniel (mmcdanie@blm.gov); Michael H. Schoder (mschoder@blm.gov); Robert Hahn; Karen Morrissey
Subject:	FW: Potter Hill
Date:	Thursday, December 6, 2012 6:10:41 PM

Good afternoon, Dennis:

I hope things have been going well for you since our last communications. I thought I would touch bases with you to see how the draft opinion on the Potter Hill title/conveyance issues is coming along. I stand ready to give you my thoughts, if you would like ARRC's input.

I understand your retirement is looming and I can only imagine how all-consuming getting ready for that must be. Hopefully, you will still be able to enjoy the holidays.

Thank you for all your efforts on the Potter Hill matter and other railroad-related issues. We very much appreciate your efforts, and those of BLM, not only this year, but through the years.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Tuesday, November 20, 2012 7:50 AM
To: 'Hopewell, Dennis'
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis:

Thank you for the update. Rob Hahn, our Land Services Manager, has been keeping in touch with Margaret and Michael recently, so I knew that your efforts were ongoing. I would be happy to provide you with our thoughts on any draft opinion. I will generally be in the office the balance of this week (which means today and tomorrow, I guess), next week and for the foreseeable future.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Monday, November 19, 2012 5:35 PM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to

that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is

important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however.

When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From:	Hopewell, Dennis
To:	Andy Behrend
Cc:	McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject:	RE: Potter Hill
Date:	Friday, December 7, 2012 2:00:00 PM

Good morning Andy,

I was finally able to complete the little bit of additional research I wanted to do for the Potter Hill legal opinion. Now I have to find an hour or two to finish the draft for Margaret McDaniel to review. I don't know Margaret's schedule but it will not take Margaret long to review the draft. Then I will be able to get your thoughts on the draft as well. Thanks for your patience in this matter. For some reason, it seems like all my clients want to have one last meeting or one final written product. I will, however, definitely issue the Potter Hill memorandum before I retire.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Thursday, December 06, 2012 2:10 PM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: FW: Potter Hill

Good afternoon, Dennis:

I hope things have been going well for you since our last communications. I thought I would touch bases with you to see how the draft opinion on the Potter Hill title/conveyance issues is coming along. I stand ready to give you my thoughts, if you would like ARRC's input.

I understand your retirement is looming and I can only imagine how all-consuming getting ready for that must be. Hopefully, you will still be able to enjoy the holidays.

Thank you for all your efforts on the Potter Hill matter and other railroad-related issues. We very much appreciate your efforts, and those of BLM, not only this year, but through the years.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Tuesday, November 20, 2012 7:50 AM
To: 'Hopewell, Dennis'
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis:

Thank you for the update. Rob Hahn, our Land Services Manager, has been keeping in touch with Margaret and Michael recently, so I knew that your efforts were ongoing. I would be happy to provide you with our thoughts on any draft opinion. I will generally be in the office the balance of this week (which means today and tomorrow, I guess), next week and for the foreseeable future.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Monday, November 19, 2012 5:35 PM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period

between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From: Andy Behrend
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: RE: Potter Hill
Date: Friday, December 7, 2012 2:47:09 PM

Dennis:

Thanks very much for your reply. I will look forward to seeing the draft memorandum. ARRC appreciates your efforts on the Potter Hill matter.

The desire of your clients to tap your expertise one last time must mean they value your opinion and will miss it.

Regards,
Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, December 07, 2012 10:00 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: RE: Potter Hill

Good morning Andy,

I was finally able to complete the little bit of additional research I wanted to do for the Potter Hill legal opinion. Now I have to find an hour or two to finish the draft for Margaret McDaniel to review. I don't know Margaret's schedule but it will not take Margaret long to review the draft. Then I will be able to get your thoughts on the draft as well. Thanks for your patience in this matter. For some reason, it seems like all my clients want to have one last meeting or one final written product. I will, however, definitely issue the Potter Hill memorandum before I retire.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Thursday, December 06, 2012 2:10 PM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael; Robert Hahn; Karen Morrissey
Subject: FW: Potter Hill

Good afternoon, Dennis:

I hope things have been going well for you since our last communications. I thought I would touch bases with you to see how the draft opinion on the Potter Hill title/conveyance issues is coming along. I stand ready to give you my thoughts, if you would like ARRC's input.

I understand your retirement is looming and I can only imagine how all-consuming getting ready for that must be. Hopefully, you will still be able to enjoy the holidays.

Thank you for all your efforts on the Potter Hill matter and other railroad-related issues. We very much appreciate your efforts, and those of BLM, not only this year, but through the years.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Andy Behrend
Sent: Tuesday, November 20, 2012 7:50 AM
To: 'Hopewell, Dennis'
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis:

Thank you for the update. Rob Hahn, our Land Services Manager, has been keeping in touch with Margaret and Michael recently, so I knew that your efforts were ongoing. I would be happy to provide you with our thoughts on any draft opinion. I will generally be in the office the balance of this week (which means today and tomorrow, I guess), next week and for the foreseeable future.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Monday, November 19, 2012 5:35 PM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Andy,

I have not forgotten the Potter Hill matter and actually had some time to work on it a little last week and today. It isn't as hard as I thought it might be. The U.S. has to convey at least an exclusive use easement as well as any additional interest it has in the property. I'm going to provide BLM a draft opinion to review. If it is alright with BLM I will solicit your input on a draft or at least give you a call before we issue a final opinion. Thanks for the background info you provided and thanks for your patience.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 10:35 AM
To: Hopewell, Dennis
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Dennis.

I originally got your email from the Alaska attorney directory, which explains what happened. Margaret was kind enough to supply your true address, which is now safely residing in my contacts file. Thank you for your efforts on this. I am very interested in seeing the results of your review and analysis. Some of the properties in question, especially the one involving the Jarvi deed and the Slaibys, could be the basis for a pretty entertaining exam question in a Property Law class.

Andy

From: Hopewell, Dennis [mailto:Dennis.Hopewell@sol.doi.gov]
Sent: Friday, September 14, 2012 10:22 AM
To: Andy Behrend
Cc: McDaniel, Margaret; Schoder, Michael
Subject: RE: Potter Hill

Hello Andy,

I received the email and attachments on Potter Hill you sent earlier today. Email programs just don't give us any leeway on using periods. I get an occasional comment like yours because the local Attorney Directory also fails to show the required period between my first and last names. In any case, your email is very timely because Potter Hill is on my short list of priorities and I should get to it next week and may be able to start on it today.

Dennis J. Hopewell
Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend [mailto:BehrendA@akrr.com]
Sent: Friday, September 14, 2012 9:57 AM
To: Hopewell, Dennis
Subject: FW: Potter Hill

Hi, Dennis:

As you can see below, I have been having some trouble getting an email message from yesterday through to you. I finally figured out I actually was using the wrong address (I omitted the period between your names). Sorry about that snafu. I hope the message below (9/13/12 @ 4:23 p.m.) and the attachments come through this time. If so, it would be great if you could verify receipt.

Thanks and regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Friday, September 14, 2012 9:42 AM
To: 'dennishopewell@sol.doi.gov'
Subject: FW: Potter Hill

Hi, Dennis:

The message below that I sent yesterday to you and Margaret McDaniel bounced back to me as "undeliverable" to your address. It appears I used the correct email address, so perhaps a firewall interfered. I am going to try again and also will follow up with a message without attachments, just in case that's the reason for the bounce-back. I you get this message, please drop me a quick line to that effect.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Andy Behrend
Sent: Thursday, September 13, 2012 4:23 PM
To: Dennis J. Hopewell (dennishopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov)
Cc: Michael H. Schoder (mschoder@blm.gov)
Subject: FW: Potter Hill

Dennis and Margaret:

Good morning. I hope the Anchorage summer, however short, has treated you both well.

Rob Hahn forwarded to me your emails regarding Potter Hill transfer issues. Those emails are set out below. I wanted to write not only to thank you for your efforts on this issue of importance to ARRC, but also to provide a bit of information on an issue Dennis raises in his email.

First, I know I speak for ARRC Real Estate when I say that we appreciate the time and attention both of you, as well as Michael Schoder, are taking to work through the remaining issues leading to a transfer of right-of-way lands in the Potter Hill area. We understand that those lands raise some unique issues that complicate the analysis. Although difficult issues can be interesting to work on, that doesn't necessarily make them easy to resolve!

Second, I wanted to respond to Dennis's observation that the Hancock deed appears to be the only one that involves an easement. (I am familiar with that deed. As I recall, its easement language says something like the easement will be "exclusive of all other persons." That lends itself to an interpretation that the deed conveyed an exclusive use easement.) But there is another deed that conveys an easement. That is the warranty deed dated July 2, 1965 from Mr. and Mrs. Jarvi to the United States. A copy of that deed can be found in the materials attached to this message. The deed lists four parcels and appears to convey fee title to Parcels 1-3. The conveyance of Parcel 4, however, is described as granting "A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." Parcel 4 is described as including all portions of three lots (Lots 4, 13 and 14 of Block 3 of Sunset Hills West Subdivision) "according to the recorded plat thereof lying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964" with the Anchorage Recorder.

Besides the fact that the Jarvi warranty deed also includes easement language, that deed also is important because, as Rob has discussed with Margaret and Michael, the current owners of two of the three lots with portions included in Parcel 4 of the Jarvi deed (the Slaibys) have asserted they have the right to occupy and use the land in ARRC's ROW for any purpose that does not interfere with railroad operations. ARRC's position is that it has at least an exclusive use easement in that land, which means it can exclude the Slaibys from the ROW. This issue has recently come to a head because the Slaibys want to add onto their house (not in the ROW), but only if they have a right to use land in the ROW for a patio, lawn, gardens, etc. The Slaiby's understand that BLM is in the

process of looking at property interests in this portion of the ROW and are awaiting the outcome of that inquiry before deciding how to proceed. We look forward to the results of your analysis of the status of the lands included in Parcel 4 of the Jarvi deed, and hope it will provide additional information relevant to our discussions with the Slaibys.

During our work on the Slaiby situation, we obtained a title report for their property (Lots 13 and 14, Block 3, Sunset Hills West Subdivision). I understand that Rob has provided copies of that report to Margaret and Michael. I am attaching a copy of that report and the title documents appended to it in case it could be of help to Dennis. Please note that the appended title documents include the Jarvi deed discussed above.

I apologize for the long email, but I guess that is the nature of these issues. Please let me know if you have any questions about the above or if we can provide you with additional information.

Regards,

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Robert Hahn
Sent: Wednesday, September 12, 2012 12:58 PM
To: Andy Behrend; Karen Morrissey
Subject: Fw: Potter Hill

From: McDaniel, Margaret [mailto:mmcdanie@blm.gov]
Sent: Wednesday, September 12, 2012 12:45 PM
To: Robert Hahn
Subject: FW: Potter Hill

Rob -- I just got this from Dennis. Do you have any thoughts I should pass on to him? I am looking into the question he has about whether the federal land records show the property to be reacquired federal property. If you have any info on his questions that will be helpful. Thanks
Margaret

From: Hopewell, Dennis
Sent: Wednesday, September 12, 2012 12:26 PM
To: McDaniel, Margaret
Subject: RE: Potter Hill

Margaret,

It appears you have several different questions on Potter Hill. The issues I see are:

(b) (5)

Please let me know if there are more issues and if I have misdescribed the above listed issues.

Based on a quick read of the file materials, my preliminary thoughts are:

(b) (5)

As far as timing goes, the Potter Hill situation raises some pretty novel issues for me. I will need to thoroughly review ARTA because it is no longer fresh in my mind and I will look through my existing files to see if I have any pertinent or helpful info. I will also need answers to the above questions and may need to meet with you again to be sure I understand the land records. I will keep working on these issues as time permits and will try to remember to give you an update in a few weeks to let you know how it is going. I'll make an effort to finish the matter in a month. No promises however. When you make the referral, you can tell Mike I requested the review and will be happy to discuss the matter or to meet with you and him.

If you have any questions, comments or additional issues for me to consider, please let me know. You can email or call, whichever you prefer.

Dennis J. Hopewell

Senior Attorney, Alaska
907.271.4186 fax 907.271.4143

This e-mail, including any attachments, is intended for the use of the individuals or entity to which it is addressed. It may contain information that is priviliged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: McDaniel, Margaret
Sent: Monday, September 10, 2012 5:59 AM
To: Hopewell, Dennis
Subject: Potter Hill

Good morning Dennis --

I got a call from Robert Hahn at the railroad on Friday regarding the package I sent you on Potter Hill. I wonder if you have had a chance to look at it at all and if you have any ideas on it. (Robert took Pat Kelly's place).

Thank you for your help. We appreciate it.

Have a good day. Margaret

From:	Andy Behrend
To:	Hopewell, Dennis (Dennis.Hopewell@sol.doi.gov); Margaret McDaniel (mmcdanie@blm.gov); Michael H. Schoder (mschoder@blm.gov)
Cc:	William Hupprich; Karen Morrissey; Robert Hahn
Subject:	Potter Hill - Letter from Adjoining Property Owner"s Counsel Regarding Title to ARRC Right-of-Way
Date:	Friday, December 7, 2012 4:14:40 PM
Attachments:	Letter to Roy Longacre re Slaibys 7-24-2012.pdf.pdf ARRC 121206 EmailWAttachment (X).pdf.pdf

Dennis, Margaret and Michael:

On July 24, 2012, I copied Michael on a letter I sent that day to Roy Longacre, attorney for property owners (the Slaibys) on Potter Hill who adjoin the ARRC right-of-way (ROW). My letter responded to a letter from Mr. Longacre asserting that ARRC had no right to exclude his clients from the ROW. I finally received a response letter from him yesterday. I notice that Mr. Longacre also copied Michael on his letter. But given that Dennis is close to wrapping up his Potter Hill opinion, I wanted to share the latest letter with you electronically in case Michael's mailed copy is delayed.

Given his letter's contents, it probably goes without saying that we disagree with essentially everything Mr. Longacre says about ARRC's property rights. But I thought that this most recent letter might be of interest to you as you work on the Potter Hill issues. One thing worth noting is that Mr. Longacre refers to Patent No. 50-2006-0363, previously issued to ARRC for the portion of the right-of-way containing Lots 1-8, inclusive, U.S. Survey 9015, as an "illegal patent." He also claims that provisions relating to "exclusive use easements" in the Alaska Railroad Transfer Act (ARTA) only apply to the ROW in Denali National Park. That contention ignores 45 U.S.C. § 1205(b)(4)(B), which provides for the transfer of at least an exclusive use easement with respect to portions of the ROW where the underlying land left federal ownership before it was transferred to ARRC or where a third-party claim in that land exists. His analysis also fails to recognize that the exclusive use easement provisions effectively set a "floor" ensuring ARRC has exclusive rights in its ROW sufficient to operate a railroad safely and economically. Congress expressly found that such an exclusive ROW was necessary to do just that. See 45 U.S.C. § 1205(b)(4)(A)(ii).

My July 24 message to Michael attached the somewhat voluminous enclosures I sent to Mr. Longacre with my July 24 letter. Please let me know if you would like me to resend those items (which include a warranty deed, some emails, a title report on the lots in question, and documents supporting that title report).

Once again, thanks to all of you for working on these issues relating to ARRC's ROW.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6)

OFFICE OF THE GENERAL COUNSEL
TELEPHONE: (907) 265-2305
FACSIMILE: (907) 265-2443
EMAIL: behrenda@akrr.com

Via Regular U.S. Mail

July 24, 2012

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

Re: Peter and Rejani Slaiby
ARRC Transitional Residential Land Use Policy

Dear Mr. Longacre:

This letter responds to yours of June 6, 2012, which was submitted electronically as a public comment regarding the proposed adoption by the Alaska Railroad Corporation ("ARRC") of the ARRC Transitional Residential Land Use Policy ("TRLUP"). Those public comments were submitted pending potential action on that proposed policy at the ARRC Board of Directors meeting on June 7, 2012.

As I believe you know from speaking to Karen Morrissey, ARRC's Real Estate Director, the ARRC Board decided at the June 7 meeting to return the proposed policy to the Board's Right-of-Way Committee for further consideration and possible revision. A letter was recently sent to adjoining property owners, including the Slaibys, informing them of that development. Any additional developments regarding the proposed policy will be communicated to adjoining property owners at a later date.

We wanted to respond separately to your letter in order to address your specific comments relating to the respective property rights of the Slaibys and ARRC. As we proceed to develop and revise the proposed policy, it is important that ARRC and its residential neighbors have a common understanding of those issues.

A. History of ARRC's Right-of-Way (ROW) and Its Property Interest in the ROW.

In order to understand the Slaibys' specific situation, it is necessary to understand the history and legal status of ARRC's ROW. ARRC obtained its ROW from the federal government as a result of the Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201 et seq. (ARTA) and the Alaska Railroad Corporation Act, AS 42.40 (ARCA). In ARTA, Congress provided that the State of Alaska would receive all of the United States' interest, but at a minimum an exclusive use easement, in the Alaska Railroad right-of-way. *See* 45 U.S.C. § 1203(b) (providing for the conveyance to the State of title to all lands within the Alaska Railroad right-of-way). In ARCA, the Alaska Legislature established ARRC and provided that the railroad lands to be conveyed under ARTA would be conveyed to ARRC. *See* AS 42.40.350.

Beginning in 1985, the federal government began the process of conveying the ROW to ARRC. The conveyance process included the initial step of interim conveyances by the federal government of much of the land in the ROW to ARRC, wherein ARRC received at least an exclusive use easement in its ROW. Since the initial conveyances, the federal government, through the Bureau of Land Management, has engaged in an incremental process of patenting the land in the ROW to ARRC. As a result of this conveyance process, ARRC holds an exclusive interest in the entire ARRC ROW. The nature of ARRC's interest in the ARRC ROW ranges from a fee simple interest for much of the ROW to, at a statutory minimum, an exclusive use easement.

Even the exclusive use easement, the minimum interest ARRC owns in its ROW, provides ARRC with exclusive rights of possession and use in the ROW. As provided in ARTA, 45 U.S.C. § 1202(6):

> "[E]xclusive-use easement" means an easement which affords to the easement holder the following:
>
> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
>
> (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
>
> (C) subjacent and lateral support of the lands subject to the easement; and
>
> (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. (Emphasis supplied)

Under this statutory definition of an exclusive use easement, ARRC has - at a minimum - the exclusive right to use and possess the ARRC ROW for transportation, communication and transmission purposes. Moreover, ARRC has the right to fence the ARRC ROW and to exclude all other persons and entities from all or any of it.

ARRC's right to possess its ROW and to use it for railroad purposes is "exclusive." And ARRC not only has the right to exclude all other persons from the ARRC ROW, it exercises that right. It fences portions of the ROW in busy areas, places

prominent "No Trespassing" signs, cites unauthorized persons on the ROW as trespassers, and takes other measures to keep people off the ROW. Another clear reflection of ARRC's exercise of control of access to the ROW is the fact that ARRC requires agencies, entities and individuals wishing to cross, occupy or use any portion of the ROW to qualify for and obtain paid permits to do so.

B. ARRC's Interest in the ROW Adjacent to the Slaibys' Property.

The portion of the ARRC ROW adjacent to the Slaibys' property includes portions of Lots 13 and 14 in Block 3 of the Sunset Hills West Subdivision ("Lots 13 and 14") lying to the southwest of the "Take Line" shown on the plat of Potter Hill Relocation according to Plat 64-105. This land was acquired by the federal government in 1965, following the 1964 earthquake, which caused the bluff in the vicinity of what is now Jarvi Drive to slide. The federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area. Accordingly, the federal government "took" additional land in the Potter Hill area for use in the ROW, receiving deeds conveying land in that area in exchange for payment of compensation.

One of those deeds conveyed to the federal government the portions of Lots 13 and 14 lying to the southwest of the "take line." A copy of that warranty deed is enclosed. The interest granted to the federal government in those lots was "[a] perpetual right-of-way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." The deed stated that "the above-described premises are being acquired for the Alaska Railroad, Department of the Interior." A title report obtained by ARRC with respect to Lots 13 and 14 confirms that grant of a perpetual right-of-way and railroad easement constitute a special exception to the Slaibys' title to Lots 13 and 14. A CD containing a copy of that title report and the documents upon which it is based is enclosed for your convenience.

Pursuant to ARTA, the portions of Lots 13 and 14 southwest of the "take line" were included among the lands to be transferred to ARRC to be occupied and used as part of its ROW, just as that land had been used and occupied by the federal Alaska Railroad. The intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA, although that final conveyance has not yet occurred. Consequently, although ARRC has an exclusive right to occupy and use the land for its ROW, both to operate a railroad and for the other statutory purposes identified in ARCA, the federal government still owns this portion of the ARRC ROW. As Patrick Kelly, ARRC's former Land Services Manager, informed both Mr. Slaiby and Scott Jones of SAJJ Architecture in April 2012, and Rob Hahn, Mr. Kelly's successor, mentioned to you in an email of June 6, 2012, the U.S. Bureau of Land Management currently is reviewing Plat 64-105 for transfer of Lots 13 and 14 to the ARRC. Copies of those communications are enclosed.

The fact that the federal government still owns the portions of Lots 13 and 14 in the ARRC ROW does not affect ARRC's exclusive rights to occupy and use that land. Consistent with ARTA, ARRC has, at a minimum, an exclusive use easement in the land. Notably, the enclosed title report includes a special exception stating that title to Lots 13 and 14 is subject to the "rights of the Public and/or governmental agencies, in and to any portion of said land lying within the boundaries of the Alaska Railroad right-of-way." The rights of ARRC in the portions of Lots 13 and 14 lying to the southwest of the "Take Line" include the statutory grant of, at a minimum, an exclusive use easement under ARTA. Accordingly, as discussed above, ARRC has the right to exclude others from the land, including by means of fencing the boundary of the ROW. Relative to that right, ARRC also has the right to prohibit or to require a permit for any residential uses of or structures in that portion of the ROW. This portion of the ROW, therefore, is subject to the proposed TRLUP.

C. Responses to Individual Points in Your June 6 Letter.

1. Slaibys Do Not Have the Right to Occupy or Use the ARRC ROW Without ARRC's Permission.

Your June 6 letter characterizes the portion of Lots 13 and 14 falling within the ARRC ROW adjacent to the Slaibys' property (i.e., the portion of those lots lying to the southwest of the "Take Line") as "property owned by the Slaibys" in which ARRC has an easement for specific purposes. Apparently referring to the ARRC's tracks, your letter states that "the railroad runs through the extreme edge of [the Slaibys'] property." You also state that the Slaibys "are free to use the easement area of their property so long as it does not interfere with ARRC's utility corridor easement." With due respect, however, those statements inaccurately describe the Slaibys' rights with respect to the portions of Lots 13 and 14 within the ARRC ROW.

First, as detailed above, the current owner of the land in question is the federal government rather than the Slaibys. Moreover, ARRC has, at a minimum, an exclusive use easement in its ROW, including the portion of the ROW comprised of the portions of Lots 13 and 14 southwest of the "Take Line." An exclusive use easement gives ARRC the right to exclude anyone other than ARRC from the ROW, to fence the land if it chooses and to require any others to purchase permits before using or occupying the ROW.

ARRC's long-standing policy has been not to grant permits to third parties to occupy the ROW with respect to uses that are not related to the operation or use of the railroad or to other statutory purposes under ARTA and ARCA. But residential uses, some authorized but many unauthorized, have arisen in portions of the ROW. Those uses pose safety risks arising from railroad operations and the potential to interfere with other statutory uses of the ROW (i.e., transportation, transmission and communication). The ARRC Board is concerned with the problems raised by such existing residential

uses and the prevention of any new residential uses, but also recognizes that adjoining land owners have developed such uses and, in some cases, maintained them for relatively long periods. That situation, coupled with ARRC's need to control its ROW, gave rise to the proposed TRLUP and its system of residential use permits.

2. The Proposed Policy Would Not Constitute a Taking.

You assert that the proposed TRLUP would constitute a taking of the Slaibys' property interest. Given the nature of ARRC's interest in its ROW, however, that is not the case. Because ARRC possesses an exclusive use easement in the portions of Lots 13 and 14 that are in the ARRC ROW, which includes the right to exclude all others from the ROW, the proposed TRLUP would not constitute a taking. Since the Slaibys do not have the right to occupy or use any land in the ARRC ROW absent ARRC's permission to do so, requiring them to have and to pay for a permit to use the ROW for residential purposes would not deprive them of any property interest.

3. The Individual History of Lots 13 and 14 Do Not Affect the Nature of ARRC's Exclusive Use Easement in the ROW.

Your letter describes the Slaibys' property as unique with respect to the ownership of land on the bluff and the lack of a setback of their home from the ROW boundary. Although the conveyance histories of various properties along this section of the ARRC ROW vary, those histories do not change the fact that ARRC has, at a minimum, an exclusive use easement in all portions of its ROW. Whatever the underlying history of that portion of the ROW, therefore, ARRC's right to exclusive use and possession of the land in its ROW, including the relevant portions of Lots 13 and 14, remains the same.

4. Applying the Proposed Policy to the ROW Adjoining the Slaibys Would Not be Arbitrary and Capricious.

You also assert that the application of the proposed TRLUP to the area of the ROW near the Slaibys would be "arbitrary and capricious." We disagree. The TRLUP's permitting system would be a perfectly rational approach to addressing the railroad safety and operations issues raised by existing residential uses of the ARRC ROW and also would protect other statutory purposes of the ROW. In addition, under the proposed policy, all adjoining properties and property owners would be treated similarly, which is reasonable given that the exclusive nature of ARRC's interest in its ROW is consistent throughout its length.

5. Addressing the Slaibys' Security Concerns.

Your letter mentions the Slaibys' desire to protect themselves from "uninvited guests who access their property on the railroad's easement." If trespassers are seen using the ARRC ROW in the vicinity of the Slaibys' residence, or anywhere else in the

neighborhood, we ask that they be reported to ARRC's Security Department at 265-2245 or 1-877-RAILCOP (1-877-724-5267). The ARRC Security Department has jurisdiction over trespassers and other security threats on the ARRC ROW. ARRC is always ready to work with its neighbors to enhance safety and security in the ROW.

6. The Slaibys' Request to Purchase ARRC's Property Interest.

Your letter raises the issue of the Slaibys purchasing ARRC's interest in the portion of the property on the bluff. Given that the federal government owns the underlying interest in the property, any conversation regarding purchase of this portion of the ROW would more properly be had with the Bureau of Land Management. ARRC's Land Services Manager, Rob Hahn, has been working with BLM's Deputy State Director, Michael Schoder on matters relating to the ARRC ROW in the vicinity of Potter Hill. Mr. Schoder can be reached by telephone at 907-271-5481 or by email at mschoder@blm.gov. That said, ARRC would generally be opposed to any request by an adjoining landowner to purchase either ARRC's or the federal government's interest in the ARRC ROW. The land in question continues to be needed by ARRC in order to maintain and protect railroad safety and operations, as well as other statutory priority purposes.

I hope this letter has provided useful information regarding the proposed TRLUP and its application to the ROW in the vicinity of the Slaibys' property. As noted above, additional communications regarding developments on the proposed policy will be forthcoming soon.

Very truly yours,

Andy Behrend

Andy Behrend
Senior Attorney, Real Estate & Environmental

Enclosures

cc: William R. Hupprich, Vice President & General Counsel, ARRC (via email)
Wendy Lindskoog, Vice President, Corporate Affairs, ARRC (via email)
Karen Morrissey, Director, Real Estate, ARRC (via email)
Michael Schoder, Deputy State Director, BLM (via email and U.S. Mail)

LONGACRE LAW OFFICES, LTD.
425 G STREET, SUITE 910
ANCHORAGE, ALASKA 99501

ROY L. LONGACRE, ESQ.

Ph: (907) 350-1748
FAX: (907) 279-4685

December 6, 2012

Sent By Email
[redacted]

Andy Behrend, Esq.
Office of the General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Re: *Peter and Rejani Slaiby*
ARRC Transitional Residential Land Use Policy (TRLUP)

Dear Mr. Behrend:

Thank you for your July 24, 2012 letter and the historic background it provided. I have reviewed the history and cited references with my clients, Peter and Rejani Slaiby. We disagree with the Alaska Railroad Corporation's (ARRC) position that it has or will obtain[1] an "exclusive use easement" on their property instead of a "perpetual right-of-way and easement to maintain a railroad lane and appurtenances, including telephone and telegraph lines on Lots 4, 13 and 14 southwest of the "Take Line"[2].

The history that you have provided shows that from the beginning the easement was limited to support the construction and operation of a railroad. Sections 49-3-2 and 49-3-4 of the 1914 Act authorized a right-of-way for the United States President to construct, maintain, and operate telephone and telegraph lines "so far as necessary or convenient in the construction and operation of the railroad".

This right-of-way limitation was continued when after the 1964 earthquake the United States found it necessary because of the bluff slide, to purchase additional property as the Jarvi Warranty Deed expressly limits the easement to:

> A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described below; .....

[1] Until the ARRC receives the legal right to the easement, we disagree it has the ability to enforce the easement.
[2] This language is paraphrased from the Jarvi's Warranty Deed to the United States.

The 1982 Transfer Act did not convey to the State of Alaska an exclusive use easement, other than a unique exclusive use easement in Denali National Park, which is specifically stated in 45 U.S.C. §1202(10) as outside the rest of the conveyance. Prior to the 1982 Transfer Act the United States did not have an exclusive use easement on the property now owned by Peter and Rejani Slaiby, but a perpetual easement as set forth above. By the 1982 Transfer Act (ARTA) the United States did not convey to the State of Alaska any more rights than it had in existence immediately before the Act in the Slaiby property. As a result of the 1982 Transfer Act, the ARRC will receive a perpetual easement on the Slaiby property limited to construct, reconstruct, operate and maintain the railroad line and appurtenances, including telephone and telegraph lines, not an exclusive use easement.

The ensuing statutes created by the State of Alaska to establish, manage and operate the Alaska Railroad (A.S. 42.40.010 et. seq.) did not enlarge the perpetual easement on the Slaiby property, but required the State to "assume all rights, liabilities, and obligations of the Alaska Railroad in accordance with the ARTA[3]. Importantly, the Alaska legislature imposed additional limitations on the Alaska Railroad in requiring unless approved by law, before applying for or accepting a grant of federal land within a municipality, a determination by the legislature that the federal land is required for essential railroad purposes[4] and if property is obtained by ARRC's eminent domain power, prior approval of the governor is required[5]. We are not aware that either of these steps has been taken; if you are aware either of these steps has been taken we would appreciate you providing me with that information.

Our research of the information provided in your letter has led us to the illegal 2006 Patent No. 9015[6] in which the United States, ostensibly under the authority of the ARTA, did purport to convey an exclusive use easement to ARRC. The problems with this patent, however are (1) the United States only had a limited perpetual easement by virtue of the 1914 Act and the 1965 Jarvi Warranty Deed and it could not patent to ARRC under the ARTA a greater real property interest than it had in the Slaibys' property, and (2) neither of the above prerequisites required by A.S. 42.40 have been taken. Indeed modification of the perpetual easement to an exclusive use easement, especially as interpreted by ARRC, is not essential and it, as well as the proposed *New Policy For Residential Use Of Railroad Right-Of-Way*, amounts to a land grab without compensation to the injured landowner.

We are unaware of the particulars of the patent being worked on by the U.S. Bureau of Land Management mentioned in your letter, but it too would be limited by the scope of ARTA and by the Alaska statutory provisions.

---

[3] A.S. 42.40.250(19).
[4] A.S. 42.40.285(5).
[5] A.S. 42.40.385(d).
[6] A copy of this patent is included for your review.

Even if ARRC did have an exclusive use easement, which would be in direct contravention of the title report obtained and provided by ARRC, it is an easement and not a fee-simple ownership interest. As such it is the Slaibys' position that use of an exclusive use easement would still be limited to what is necessary to maintain and operate the railroad and telephone and telegraph lines. As stated in my earlier letter, the position of ARRC asserting the right to permit or unnecessarily fence the easement property would constitute an abuse of its discretion and constitute a taking of property from the Slaibys; which could only be compensated with the value of their property. This is in part because, as mentioned before, the easement area "Take Line" encompasses more than the bluff which is arguably all that is necessary to protect the railroad line below, but also extends north past the toe of the bluff and includes property necessary to the Slaibys' use of their home. Different from other effected landowners, the Slaibys own the property at issue, and the impact of an exclusive use easement on behalf of the ARRC essentially destroys the value of their property. In addition the uncertainty over this issue and the inability to reach a satisfactory resolution in a reasonable and expected time frame has cost the Slaibys now over a year of delay in proceeding with their home expansion as well as thousands of dollars.

I did not mean to suggest in my earlier letter that it would make sense that the entire easement be sold to the Slaibys as suggested in your letter, just the portion north of the toe hold. In this way ARRC would be able to protect the bluff from interfering with maintenance and operation of the railroad and would be free from the unneeded portion of the easement on top of the bluff. Doesn't this make sense and obviate the need for what may be a protracted legal battle?

I look forward to hearing from you.

Very truly yours,

Roy Longacre, Esq.

Enclosure: as stated

cc: Peter E. and Rejani Slaiby
Karen Morrissey, Director, Real Estate, ARRC
Michael Schoder, Deputy State Director, BLM
John Pletcher, Esq.
Craig Johnson, Representative of Alaska Legislature
Lesil McGuire, Representative of Alaska Legislature
Lt. Governor Mead Treadwell
Don Young, Congressman
Lisa Murkowski, Senator
Mark Begich, Senator

The United States of America

To all to whom these presents shall come, Greeting:

Patent

AA-55129-9

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 400 Seventh Street S.W., Washington D.C., 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201 et seq.(hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way), and other railroad lands (railroad parcels). A portion of the lands are under the Exclusive License issued on January 5, 1985, and recorded in the Anchorage Recording District Book 1212, Pages 297-352. Title to the remaining lands was vested by Interim Conveyance on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 260-277. This patent is hereby issued for the real property described below:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

Lots 1 to 8, inclusive, U.S. Survey No. 9015, Alaska.

Containing 163.10 acres as shown on plat of survey officially filed December 14, 1994.

U. S. Survey No. 9016, Alaska.

Containing 74.45 acres as shown on plat of survey officially filed February 7, 1990.

Aggregating 237.55 acres.

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA, does give, grant, and convey, unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to said real property, subject to the reservations and conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive-use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

1. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

   any interest in the Seward/Anchorage highway transferred to the State of Alaska by the quit claim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70, 73 Stat. 141, as to Secs. 19, 20, 29, and 30, T. 12 N., R. 3 W., Seward Meridian.

2 Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

3. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

Definitions:

1. "Real property", as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603(6) of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

a. "exclusive-use easement", as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

1. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

3. subjacent and lateral support of the lands subject to the easement; and

4. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

b. "right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:

1. area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 9th day of August, 2006.

UNITED STATES OFAMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: _____

Title: _____

Dated: 8/14/06

District of Columbia

Subscribed and sworn to before me, in my presence,
this 9th day of August 2006
by Evelia Stubbs

_____ Notary Public
My Commission Expires 3-14-09

Location Index for Recording Information:

Lots 1 to 8, inclusive, USS 9015 located in Secs. 6, 7, 18, 19, 20, 29, 30, 32, 33, and 34, T. 12 N., Rs. 3 and 4 W., SM; USS 9016 located in Secs. 23, 25, 26, and 36, T. 13 N., R. 4 W., SM.

Return Recorded Document to:

Alaska Railroad Corporation
Mr. James Blasingame
Vice President, Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500

Patent No. 50-2006-0363

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: FW: 45 U.S.C. Section 1203(b)(1)
Date: Monday, January 27, 2014 1:07:12 PM
Attachments: Railroad Easement Pletcher Documents.pdf

Steve:

John Pletcher's materials do contain the portions of Section 1203(b)(1) that LEXIS erroneously shows as repealed. There are also some indications in the Slaibys' statement of reasons that suggest they are working from the correct version of Section 1203(b)(1). On page 11, they argue that the term "exclusive use easement" ties back to Section 1203 and an easement for the Railroad in Denali Park. The portion of Section 1203(b)(1) that contains the reference to Denali Park falls within LEXIS's omitted language. Also, on page 13, the Slaibys refer to "45 U.S.C. § 1203(a)(1)(A) and (B)". Not only is there no such subsection of Section 1203, the context clearly indicates that they are discussing Section 1203(b)(1)(A) and (B). So it appears that Mr. Longacre was referring to the full and correct version of Section 1203(b)(1). ''

Notwithstanding these materials, it might be worth checking with Roy Longacre to make sure he is working off the correct version of Section 1203(b)(a). It will not benefit any of the parties if we are not all working off the correct, operative version of ARTA.

In case you are interested, I have attached the packet of materials Mr. Pletcher supplied to ARRC in support of his positions regarding the ARRC ROW. His take on how Section 1203 functions, including his views on ARTA exclusive use easements is found at pages 26-29 of the pdf file.

Thanks,
Andy

From: Andy Behrend
Sent: Monday, January 27, 2014 8:23 AM
To: 'Scordino, Steven'
Subject: RE: 45 U.S.C. Section 1203(b)(1)

Steve:

Well, since Longacre appears to be relying on Mr. Pletcher's materials for much of his analysis, let me take a look at the stack of material Pletcher sent us to back up his assertions about ARTA and the 1914 Act. I know that he has shared those materials with the Slaibys in the past year or so. I'll let you know what I find.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 8:14 AM
To: Andy Behrend
Subject: Re: 45 U.S.C. Section 1203(b)(1)

I was aware of why the change was made and I have an accurate copy of Section 1203. Do you think we should check with Longacre on whether he was relying upon the Lexis version?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, Jan 24, 2014 at 11:41 AM, Andy Behrend <BehrendA@akrr.com> wrote:
Hi, Steve:

Thanks for the discussion yesterday. You mentioned the erroneous repeal notice on 45 U.S.C. § 1203(b)(1) that shows up on Lexis. I checked and Westlaw shows the correct repeal annotation, which is that only the last sentence of Section 1203(b)(1) is repealed. The reason that last sentence was repealed was that it provided for what would happen to certain property interests if and when any land reverted to the federal government under 45 U.S.C. § 1209 due to abandonment of the use of that land for railroad purposes. But Section 1209 was repealed in 2003, making the last sentence of Section 1203(b)(1) unnecessary and superfluous.

Let me know if you want a copy of the Westlaw USCA entry for Section 1203 and I'll print one and send it.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

HISTORY: ALASKA RAILROAD EASEMENT

IT IS A PROBLEM OF STATEWIDE CONCERN

A BRIEF HISTORY:

Easement Act of 1898: provided for a 200 ft. wide easement in Alaska for anyone willing to build a railroad. No takers.

Alaska Railroad Act of March 12, 1914: 200 ft. wide easement, 100ft each side of centerline for "railroad, telephone, telegraph". RR was owned by the Fed. Govt.

Pre –statehood this easement is found in patents issued by the Dept. of the Interior to homesteaders along the line.

Post statehood the RR continued to be owned and operated by the Fed. Govt.

The 1982 ARRTA 45 USC 1201-1214 transferred the rights of the Feds to the State.

1 Transfer of existing real property under Sec. 2003.

2 Allowed for the State to acquire future easements of several varieties. Sec. 2008.

3 left the 1914 easements as they were: Sec. 1212.

4 Reversion to adjacent property owners: Sec. 1209 repealed in 2003, possibly suggested by the RR, but corrected as to the Eielson Spur in the last session.

In 2006 AK RR solicits and acquires from Dept of the Interior patents converting 1914 -conveyed and sec. 2003 -transferred easements into 2008 easements. This changes a simple easement for certain uses into virtually complete ownership.

THE TWO BASIC ISSUES

ONGOING USE
RIGHT OF REVERSION

Railroad Issues

The purpose of this flyer is to give you a small amount of information regarding the issues with the railroad. This document is not intended to provide any legal advice or legal assistance to you.

There are 2 general issues going on with the railroad's new policy:

The 1st is **the use of the involved property by the railroad and competing uses by adjacent landowners.**
The situation can vary along the railroad property depending on the circumstances. For example, as far as the railroad yard downtown goes, the railroad may own the property outright. The railroad's ownership rights along its track might be various depending upon the locality involved. The railroad was deeded a "right-of-way" for "railroad telephone and telegraph" in some areas. This is not outright ownership. The usage follows the language of the right-of-way document. A right-of-way is simply a type of easement.

It is my understanding that a right-of-way confers upon the owner of that right-of-way the right to use that right-of-way for the purposes stated in the right-of-way document which created it. Typically, the property owner of the property adjoining the right-of-way or the owner of the property over which the right-of-way traverses has a right of reasonable use of the right-of-way conveyed, which uses are not unreasonably inconsistent with the right-of-way holders use. In a dispute between the right-of-way holder and others, the question of whether or not the uses are reasonable and not inconsistent becomes a fact issue during litigation, on occasion. That is an issue on a case-to-case basis where there are many users along a right-of-way, and different uses under consideration.

The owner is not required to apply for or pay for a permit to use the property, as the railroad is now attempting to require. Likewise, the right to use the right-of-way in a manner not inconsistent with the right-of-way holder's use is not subject to being terminated unless the creating document calls for that.

The 2nd issue **involves what is technically called "reversion".** This commonly occurs where an easement or right-of-way is abandoned. Although there may be exceptions, the right-of-way which is the "dominant estate" commonly "reverts" back to the servient estate that it crosses if the ROW is abandoned. A thorough explanation of this as related to the railroads on a national basis is contained in a website of the National Association of Reversionary Property Owners (NARPO): links: home.earthlink.net/~dick156/row.htm. and prfamerica.org/speeches/3rd/RailsToTrailsMovement.html. This website and information deals with the reversion right as impacted by the "Rails to Trails Act" which was an attempt to circumvent the reversion right.

This issue is very complicated on a national basis and is further complicated locally by statutes having to do with the creation of the Alaska Railroad, the creation of their rights-of-way for track, the 1982 Alaska Railroad Transfer Act which transferred the Alaska Railroad from the federal government to the state of Alaska, some other federal statutes having to do with the reversion right, and a state statute that was passed in the last session of the legislature having to do with the Eielson Spur line.

I will not attempt to analyze all of this here but only point all this out to indicate that the matter is not simple. The attempt by the railroad to fit all of this into one new policy of the railroad may infringe on our rights which you and others have to reversionary rights.

At this juncture I simply recommend that we get organized, perhaps combining to acquire legal resources and other assistance. This assistance could also involve marshaling political assets.

I hope that this has been helpful and will advance the discussion.

ROADMAP TO THE PRESENT CONFUSION

A. PRE -1982 RIGHT OF WAY: ALL WERE GRANTED UNDER THE 1914 RR ACT AND ARE FOR "RAILROAD, TELEPHONE AND TELEGRAPH".

B. 1982 TRANSFER ACT: 3 CATEGORIES OF TRANSFERS THERE:

1. SECTION 1203 TRANSFERS: "RAIL PROPERTIES" (see; sec.1202(10) for the definition): THIS CONVEYED THE RIGHT OF WAY OWNED BY THE USA THROUGH THE RR. ALL SUCH PRE-82 EASEMENTS WERE UNDER THE 1914 ACT.

2. SECTION 1208 TRANSFERS: THE FEDS AGREED TO MAKE FED LAND AVAILABLE FOR FUTURE RAIL LINES AFTER 1982. (These were to be in a form as close as possible to the language of the 1914 Act and 1202(6), depending on the circumstances. See: 1208(a).

3. SECTION 1208(b)(1)(D). APPLICABLE TO DENALI PARK: THIS IS AN "EXCLUSIVE USE" EASEMENT AS DEFINED BY 1202(6) (See cheat sheet for the restrictions) This is the only place in the Act where such a "restricted use" easement is conveyed. The key word here is "CONVEYED". Other than Denali Park all pre-82 easements were simply passed through to the State since that was what the Feds owned.

C. PATENT AA 55129-9: (issued in 2006) This patent is for lands in Anchorage. The same may have occurred in the Valley, Fairbanks, etc. Note that it is issued with the restricted use language of Denali Park because is uses the 1202(6) rather than the 1202(10) language.

THE RR WITH BLM HELP HAS CONVERTED 1914 EASEMENTS INTO A COMPLETELY DIFFERENT OWNERSHIP INTEREST BY CONFLATING 1914 EASEMENT LANGUAGE WITH DENALI PARK EXCLUSIVE USE LANGUAGE.

THE RR CLAIMS THAT IT HAS THE FIDUCIARY DUTY TO MAXIMIZE RR PROPERTY OWNERSHIP AND THAT THE 2006 PATENT OPERATES AS AN INVERSE CONDEMNATION LEAVING ALL PROPERTY OWNERS TO SUE FOR COMPENSATION

THE RR ACCOMPLISHED BOTH GOALS ON PAPER

BUT……

(1) AS TO THE LAND GRAB CHANGE FROM 1914 TO AN EXCLUSIVE USE EASEMENT SEE:

AS 42.40.285

"Unless the legislature approves the action by law, the corporation may not ….

(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with**.....**

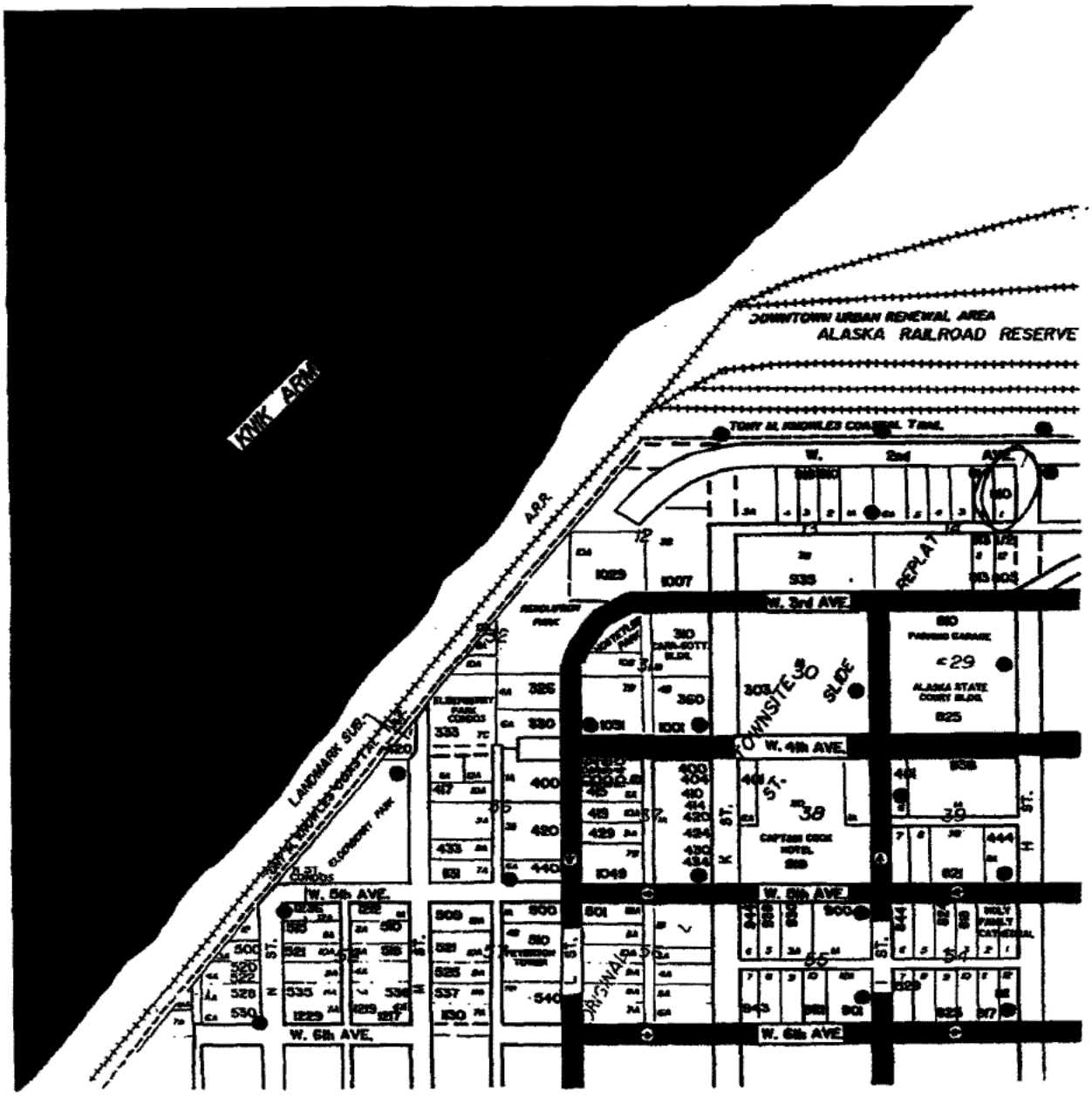
(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10)."

AA55129-29 IS IN A MUNICIPALITY AND MUST CARRY THE 1914 ACT AND 1202(10) LANGUAGE, NOT (6) AS IT DOES, AT LEAST NOT WITHOUT LEGISLATIVE APPROVAL. DID THE LEGISLATURE APPROVE? DID IT EVEN KNOW?

(2) AS TO CONDEMNATION CAUSED BY THE PATENT SEE: AS 42.40.385
(d) The exercise of the power of eminent domain requires the prior approval of the governor.

THE CONVEYANCE FOR DOWNTOWN EXAMPLE

The situation is identical along the line in Anchorage. The Oceanview area conveyance of 1949 is identical in form



GR. 1229

NE 1/4 SEC. 13, T13N R4W

62

COPYRIGHT 1997 JMR

63

77

SEE OVERVIEW MAP "F"

Anchorage 09620 —25

RECEIVED
U. S. LAND OFFICE
ANCHORAGE, ALASKA
DATE 9-19-40
HOUR 2 p m

THE UNITED STATES OF AMERICA,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, there has been deposited in the General Land Office of the United States evidence whereby it appears that Simon Hellenthal is entitled to a patent for the [illegible] is entitled to a patent for the Lot one of Block thirteen in the Townsite of Anchorage, Alaska

According to the approved Plat of the Survey of said Townsite on file in the General Land Office, containing seven thousand square feet;

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Simon Hellenthal the Tract of land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Simon Hellenthal and to his heirs and assigns forever; subject to any vested and accured water rights for mining agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts. But excepting, nevertheless, and reserving unto the United States, rights of way over, across and through said lands for canals and ditches constructed by its authority, all in the manner perscribed and directed by the Act of Congress approved August 30, 1890 (26 Stat1, 391) And there is, also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 305).

IN TESTIMONY WHEREOF, I, Franklin D. Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. GIVEN under my hand, at the City of Washington the Twenty-seventh day of August in the year of our Lord one thousand nine hundred and forty and the Independence of the United States the one hundred and Sixty-Fifth

the one hundred and SIXTY-FIRST.

(SEAL) BY the President: Franklin D. Roosevelt

By Louise Jeanne Kavanagh, Secretary.

R. S. Clinton
Chief, Patents Division, General Land Office

Recorder of the General Land Office.

Patent Number

RECORDED: Patent Number 1109127

The foregoing instrument was filed for record at 11 o'clock A. M. November 27, 1940, at the request of Simon Hellenthal.

[illegible]
District Recorder

DOWNTOWN
1940

NEIGHBOR'S PROBLEM

.....

SOON TO BE OURS

OFFICE OF THE GENERAL COUNSEL
TELEPHONE: (907) 265-2305
FACSIMILE: (907) 265-2443
EMAIL: behrenda@akrr.com

Via Regular U.S. Mail

July 24, 2012

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

Re: Peter and Rejani Slaiby
ARRC Transitional Residential Land Use Policy

Dear Mr. Longacre:

This letter responds to yours of June 6, 2012, which was submitted electronically as a public comment regarding the proposed adoption by the Alaska Railroad Corporation ("ARRC") of the ARRC Transitional Residential Land Use Policy ("TRLUP"). Those public comments were submitted pending potential action on that proposed policy at the ARRC Board of Directors meeting on June 7, 2012.

As I believe you know from speaking to Karen Morrissey, ARRC's Real Estate Director, the ARRC Board decided at the June 7 meeting to return the proposed policy to the Board's Right-of-Way Committee for further consideration and possible revision. A letter was recently sent to adjoining property owners, including the Slaibys, informing them of that development. Any additional developments regarding the proposed policy will be communicated to adjoining property owners at a later date.

We wanted to respond separately to your letter in order to address your specific comments relating to the respective property rights of the Slaibys and ARRC. As we proceed to develop and revise the proposed policy, it is important that ARRC and its residential neighbors have a common understanding of those issues.

A. History of ARRC's Right-of-Way (ROW) and Its Property Interest in the ROW.

In order to understand the Slaibys' specific situation, it is necessary to understand the history and legal status of ARRC's ROW. ARRC obtained its ROW from the federal government as a result of the Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201 et seq. (ARTA) and the Alaska Railroad Corporation Act, AS 42.40 (ARCA). In ARTA, Congress provided that the State of Alaska would receive all of the United States' interest, but at a minimum an exclusive use easement, in the Alaska Railroad right-of-way. *See* 45 U.S.C. § 1203(b) (providing for the conveyance to the State of title to all lands within the Alaska Railroad right-of-way). In ARCA, the Alaska Legislature established ARRC and provided that the railroad lands to be conveyed under ARTA would be conveyed to ARRC. *See* AS 42.40.350.

Beginning in 1985, the federal government began the process of conveying the ROW to ARRC. The conveyance process included the initial step of interim conveyances by the federal government of much of the land in the ROW to ARRC, wherein ARRC received at least an exclusive use easement in its ROW. Since the initial conveyances, the federal government, through the Bureau of Land Management, has engaged in an incremental process of patenting the land in the ROW to ARRC. As a result of this conveyance process, ARRC holds an exclusive interest in the entire ARRC ROW. The nature of ARRC's interest in the ARRC ROW ranges from a fee simple interest for much of the ROW to, at a statutory minimum, an exclusive use easement.

Even the exclusive use easement, the minimum interest ARRC owns in its ROW, provides ARRC with exclusive rights of possession and use in the ROW. As provided in ARTA, 45 U.S.C. § 1202(6):

> "[E]xclusive-use easement" means an easement which affords to the easement holder the following:
>
> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
>
> (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
>
> (C) subjacent and lateral support of the lands subject to the easement; and
>
> (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands. (Emphasis supplied)

Under this statutory definition of an exclusive use easement, ARRC has - at a minimum - the exclusive right to use and possess the ARRC ROW for transportation, communication and transmission purposes. Moreover, ARRC has the right to fence the ARRC ROW and to exclude all other persons and entities from all or any of it.

ARRC's right to possess its ROW and to use it for railroad purposes is "exclusive." And ARRC not only has the right to exclude all other persons from the ARRC ROW, it exercises that right. It fences portions of the ROW in busy areas, places

prominent "No Trespassing" signs, cites unauthorized persons on the ROW as trespassers, and takes other measures to keep people off the ROW. Another clear reflection of ARRC's exercise of control of access to the ROW is the fact that ARRC requires agencies, entities and individuals wishing to cross, occupy or use any portion of the ROW to qualify for and obtain paid permits to do so.

B. ARRC's Interest in the ROW Adjacent to the Slaibys' Property.

The portion of the ARRC ROW adjacent to the Slaibys' property includes portions of Lots 13 and 14 in Block 3 of the Sunset Hills West Subdivision ("Lots 13 and 14") lying to the southwest of the "Take Line" shown on the plat of Potter Hill Relocation according to Plat 64-105. This land was acquired by the federal government in 1965, following the 1964 earthquake, which caused the bluff in the vicinity of what is now Jarvi Drive to slide. The federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area. Accordingly, the federal government "took" additional land in the Potter Hill area for use in the ROW, receiving deeds conveying land in that area in exchange for payment of compensation.

One of those deeds conveyed to the federal government the portions of Lots 13 and 14 lying to the southwest of the "take line." A copy of that warranty deed is enclosed. The interest granted to the federal government in those lots was "[a] perpetual right-of-way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines . . . ." The deed stated that "the above-described premises are being acquired for the Alaska Railroad, Department of the Interior." A title report obtained by ARRC with respect to Lots 13 and 14 confirms that grant of a perpetual right-of-way and railroad easement constitute a special exception to the Slaibys' title to Lots 13 and 14. A CD containing a copy of that title report and the documents upon which it is based is enclosed for your convenience.

Pursuant to ARTA, the portions of Lots 13 and 14 southwest of the "take line" were included among the lands to be transferred to ARRC to be occupied and used as part of its ROW, just as that land had been used and occupied by the federal Alaska Railroad. The intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA, although that final conveyance has not yet occurred. Consequently, although ARRC has an exclusive right to occupy and use the land for its ROW, both to operate a railroad and for the other statutory purposes identified in ARCA, the federal government still owns this portion of the ARRC ROW. As Patrick Kelly, ARRC's former Land Services Manager, informed both Mr. Slaiby and Scott Jones of SAJJ Architecture in April 2012, and Rob Hahn, Mr. Kelly's successor, mentioned to you in an email of June 6, 2012, the U.S. Bureau of Land Management currently is reviewing Plat 64-105 for transfer of Lots 13 and 14 to the ARRC. Copies of those communications are enclosed.

The fact that the federal government still owns the portions of Lots 13 and 14 in the ARRC ROW does not affect ARRC's exclusive rights to occupy and use that land. Consistent with ARTA, ARRC has, at a minimum, an exclusive use easement in the land. Notably, the enclosed title report includes a special exception stating that title to Lots 13 and 14 is subject to the "rights of the Public and/or governmental agencies, in and to any portion of said land lying within the boundaries of the Alaska Railroad right-of-way." The rights of ARRC in the portions of Lots 13 and 14 lying to the southwest of the "Take Line" include the statutory grant of, at a minimum, an exclusive use easement under ARTA. Accordingly, as discussed above, ARRC has the right to exclude others from the land, including by means of fencing the boundary of the ROW. Relative to that right, ARRC also has the right to prohibit or to require a permit for any residential uses of or structures in that portion of the ROW. This portion of the ROW, therefore, is subject to the proposed TRLUP.

C. Responses to Individual Points in Your June 6 Letter.

1. Slaibys Do Not Have the Right to Occupy or Use the ARRC ROW Without ARRC's Permission.

Your June 6 letter characterizes the portion of Lots 13 and 14 falling within the ARRC ROW adjacent to the Slaibys' property (i.e., the portion of those lots lying to the southwest of the "Take Line") as "property owned by the Slaibys" in which ARRC has an easement for specific purposes. Apparently referring to the ARRC's tracks, your letter states that "the railroad runs through the extreme edge of [the Slaibys'] property." You also state that the Slaibys "are free to use the easement area of their property so long as it does not interfere with ARRC's utility corridor easement." With due respect, however, those statements inaccurately describe the Slaibys' rights with respect to the portions of Lots 13 and 14 within the ARRC ROW.

First, as detailed above, the current owner of the land in question is the federal government rather than the Slaibys. Moreover, ARRC has, at a minimum, an exclusive use easement in its ROW, including the portion of the ROW comprised of the portions of Lots 13 and 14 southwest of the "Take Line." An exclusive use easement gives ARRC the right to exclude anyone other than ARRC from the ROW, to fence the land if it chooses and to require any others to purchase permits before using or occupying the ROW.

ARRC's long-standing policy has been not to grant permits to third parties to occupy the ROW with respect to uses that are not related to the operation or use of the railroad or to other statutory purposes under ARTA and ARCA. But residential uses, some authorized but many unauthorized, have arisen in portions of the ROW. Those uses pose safety risks arising from railroad operations and the potential to interfere with other statutory uses of the ROW (i.e., transportation, transmission and communication). The ARRC Board is concerned with the problems raised by such existing residential

uses and the prevention of any new residential uses, but also recognizes that adjoining land owners have developed such uses and, in some cases, maintained them for relatively long periods. That situation, coupled with ARRC's need to control its ROW, gave rise to the proposed TRLUP and its system of residential use permits.

2. The Proposed Policy Would Not Constitute a Taking.

You assert that the proposed TRLUP would constitute a taking of the Slaibys' property interest. Given the nature of ARRC's interest in its ROW, however, that is not the case. Because ARRC possesses an exclusive use easement in the portions of Lots 13 and 14 that are in the ARRC ROW, which includes the right to exclude all others from the ROW, the proposed TRLUP would not constitute a taking. Since the Slaibys do not have the right to occupy or use any land in the ARRC ROW absent ARRC's permission to do so, requiring them to have and to pay for a permit to use the ROW for residential purposes would not deprive them of any property interest.

3. The Individual History of Lots 13 and 14 Do Not Affect the Nature of ARRC's Exclusive Use Easement in the ROW.

Your letter describes the Slaibys' property as unique with respect to the ownership of land on the bluff and the lack of a setback of their home from the ROW boundary. Although the conveyance histories of various properties along this section of the ARRC ROW vary, those histories do not change the fact that ARRC has, at a minimum, an exclusive use easement in all portions of its ROW. Whatever the underlying history of that portion of the ROW, therefore, ARRC's right to exclusive use and possession of the land in its ROW, including the relevant portions of Lots 13 and 14, remains the same.

4. Applying the Proposed Policy to the ROW Adjoining the Slaibys Would Not be Arbitrary and Capricious.

You also assert that the application of the proposed TRLUP to the area of the ROW near the Slaibys would be "arbitrary and capricious." We disagree. The TRLUP's permitting system would be a perfectly rational approach to addressing the railroad safety and operations issues raised by existing residential uses of the ARRC ROW and also would protect other statutory purposes of the ROW. In addition, under the proposed policy, all adjoining properties and property owners would be treated similarly, which is reasonable given that the exclusive nature of ARRC's interest in its ROW is consistent throughout its length.

5. Addressing the Slaibys' Security Concerns.

Your letter mentions the Slaibys' desire to protect themselves from "uninvited guests who access their property on the railroad's easement." If trespassers are seen using the ARRC ROW in the vicinity of the Slaibys' residence, or anywhere else in the

neighborhood, we ask that they be reported to ARRC's Security Department at 265-2245 or 1-877-RAILCOP (1-877-724-5267). The ARRC Security Department has jurisdiction over trespassers and other security threats on the ARRC ROW. ARRC is always ready to work with its neighbors to enhance safety and security in the ROW.

6. The Slaibys' Request to Purchase ARRC's Property Interest.

Your letter raises the issue of the Slaibys purchasing ARRC's interest in the portion of the property on the bluff. Given that the federal government owns the underlying interest in the property, any conversation regarding purchase of this portion of the ROW would more properly be had with the Bureau of Land Management. ARRC's Land Services Manager, Rob Hahn, has been working with BLM's Deputy State Director, Michael Schoder on matters relating to the ARRC ROW in the vicinity of Potter Hill. Mr. Schoder can be reached by telephone at 907-271-5481 or by email at mschoder@blm.gov. That said, ARRC would generally be opposed to any request by an adjoining landowner to purchase either ARRC's or the federal government's interest in the ARRC ROW. The land in question continues to be needed by ARRC in order to maintain and protect railroad safety and operations, as well as other statutory priority purposes.

I hope this letter has provided useful information regarding the proposed TRLUP and its application to the ROW in the vicinity of the Slaibys' property. As noted above, additional communications regarding developments on the proposed policy will be forthcoming soon.

Very truly yours,

Andy Behrend

Andy Behrend
Senior Attorney, Real Estate & Environmental

Enclosures

cc: William R. Hupprich, Vice President & General Counsel, ARRC (via email)
Wendy Lindskoog, Vice President, Corporate Affairs, ARRC (via email)
Karen Morrissey, Director, Real Estate, ARRC (via email)
Michael Schoder, Deputy State Director, BLM (via email and U.S. Mail)

PATENT AA-55129-9

DEALS WITH SURVEYS 9015 1ND 9016

ISSUED 2006 AND PURPORTS TO CONVEY AN UNRESTRICTED EASEMENT PER THE DEFINITON USED IN SEC. 1202(6)

The United States of America

To all to whom these presents shall come, Greeting:

Patent

AA-55129-9

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 400 Seventh Street S.W., Washington D.C., 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201 et seq.(hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way), and other railroad lands (railroad parcels). A portion of the lands are under the Exclusive License issued on January 5, 1985, and recorded in the Anchorage Recording District Book 1212, Pages 297-352. Title to the remaining lands was vested by Interim Conveyance on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 260-277. This patent is hereby issued for the real property described below:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

Lots 1 to 8, inclusive, U.S. Survey No. 9015, Alaska.

Containing 163.10 acres as shown on plat of survey officially filed December 14, 1994.

U. S. Survey No. 9016, Alaska.

Containing 74.45 acres as shown on plat of survey officially filed February 7, 1990.

Aggregating 237.55 acres.

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA, does give, grant, and convey, unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to said real property, subject to the reservations and conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive-use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

1. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

   any interest in the Seward/Anchorage highway transferred to the State of Alaska by the quit claim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70, 73 Stat. 141, as to Secs. 19, 20, 29, and 30, T. 12 N., R. 3 W., Seward Meridian.

2 Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).

3. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

Definitions:

1. "Real property", as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.

2. All of the terms used in this instrument that are defined in Sec. 603(6) of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

a. "exclusive-use easement", as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:

1. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

3. subjacent and lateral support of the lands subject to the easement; and

4. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

b. "right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:

1. area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 9th day of August, 2006.

UNITED STATES OFAMERICA

Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: PK Gamble

Title: Pres/CEO

Dated: 8/14/06

District of Columbia

Subscribed and sworn to before me, in my presence,
this 9th day of August 2006
by Evelin Stubbs

Notary Public
My Commission Expires 3-14-08

Location Index for Recording Information:

Lots 1 to 8, inclusive, USS 9015 located in Secs. 6, 7, 18, 19, 20, 29, 30, 32, 33, and 34, T. 12 N., Rs. 3 and 4 W., SM; USS 9016 located in Secs. 23, 25, 26, and 36, T. 13 N., R. 4 W., SM.

Return Recorded Document to:

Alaska Railroad Corporation
Mr. James Blasingame
Vice President, Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500

Patent No 50-2006-0363

Alaska Statute / Fed Statute Cheat Sheet

FEDERAL

1914 Act:

Sec.49-3-2:

This states that the authority to construct the railroad also carries with it the power to construct and operate a telegraph and telephone line necessary and convenient in the construction and operation of the railroad.

Sec. 49-3-5: "reservations over right-of-way in patents"

"In all patents for lands taken up, entered, or located in Alaska after March 12, 1914 there is reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines to the extent of 100 feet on each side of the centerline of any such road and 25 feet on either side of the centerline of any such telegraph or telephone lines."

1982 Transfer Act

45 USC 1201-1214

1201: purpose
1202: definitions: key ones are (6) and (10)
(6)(A) has the "exclusive use" language
(6)(B) has the "transportation, communication, transmission" language
(6)(C) subajacent and lateral support
(6)(D) has the fence off provision and to prohibit others from using
(10) "rail properties" defined: "all right title and interest of the US"
1203: Transfer of real property including rail property This conveys the existing 1914 easements to the State
1208: Future transfers after transfer: Allows for future easements across fed lands

(b)(1)(B) transfers "rail properties" not subject to dispute. See.02(10)
(b)(1)(D) deals with the exclusive use easement in Denali Park

1209: Reversion after abandonment: (repealed 2003)
1212: Interaction with other laws: prior reservations not affected.

STATE:

.250

AS 42.40.250:

"In addition to the exercise of other powers authorized by law, the corporation may...
(10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);"

"Land" is defined in Sec. 980:
In this chapter unless the context otherwise requires,... **(8)** "land" means any interest in real property,

---

.285

Unless the legislature approves the action by law, the corporation may not
....
(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with.....

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).

350:

(a) The corporation shall receive from the United States and, in its own name, take title to all rail property transferred under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982). All land that is transferred or acquired by the corporation is designated as follows:

(1) railroad rights-of-way are railroad utility corridors;

(2) land outside railroad utility corridors is rail land.

(b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, ... the corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

.....

395: eminent domain:

(a) The corporation may exercise the power of eminent domain under AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes consistent with this chapter.... (b) The corporation may file a declaration of taking in the manner provided for the state under AS 09.55.420 .

.....

(d) The exercise of the power of eminent domain requires the prior approval of the governor.

400:

The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws.

A SYNOPSIS OF SEC. 1203 THE MAIN TRANSFER SECTION

45 USC Sec. 1203 Cut Down to Size

Sec. 1203. Transfer authorization

(a) Authority of Secretary; time, manner, etc., of transfer
Subject to the provisions of this chapter, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. ...

(b) Simultaneous and interim transfers, conveyances, etc.
(1) On the date of transfer, the Secretary shall simultaneously:
(A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property; (this does not apply since it excludes interests in real property)

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights; (if there are no unresolved claims then an immediate transfer is provided-as far as I know this is us)

(C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights; (inapplicable since there are no disputes)

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the

railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

(THIS IS THE ONLY PLACE IN THE WHOLE OF THE STATUTES THAT MENTIONS EXCLUSICVE USE AND IT APPLIES TO DENALI PARK AND NO OTHER PLACE)

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of January 14, 1983.

(THIS IS THE SOURCE OF THE "EXCLUSIVE USE" AND "TRANSPORTATION, TRANSMISSION AND COMMUNICATIONS" LANGUAGE BUT THIS APPLIES ONLY TO SUBSECTION (D) WHICH APPLIES ONLY TO THE DENALI PARK CONVEYANCES.)

TRANSFER OF ALASKA RAILROAD TO STATE OF ALASKA

The State of Alaska accepted the certification requirements of the Alaska Railroad Transfer Act [this chapter] by 1984 SLA ch. 54, eff. May 19, 1984. Thereafter, by 1984 SLA ch. 153, eff. July 6, 1984, the Alaska Railroad Corporation was established to manage and operate the Alaska Railroad. The transfer of the Alaska Railroad to the State of Alaska was carried out on January 5, 1985.

(BELOW IS MORE OF THE "EXCLUSIVE USE" LANGUAGE BUT THIS IS APPLICABLE TO THE DENALI PARK EXCJHANGE)

-MISC2-

DENALI NATIONAL PARK AND ALASKA RAILROAD CORPORATION EXCHANGE

Pub. L. 110-229, title III, Sec. 351, May 8, 2008, 122 Stat. 800, provided that:

"(a) Definitions. - In this section:

"(1) Corporation. - The term 'Corporation' means the Alaska Railroad Corporation owned by the State of Alaska.

"(2) Secretary. - The term 'Secretary' means the Secretary of the Interior.

"(b) Exchange. -

"(1) In general. -

"(A) Easement expanded. - The Secretary is authorized to grant to the Alaska Railroad Corporation an exclusive-use easement on land that is identified by the Secretary within Denali National Park for the purpose of providing a location to the Corporation for construction, maintenance, and on-going operation of track and associated support facilities for turning railroad trains around near Denali Park Station.

"(B) Easement relinquished. - In exchange for the easement granted in subparagraph (A), the Secretary shall require the relinquishment of certain portions of the Corporation's existing exclusive use easement within the boundary of Denali National Park.

"(2) Conditions of the exchange. -

"(A) Equal exchange. - The exchange of easements under this section shall be on an approximately equal-acre basis.

"(B) Total acres. - The easement granted under paragraph (1)(A) shall not exceed 25 acres.

"(C) Interests conveyed. - The easement conveyed to the Alaska Railroad Corporation by the Secretary under this section shall be under the same terms as the exclusive use easement granted to the Railroad in Denali National Park in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985-994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.). The easement relinquished by the Alaska Railroad Corporation to the United States under this section shall, with respect to the portion being exchanged, be the full title and interest received by the Alaska Railroad in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985-994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.).

"(D) Costs. - The Alaska Railroad shall pay all costs

associated with the exchange under this section, including the costs of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the costs of any surveys, and other reasonable costs.

"(E) Land to be part of wilderness. - The land underlying any easement relinquished to the United States under this section that is adjacent to designated wilderness is hereby designated as wilderness and added to the Denali Wilderness, the boundaries of which are modified accordingly, and shall be managed in accordance with applicable provisions of the Wilderness Act (78 Stat. 892) [16 U.S.C. 1131 et seq.] and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371) [see Tables for classification].

"(F) Other terms and conditions. - The Secretary shall require any additional terms and conditions under this section that the Secretary determines to be appropriate to protect the interests of the United States and of Denali National Park."

MAKING A LONG STORY SHORT THE "EXCLUSIVE USE" EASEMENT AND THE 'TRANSPORTATION, TRANSMISSION, COMMUNICATIONS" LANGUAGE APPLIES ONLY TO DENALI PARK.

SIMPLE LEGISLATIVE PLAN

(1) AS TO ONGOING USE/EASEMENT TYPE:

(a): amend AS 42.40.285 to reflect that those rights to real property Act acquired by the RR under the Transfer Act of 1982, that is, easements granted pre-1982 under the 1914 Act remain unchanged by the Transfer Act and remain for the purposes stated in the Act of March 12, 1914. (See: sec. 1212.)

(b) if the railroad has sought or received a patent or other conveyance conveying any easement rights contrary to (a) they are null and void.

(c) if any patents or conveyance contrary to (a) have been granted to the Ak RR the RR is required to apply for a patent or conveyance in compliance.

(2) AS TO REVERSION:

Assuming the Eilson Spur solution is a good one, do the same as to the rest of the line for adjoining owners.

(3) AS TO LINES OUTSIDE OF MUNICIPALITIES:

THESE SHOULD BE IN A FORM EITHER PER THE 1914 ACT OR IN A FORM APPROVED IN ADVANCE BY THE LEGISLATURE

THE ARRTA DOES NOT CHANGE THE PRIOR TRANSFERS

(IT SAYS SO IN SEC.1212)

Does RRTA change the 1914 reservations for ROW ?

§1212. Applicability of other laws
(a) Actions subject to other laws

The provisions of chapter 5 of title 5 (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 303 of title 49, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this chapter, except to the extent that such laws may be applicable to granting of rights-of-way under section 1208 of this title.
(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2371), and the general land and land management laws of the United States.
(c) Ceiling on Government contributions for Federal employees health benefits insurance premiums

Beginning on January 14, 1983, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5 shall not apply to the Alaska Railroad.
(d) Acreage entitlement of State or Native Corporation

Nothing in this chapter is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.
(e) Judgments involving interests, etc., of Native Corporations

With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this chapter, nothing contained in this chapter shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

(Pub. L. 97–468, title VI, §613, Jan. 14, 1983, 96 S

EXCERPTS APPLICABLE TO THE SITUATION:

Step 1:

§1212. Applicability of other laws
(a) Actions subject to other law…

(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.)

Step 2:

§1212. Applicability of other laws
(a) Actions subject to other laws……

The enactment of this chapter, actions **taken** during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter…. Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.)

"Revocation" : "the recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the active revocation made it void. …Black's Law Dictionary.

Step 2 shows that the reservations previously made remain as such despite transfer of RR real estate to the Sate, either originally, interim or final.

A LONGER STATE AND FEDERAL ANALYSIS

Alaska/ Fed Statute Analysis

1 The RR is empowered to operate the RR, etc.

AS 42.40.250:

"In addition to the exercise of other powers authorized by law, the corporation may...
(10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);"

"Land" is defined in Sec. 980:
I"n this chapter unless the context otherwise requires,... **(8)** "land" means any interest in real property, including tide and submerged land, and any right appurtenant to the interest;"

2 There is a difference between fed grants that the RR may receive: those inside and those outside a municipality. We are in the MOA:

AS 42.40,285:

Unless the legislature approves the action by law, the corporation may not
....
(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with

.....

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).

The last exception seems applicable: the grant of the ROW within the MOA is made under the 82 Transfer Act. Note specifically the reference to the "rail

properties" language of Sec. 1202 (10), and not the 1202(6) "unrestricted easement" language suggested by the RR in its letter.

Sec. 1212 states in part:

"Applicability of other laws

.....

(b).....

The enactment of this chapter, actions taken during the

transition period as provided in section 1204 of this title, and

transfer of the rail properties of the Alaska Railroad under

authority of this chapter....

Such events shall not

constitute or cause the revocation of any prior withdrawal or

reservation of land for the use of the Alaska Railroad under the

Act of March 12, 1914 (43 U.S.C. 975 et seq.),"

MY CONCLUSION IS THAT THE TRANSFERS OF LANDS BY WAY OF ROW UNDER THE 1914 ACT TO THE ORIGINAL ALASKA RR OWNED BY THE FEDS WERE NOT CHANGED BY THE 1982 TRANSFER TO THE STATE, ESPECIALLY NOT THOSE WITHIN A MUNICIPALITY. THE ALASKA RR IN STATE HANDS RECEIVED THOSE RIGHTS THAT WERE ORIGINALLY CONVEYED AND NO MORE.

REVERSION RIGHTS FOLLOW:

3 Reversions: http://us-code.vlex.com/vid/sec-reversion-19256882

45 USC 1209 was the reversion statute in the Transfer Act of 1982 and stated as follows, in part.

(a) Reversion or payment to Federal Government for conversion to use preventing State-owned railroad from continuing to operate If, within ten years after the date of transfer to the State authorized by section 1203 of this title, the Secretary finds that all or part of the real property transferred to the State under this chapter, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad. (b) Reversion upon discontinuance by State of use of any land within right-of-way; criteria for discontinuance If, after the date of transfer pursuant to section 1203 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States.

The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when: (1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or (2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes.

Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one

year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse.

Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs. (c) Conveyances by United States subsequent to reversion Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States.

Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way. (d) Discontinuance by State of use of national park or forest lands; jurisdiction upon reversion If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this chapter which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section.

Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali

National Park and Preserve or the Chugach National Forest. (e) Payment into Treasury of United States of excess proceeds from sale or transfer of all or substantially all of State-owned railroad; limitations Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 1203 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States. (f) Enforcement by Attorney General The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

[The foregoing procedure is different than the one proclaimed in state statute. But the land reverted to adjacent landowners]

1209 was repealed in 2003. This may be the claim for inverse condemnation.

This can be corrected the same way as done for the spur line in the last session

45 USC SECTION 1209

THIS PROVISION WAS REPEALED BY CONGRESS IN 2003.

THE EVENT ATTEMPTS TO GHANGE THE RIGHT OF REVERSION FROM ADJOINING PROPERTY OWNERS TO THE STATE OF ALASKA, WITHOUT NOTICE TO THOSE INVOLVED.

THIS AFFECTS NOT ONLY PRIVATE RIGHTS BUT RAISES THE POSSIBLITY OF THE PROPERTY REVERTING UNDER THE "RAILS TO TRAILS ACT" FOR WHICH WE ALL HAD AN EXEMPTION BEFORE 2003.

SEE: The National Association of Reversionary Property Owners (NARPO) for an explanation of the right of reversion home.earthlink.net/~dick156/row.htm

45 USC 1209

http://us-code.vlex.com/vid/sec-reversion-19256882

(a) Reversion or payment to Federal Government for conversion to use preventing State-owned railroad from continuing to operate If, within ten years after the date of transfer to the State authorized by section 1203 of this title, the Secretary finds that all or part of the real property transferred to the State under this chapter, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad. (b) Reversion upon discontinuance by State of use of any land within right-of-way; criteria for discontinuance If, after the date of transfer pursuant to section 1203 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States.

The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when: (1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or (2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes.

Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse.

Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs. (c) Conveyances by United States subsequent to reversion Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States.

Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way. (d) Discontinuance by State of use of national park or forest lands; jurisdiction upon reversion If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the

Alaska Railroad transferred to the State pursuant to this chapter which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section.

Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest. (e) Payment into Treasury of United States of excess proceeds from sale or transfer of all or substantially all of State-owned railroad; limitations Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 1203 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States. (f) Enforcement by Attorney General The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

Section Referred To In Other Sections

This section is referred to in sections 1203, 1208 of this title.

OVERALL CONCEPTS TO CONSIDER IN AMENDMENTS

Draft Railroad Legislation

Rev 10/19/12

A basic need is to stop the Congressional delegation from doing more to change the relative positions: Sec. 1209 reversion and the 2006 deal.

These are suggested ideas for thought about provisions to solve the 2 problems at hand: usage of railroad right-of-way and right of reversion. It also deals with a 3rd problem, which is the existing condemnation power of the railroad.

1. All railroad track easements or rights-of-way heretofore issued to the Alaska Railroad pursuant to the Alaska Railroad Act of March 12, 1914 continue as issued by the federal government in documents of conveyance from time to time under the foregoing enactment. These easements and rights of way are for the sole and specific purposes of "railroad, telephone and telegraph" within the meaning of that statute. Any usage of the easement or right-of-way for telephone or telegraph must be for telephone or telegraph in direct support of railroad operations and no other, as set forth in the above-referenced federal statute and for no other purposes. The rights and duties and rights and duties of owners of property over which the easement right-of-way exists, and the rights and duties of adjacent property owners, as to usages of said right-of-way between the dominant and subservient estate shall be interpreted under the common law of the State of Alaska. (See: AS 42.40.400 which states in part: ".... If the easement was acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws." Which is about what my paragraph does, above. Amend 42.40.350, too, I guess.)

2 The Alaska Railroad shall not claim, advance or attempt to perfect in any manner whatsoever any property interest in said easements or rights-of-way in excess of those stated above and pursuant to the Alaska Railroad Act of March 12, 1914. The Alaska Railroad may not use its power of condemnation to expand its rights in any easement or right away conveyed under the above referenced federal act.

3 Alaska Railroad may not:

(a) require any person to obtain a permit, nor may the railroad, assert any right to require any person to obtain any such permit, nor may the railroad make any charge, whether or not any permit is required or requested by the railroad, in order for said person to use the railroad right-of-way in a manner allowed by common law.

(b) fence off, restrict access to, or otherwise lessen or diminish the right of public access across the railroad right-of-way or easement, nor in a like or similar manner do the same as to the adjoining landowners, or landowners over whose property of the easement or right-of-way lies.

(c) require any person to hold harmless or otherwise indemnify the railroad for personal use of the easement or right-of-way in a manner consistent with the common law.

(d) use its power of condemnation in any manner whatsoever to overcome, change, alter or amend any provision herein. (an example is AS 42.40.355. dealing with the Gates of the Arctic)

4 No person may substantially impair, restrict or otherwise diminish the right of the railroad to use the right-of-way for the purposes stated in the Alaska Railroad Act of March 14, 1914.

5 The public has the right to cross the Alaska Railroad right-of-way or easement for the purpose of accessing public lands or to access private commercial or noncommercial property in a manner consistent with the law.

6 The Alaska Railroad is not liable to any person or that person's estate for any bodily injury or property damage which occurs as a result of the person's use of the easement or right-of-way for access as stated above, or for any other lawful purpose, except for intentional or gross negligence on the part of the Alaska Railroad, its agents and employees.

7 Right of reversion: legislation from last session is amended to include the main lines of the Alaska Railroad. In the event of abandonment of the railroad line, the easement or right-of-way reverts to the adjacent landowner on each side of the railroad line, whether the landowner is public or private. See: AS 42.40.400.

Definition: the word "person" means any natural person, corporation or entity.

PROPOSED AMENDMENTS TO THE ALASKA STATUTES
[deals with the tye of easement held by the Alaska RR and the abandonment thereof]

400: [Holding and abandonment of easements] this amends the heading.

THE SENTENCES IN THE ORIGINAL .400 ARE SWITCHED IMMEDIATELY FOLLOWING:

If the easement was acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws. Notwithstanding any other provision of law,and notwithstanding of any patents or conveyances granted to the Alaska Railroad by any Agency of the Fedrral Government since the effective date of the Alaska Railroad Transfer Act of 1982, if any easement transferred by the Railroad Transfer Act of 1982 was originally issued under the Alaska Railroad Act of March 12, 1914, the easement held by the Alaska Railroad shall be for the purpose of railroad telephone and telegraph, as set forth in that statute, and not for the purpose of an unrestricted easement or any other type of easement referenced in, or alluded to, in the Alaska Transfer Act of 1982.

The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district.

"Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way." (this language comes from the original Sec 1209, cut and paste)

+==========

WHAT TO DO WITH SEC 350 MESS OF LANGUAGE IS UNKNOWN

(The "corridor" language of unknown meaning)

ISSUE OF CONDEMNATION:

SEC. 385: needs amendment to restrict RR power of condemnation and condemnation,

This is a start: in .385:

(d) The exercise of the power of eminent domain [, including any claim of benefit from the doctrine of inverse condemnation] requires the prior approval of the governor.

NEW SUBSECTION E:

(e) The exercise of the power of condemnation including any claim of benefit from the doctrine of inverse condemnation touching or concerning any easement granted under the Alaska Railroad Act of 1914 requires the approval of the Legislature and the Governor.

From: Scordino, Steven
To: Andy Behrend
Subject: Re: FW: 45 U.S.C. Section 1203(b)(1)
Date: Monday, January 27, 2014 1:23:13 PM

I'll give him a call today.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:07 AM, Andy Behrend <BehrendA@akrr.com> wrote:

> Steve:
>
> John Pletcher's materials do contain the portions of Section 1203(b)(1) that LEXIS erroneously shows as repealed. There are also some indications in the Slaibys' statement of reasons that suggest they are working from the correct version of Section 1203(b)(1). On page 11, they argue that the term "exclusive use easement" ties back to Section 1203 and an easement for the Railroad in Denali Park. The portion of Section 1203(b)(1) that contains the reference to Denali Park falls within LEXIS's omitted language. Also, on page 13, the Slaibys refer to "45 U.S.C. § 1203(a)(1)(A) and (B)". Not only is there no such subsection of Section 1203, the context clearly indicates that they are discussing Section 1203(b)(1)(A) and (B). So it appears that Mr. Longacre was referring to the full and correct version of Section 1203(b)(1). ''
>
> Notwithstanding these materials, it might be worth checking with Roy Longacre to make sure he is working off the correct version of Section 1203(b)(a). It will not benefit any of the parties if we are not all working off the correct, operative version of ARTA.
>
> In case you are interested, I have attached the packet of materials Mr. Pletcher supplied to ARRC in support of his positions regarding the ARRC ROW. His take on how Section 1203 functions,

including his views on ARTA exclusive use easements is found at pages 26-29 of the pdf file.

Thanks,

Andy

From: Andy Behrend
Sent: Monday, January 27, 2014 8:23 AM
To: 'Scordino, Steven'
Subject: RE: 45 U.S.C. Section 1203(b)(1)

Steve:

Well, since Longacre appears to be relying on Mr. Pletcher's materials for much of his analysis, let me take a look at the stack of material Pletcher sent us to back up his assertions about ARTA and the 1914 Act. I know that he has shared those materials with the Slaibys in the past year or so. I'll let you know what I find.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 8:14 AM
To: Andy Behrend
Subject: Re: 45 U.S.C. Section 1203(b)(1)

I was aware of why the change was made and I have an accurate copy of Section 1203. Do you think we should check with Longacre on whether he was relying upon the Lexis version?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, Jan 24, 2014 at 11:41 AM, Andy Behrend <BehrendA@akrr.com> wrote:

Hi, Steve:

Thanks for the discussion yesterday. You mentioned the erroneous repeal notice on 45 U.S.C. § 1203(b)(1) that shows up on Lexis. I checked and Westlaw shows the correct repeal annotation, which is that only the last sentence of Section 1203(b)(1) is repealed. The reason that last sentence was repealed was that it provided for what would happen to certain property interests if and when any land reverted to the federal government under 45 U.S.C. § 1209 due to abandonment of the use of that land for railroad purposes. But Section 1209 was repealed in 2003, making the last sentence of Section 1203(b)(1) unnecessary and superfluous.

Let me know if you want a copy of the Westlaw USCA entry for Section 1203 and I'll print one and send it.

Thanks,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

From: Scordino, Steven
To: Andy Behrend
Subject: Re: FW: 45 U.S.C. Section 1203(b)(1)
Date: Monday, January 27, 2014 2:23:56 PM

Roy said he didn't use Lexis.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:23 AM, Scordino, Steven <steven.scordino@sol.doi.gov> wrote:

> I'll give him a call today.
>
> Steve Scordino
> Attorney Advisor
> 4230 University Drive, Suite 300
> Anchorage, Alaska 99508
> (907) 271-4204 / fax (907) 271-4143
>
> This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.
>
> On Mon, Jan 27, 2014 at 9:07 AM, Andy Behrend <BehrendA@akrr.com> wrote:
>
> > Steve:
> >
> > John Pletcher's materials do contain the portions of Section 1203(b)(1) that LEXIS erroneously

shows as repealed. There are also some indications in the Slaibys' statement of reasons that suggest they are working from the correct version of Section 1203(b)(1). On page 11, they argue that the term "exclusive use easement" ties back to Section 1203 and an easement for the Railroad in Denali Park. The portion of Section 1203(b)(1) that contains the reference to Denali Park falls within LEXIS's omitted language. Also, on page 13, the Slaibys refer to "45 U.S.C. § 1203(a)(1)(A) and (B)". Not only is there no such subsection of Section 1203, the context clearly indicates that they are discussing Section 1203(b)(1)(A) and (B). So it appears that Mr. Longacre was referring to the full and correct version of Section 1203(b)(1). ''

Notwithstanding these materials, it might be worth checking with Roy Longacre to make sure he is working off the correct version of Section 1203(b)(a). It will not benefit any of the parties if we are not all working off the correct, operative version of ARTA.

In case you are interested, I have attached the packet of materials Mr. Pletcher supplied to ARRC in support of his positions regarding the ARRC ROW. His take on how Section 1203 functions, including his views on ARTA exclusive use easements is found at pages 26-29 of the pdf file.

Thanks,

Andy

From: Andy Behrend
Sent: Monday, January 27, 2014 8:23 AM
To: 'Scordino, Steven'
Subject: RE: 45 U.S.C. Section 1203(b)(1)

Steve:

Well, since Longacre appears to be relying on Mr. Pletcher's materials for much of his analysis, let me take a look at the stack of material Pletcher sent us to back up his assertions about ARTA and the 1914 Act. I know that he has shared those materials with the Slaibys in the past year or so. I'll let you know what I find.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 8:14 AM
To: Andy Behrend
Subject: Re: 45 U.S.C. Section 1203(b)(1)

I was aware of why the change was made and I have an accurate copy of Section 1203. Do you think we should check with Longacre on whether he was relying upon the Lexis version?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, Jan 24, 2014 at 11:41 AM, Andy Behrend <BehrendA@akrr.com> wrote:

Hi, Steve:

Thanks for the discussion yesterday. You mentioned the erroneous repeal notice on 45 U.S.C. § 1203(b)(1) that shows up on Lexis. I checked and Westlaw shows the correct repeal annotation, which is that only the last sentence of Section 1203(b)(1) is repealed. The reason that last sentence was repealed was that it provided for what would happen to certain property interests if and when any land reverted to the federal government under 45 U.S.C. § 1209 due to abandonment of the use of that land for railroad purposes. But Section 1209 was repealed in 2003, making the last sentence of Section 1203(b)(1) unnecessary and superfluous.

Let me know if you want a copy of the Westlaw USCA entry for Section 1203 and I'll print one and send it.

Thanks,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

From: Andy Behrend
To: "Scordino, Steven"
Subject: RE: FW: 45 U.S.C. Section 1203(b)(1)
Date: Monday, January 27, 2014 3:11:22 PM

Thanks for checking, Steve.

FYI, I will be filing ARRC's motion to extend today. The new due date will be March 14. As we have previously discussed, ARRC obviously does not oppose any motion by BLM for a similar extension.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 10:24 AM
To: Andy Behrend
Subject: Re: FW: 45 U.S.C. Section 1203(b)(1)

Roy said he didn't use Lexis.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:23 AM, Scordino, Steven <steven.scordino@sol.doi.gov> wrote:
I'll give him a call today.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of

this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:07 AM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

John Pletcher's materials do contain the portions of Section 1203(b)(1) that LEXIS erroneously shows as repealed. There are also some indications in the Slaibys' statement of reasons that suggest they are working from the correct version of Section 1203(b)(1). On page 11, they argue that the term "exclusive use easement" ties back to Section 1203 and an easement for the Railroad in Denali Park. The portion of Section 1203(b)(1) that contains the reference to Denali Park falls within LEXIS's omitted language. Also, on page 13, the Slaibys refer to "45 U.S.C. § 1203(a)(1)(A) and (B)". Not only is there no such subsection of Section 1203, the context clearly indicates that they are discussing Section 1203(b)(1)(A) and (B). So it appears that Mr. Longacre was referring to the full and correct version of Section 1203(b)(1). ''

Notwithstanding these materials, it might be worth checking with Roy Longacre to make sure he is working off the correct version of Section 1203(b)(a). It will not benefit any of the parties if we are not all working off the correct, operative version of ARTA.

In case you are interested, I have attached the packet of materials Mr. Pletcher supplied to ARRC in support of his positions regarding the ARRC ROW. His take on how Section 1203 functions, including his views on ARTA exclusive use easements is found at pages 26-29 of the pdf file.

Thanks,
Andy

From: Andy Behrend
Sent: Monday, January 27, 2014 8:23 AM
To: 'Scordino, Steven'
Subject: RE: 45 U.S.C. Section 1203(b)(1)

Steve:

Well, since Longacre appears to be relying on Mr. Pletcher's materials for much of his analysis, let me take a look at the stack of material Pletcher sent us to back up his assertions about ARTA and the 1914 Act. I know that he has shared those materials with the Slaibys in the past year or so. I'll let you know what I find.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 8:14 AM
To: Andy Behrend
Subject: Re: 45 U.S.C. Section 1203(b)(1)

I was aware of why the change was made and I have an accurate copy of Section 1203. Do you think we should check with Longacre on whether he was relying upon the Lexis version?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, Jan 24, 2014 at 11:41 AM, Andy Behrend <BehrendA@akrr.com> wrote:
Hi, Steve:

Thanks for the discussion yesterday. You mentioned the erroneous repeal notice on 45 U.S.C. § 1203(b)(1) that shows up on Lexis. I checked and Westlaw shows the correct repeal annotation, which is that only the last sentence of Section 1203(b)(1) is repealed. The reason that last sentence was repealed was that it provided for what would happen to certain property interests if and when any land reverted to the federal government under 45 U.S.C. § 1209 due to abandonment of the use of that land for railroad purposes. But Section 1209 was repealed in 2003, making the last sentence of Section 1203(b)(1) unnecessary and superfluous.

Let me know if you want a copy of the Westlaw USCA entry for Section 1203 and I'll print one and send it.

Thanks,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven
To: Andy Behrend
Subject: Re: FW: 45 U.S.C. Section 1203(b)(1)
Date: Monday, January 27, 2014 3:15:23 PM

I am filing one under the automatic extension provision today as well.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 11:11 AM, Andy Behrend <BehrendA@akrr.com> wrote:

> Thanks for checking, Steve.
>
> FYI, I will be filing ARRC's motion to extend today. The new due date will be March 14. As we have previously discussed, ARRC obviously does not oppose any motion by BLM for a similar extension.
>
> Andy
>
> **From:** Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
> **Sent:** Monday, January 27, 2014 10:24 AM
> **To:** Andy Behrend
> **Subject:** Re: FW: 45 U.S.C. Section 1203(b)(1)
>
> Roy said he didn't use Lexis.
>
> Steve Scordino

Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:23 AM, Scordino, Steven <steven.scordino@sol.doi.gov> wrote:

I'll give him a call today.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jan 27, 2014 at 9:07 AM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

John Pletcher's materials do contain the portions of Section 1203(b)(1) that LEXIS erroneously shows as repealed. There are also some indications in the Slaibys' statement of reasons that suggest they are working from the correct version of Section 1203(b)(1). On page 11, they argue that the term "exclusive use easement" ties back to Section 1203 and an easement for the Railroad in Denali Park. The portion of Section 1203(b)(1) that contains the reference to Denali Park falls within LEXIS's omitted language. Also, on page 13, the Slaibys refer to "45 U.S.C. §

1203(a)(1)(A) and (B)". Not only is there no such subsection of Section 1203, the context clearly indicates that they are discussing Section 1203(b)(1)(A) and (B). So it appears that Mr. Longacre was referring to the full and correct version of Section 1203(b)(1). ''

Notwithstanding these materials, it might be worth checking with Roy Longacre to make sure he is working off the correct version of Section 1203(b)(a). It will not benefit any of the parties if we are not all working off the correct, operative version of ARTA.

In case you are interested, I have attached the packet of materials Mr. Pletcher supplied to ARRC in support of his positions regarding the ARRC ROW. His take on how Section 1203 functions, including his views on ARTA exclusive use easements is found at pages 26-29 of the pdf file.

Thanks,

Andy

From: Andy Behrend
Sent: Monday, January 27, 2014 8:23 AM
To: 'Scordino, Steven'
Subject: RE: 45 U.S.C. Section 1203(b)(1)

Steve:

Well, since Longacre appears to be relying on Mr. Pletcher's materials for much of his analysis, let me take a look at the stack of material Pletcher sent us to back up his assertions about ARTA and the 1914 Act. I know that he has shared those materials with the Slaibys in the past year or so. I'll let you know what I find.

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, January 27, 2014 8:14 AM
To: Andy Behrend
Subject: Re: 45 U.S.C. Section 1203(b)(1)

I was aware of why the change was made and I have an accurate copy of Section 1203. Do you think we should check with Longacre on whether he was relying upon the Lexis version?

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, Jan 24, 2014 at 11:41 AM, Andy Behrend <BehrendA@akrr.com> wrote:

Hi, Steve:

Thanks for the discussion yesterday. You mentioned the erroneous repeal notice on 45 U.S.C. § 1203(b)(1) that shows up on Lexis. I checked and Westlaw shows the correct repeal annotation, which is that only the last sentence of Section 1203(b)(1) is repealed. The reason that last sentence was repealed was that it provided for what would happen to certain property interests if and when any land reverted to the federal government under 45 U.S.C. § 1209 due to abandonment of the use of that land for railroad purposes. But Section 1209 was repealed in 2003, making the last sentence of Section 1203(b)(1) unnecessary and superfluous.

Let me know if you want a copy of the Westlaw USCA entry for Section 1203 and I'll print one and send it.

Thanks,

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

From: Scordino, Steven
To: Andy Behrend
Subject: Slaiby draft answer
Date: Monday, March 3, 2014 7:27:12 PM
Attachments: Slaiby - Answer.docx

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

STEVEN SCORDINO, Attorney-Advisor
Office of the Solicitor – Alaska Region
United States Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508-4626
(907) 271-4131/Fax (907) 271-4143

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

IBLA 2014-27	)	
	)	AA-55129
PETER SLAIBY AND REJANI SLAIBY	)	

ANSWER

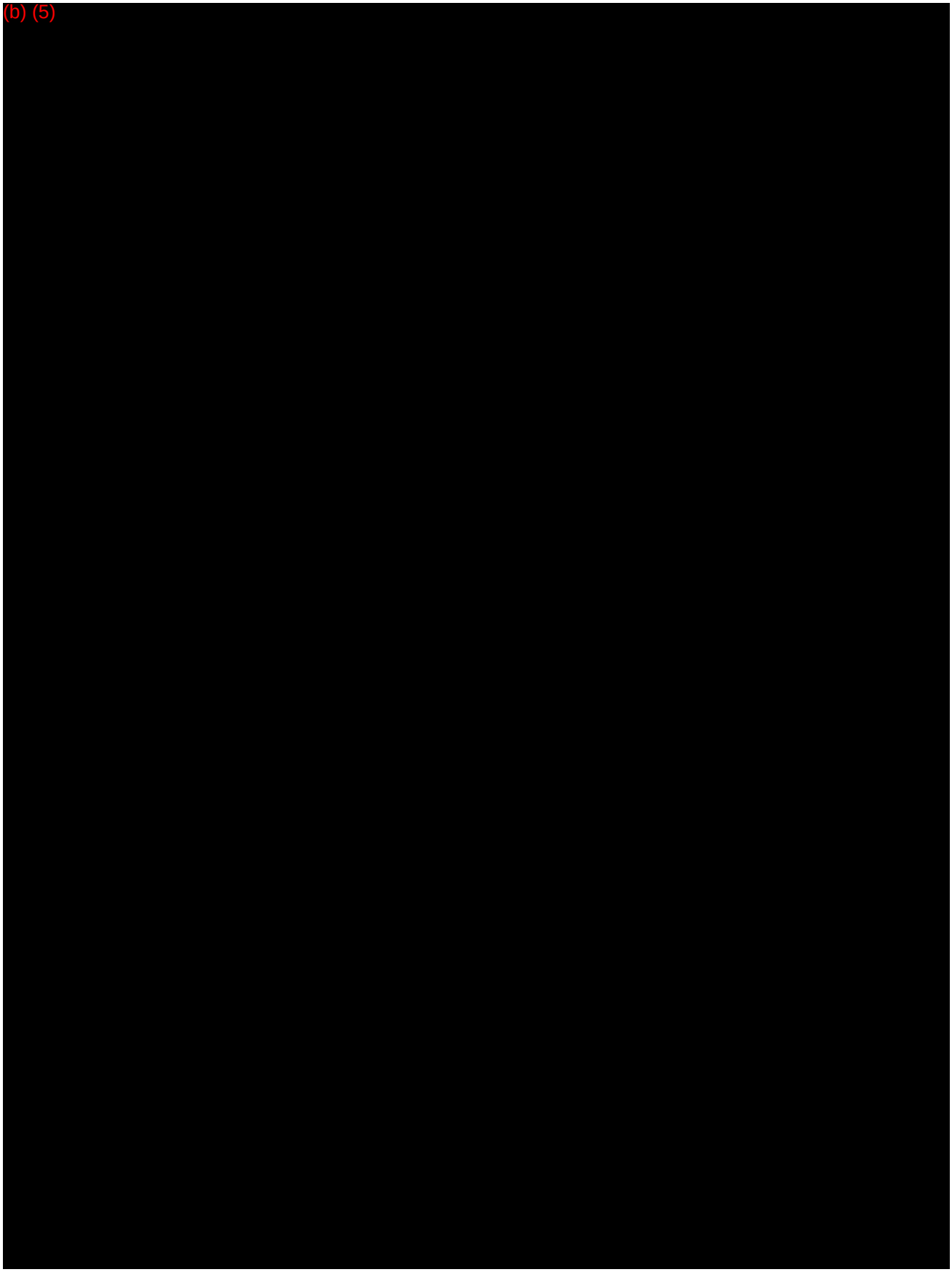
(b) (5)

[redacted]

(b) (5)

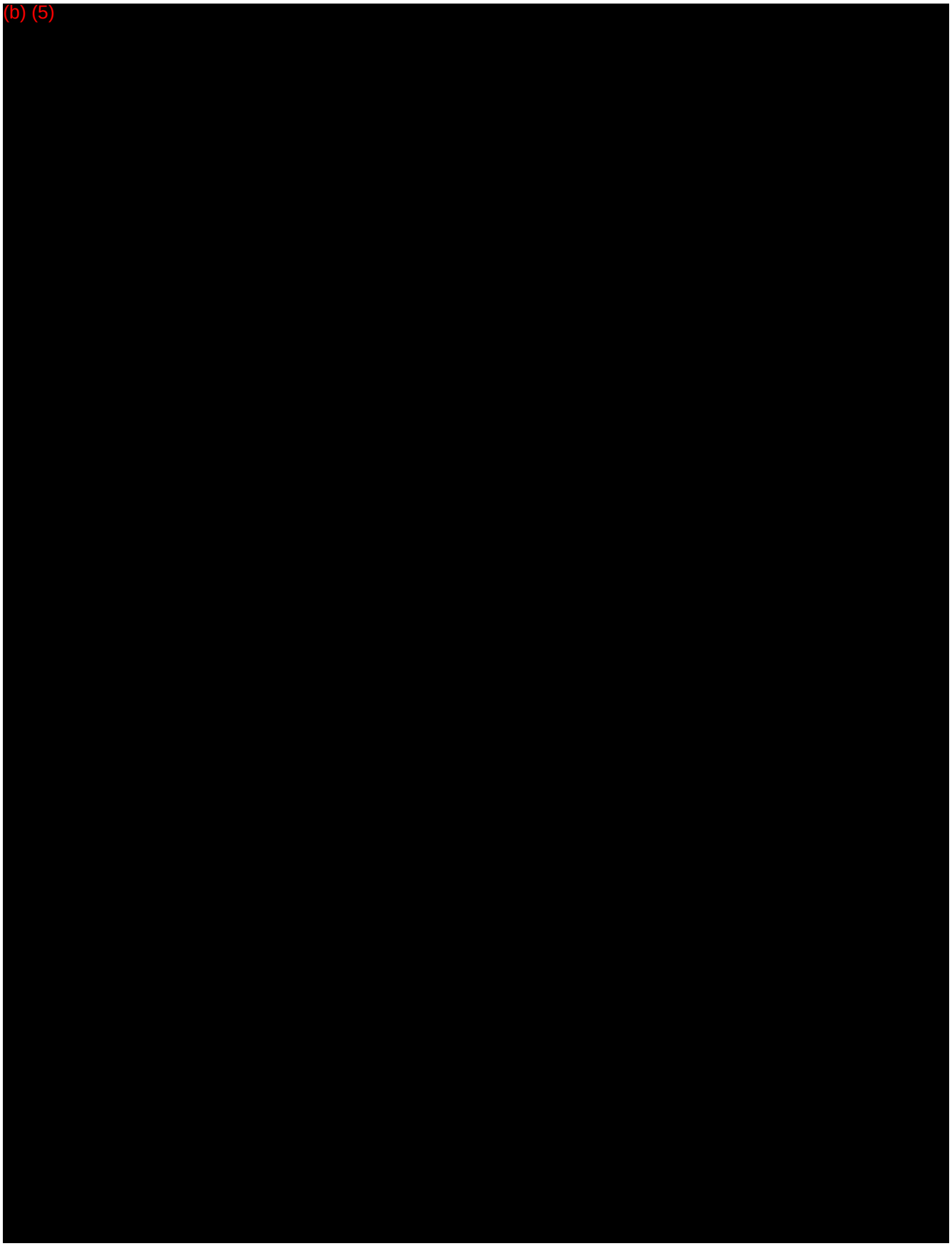
[redacted]

(b) (5)



(b) (5)

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

From:	Andy Behrend
To:	"Scordino, Steven"
Subject:	RE: Slaiby draft answer
Date:	Monday, March 3, 2014 9:38:41 PM
Attachments:	Slaiby - Alaska Railroad Corporation"s Answer to Appellants" Statement of Reasons_afb_2-28-2014.docx

Steve:

Thanks. Here is ours. It probably will shrink a little bit yet.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, March 03, 2014 3:27 PM
To: Andy Behrend
Subject: Slaiby draft answer

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA 2014-27	)	AA-55129
	)	
PETER SLAIBY AND REJANI SLAIBY,	)	Land Conveyance
	)	
Appellants.	)	
	)	

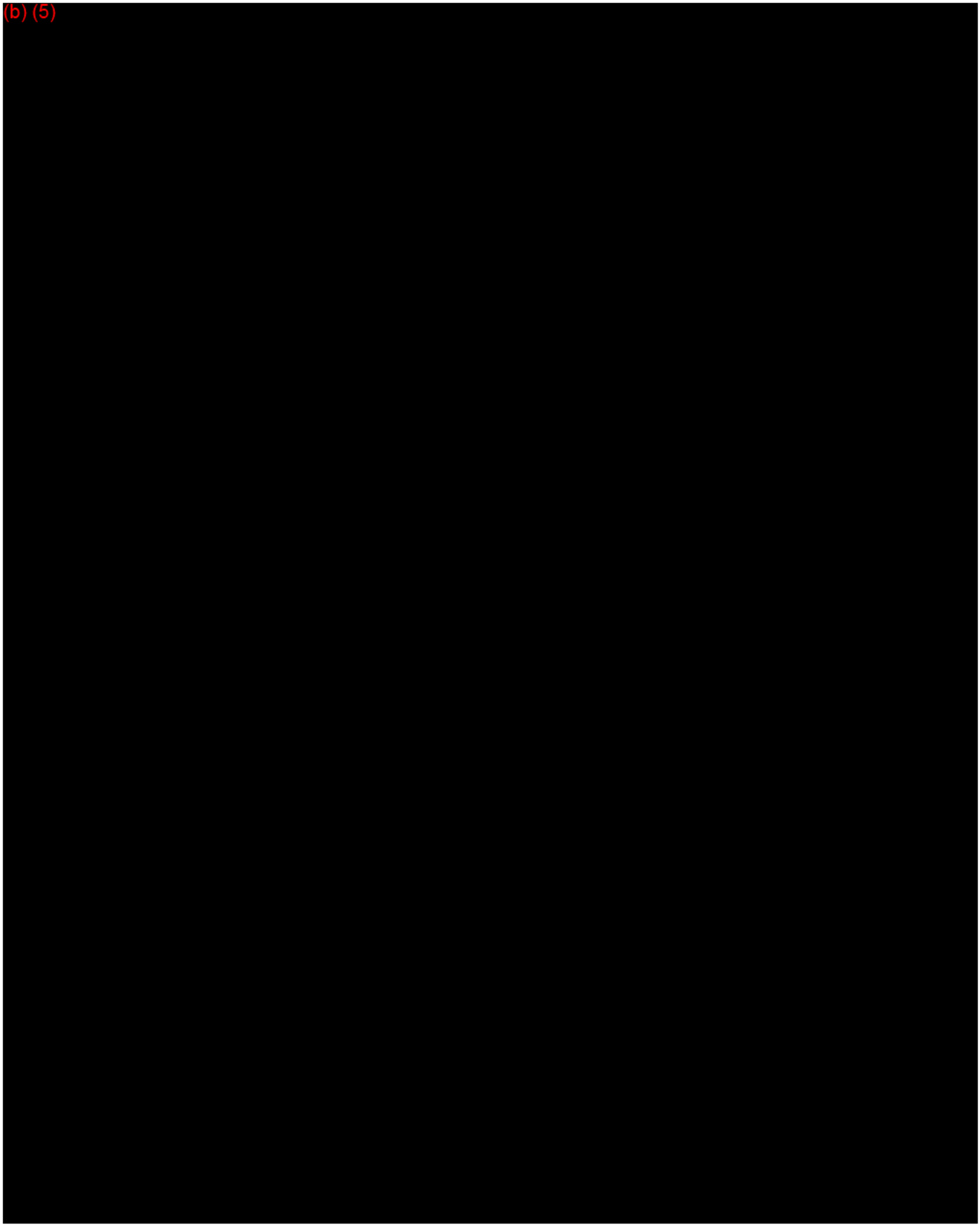
INTERVENOR ALASKA RAILROAD CORPORATION'S ANSWER TO APPELLANTS' STATEMENT OF REASONS

Intervenor Alaska Railroad Corporation ("ARRC") hereby files its Answer to the Statement of Reasons filed by Appellants.[1]

(b) (5)

[redacted]

(b) (5)

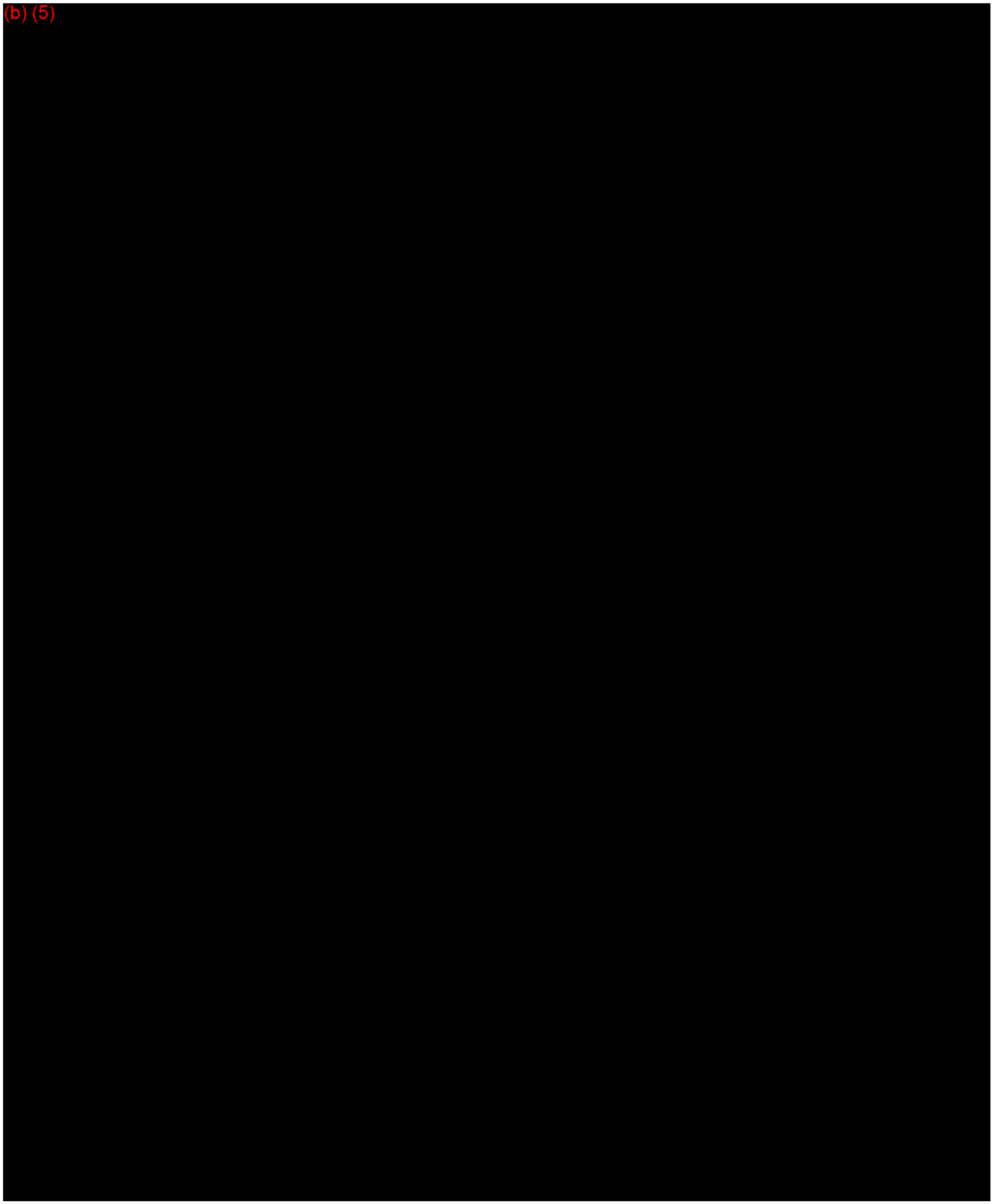


(b) (5)

(b) (5)

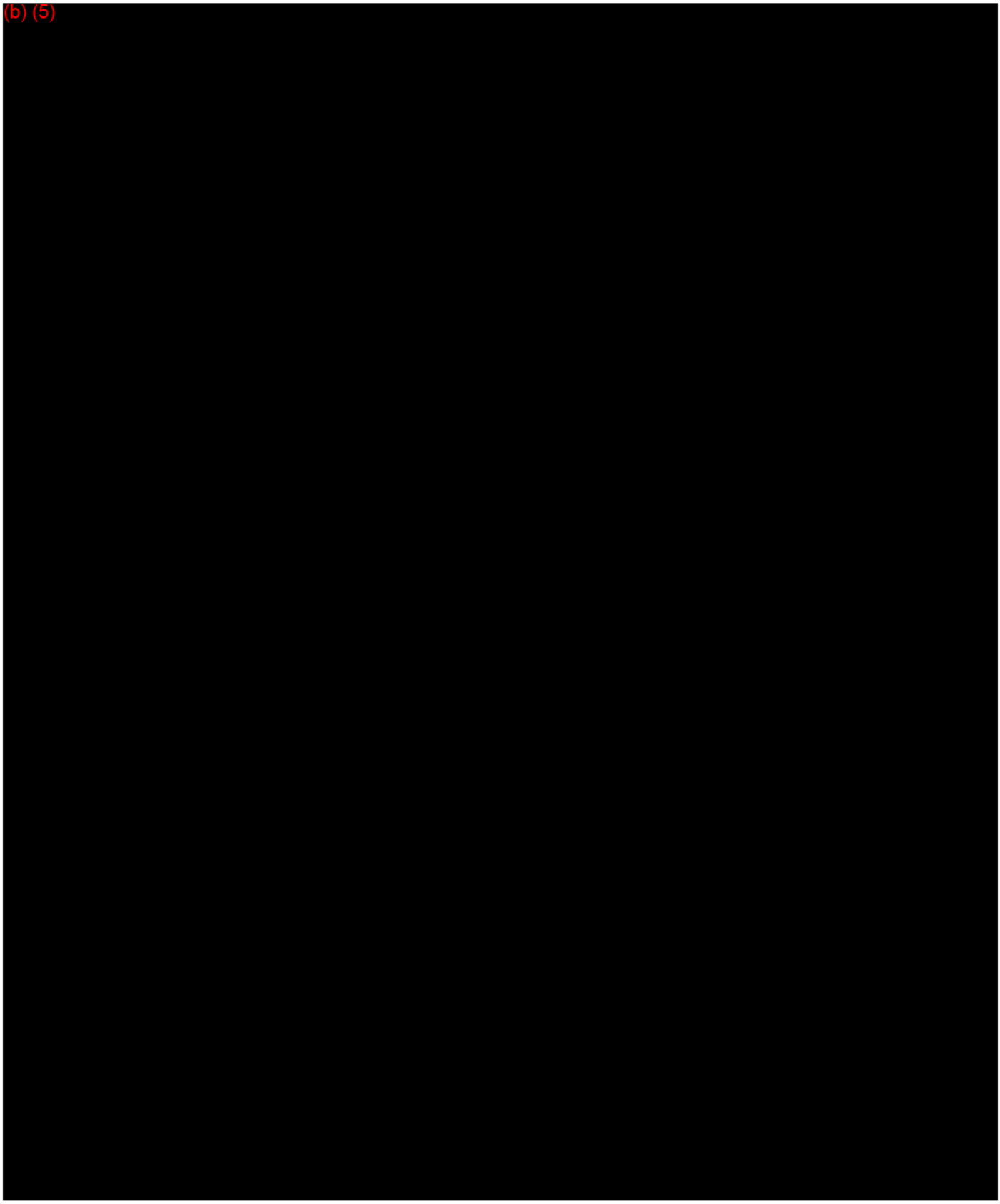
(b) (5)

(b) (5)



(b) (5)

(b) (5)


(b) (5)

(b) (5)

[redacted]

(b) (5)

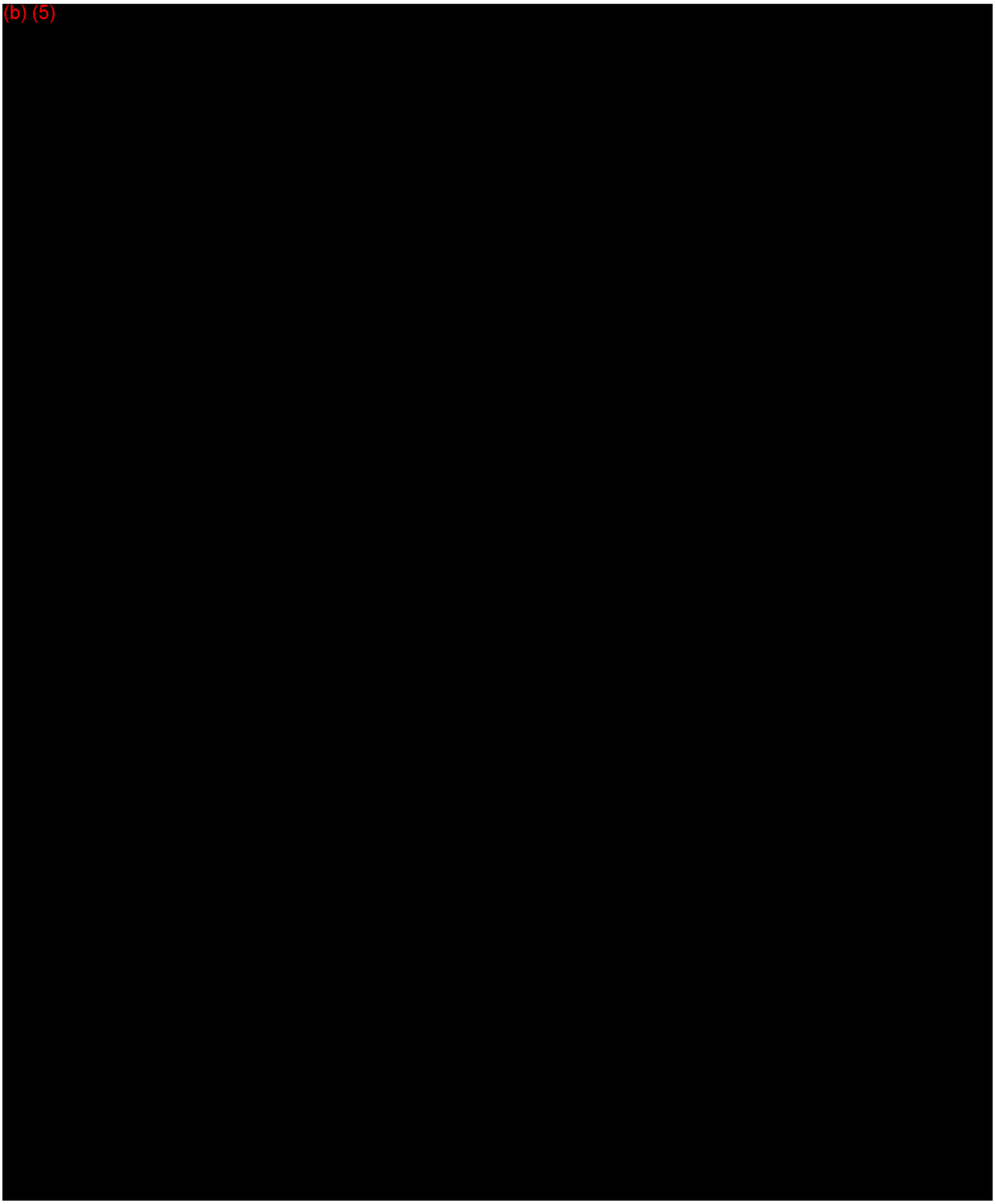
[redacted]

(b) (5)

(b) (5)

(b) (5)

(b) (5)



(b) (5)

(b) (5)

[redacted]

(b) (5)

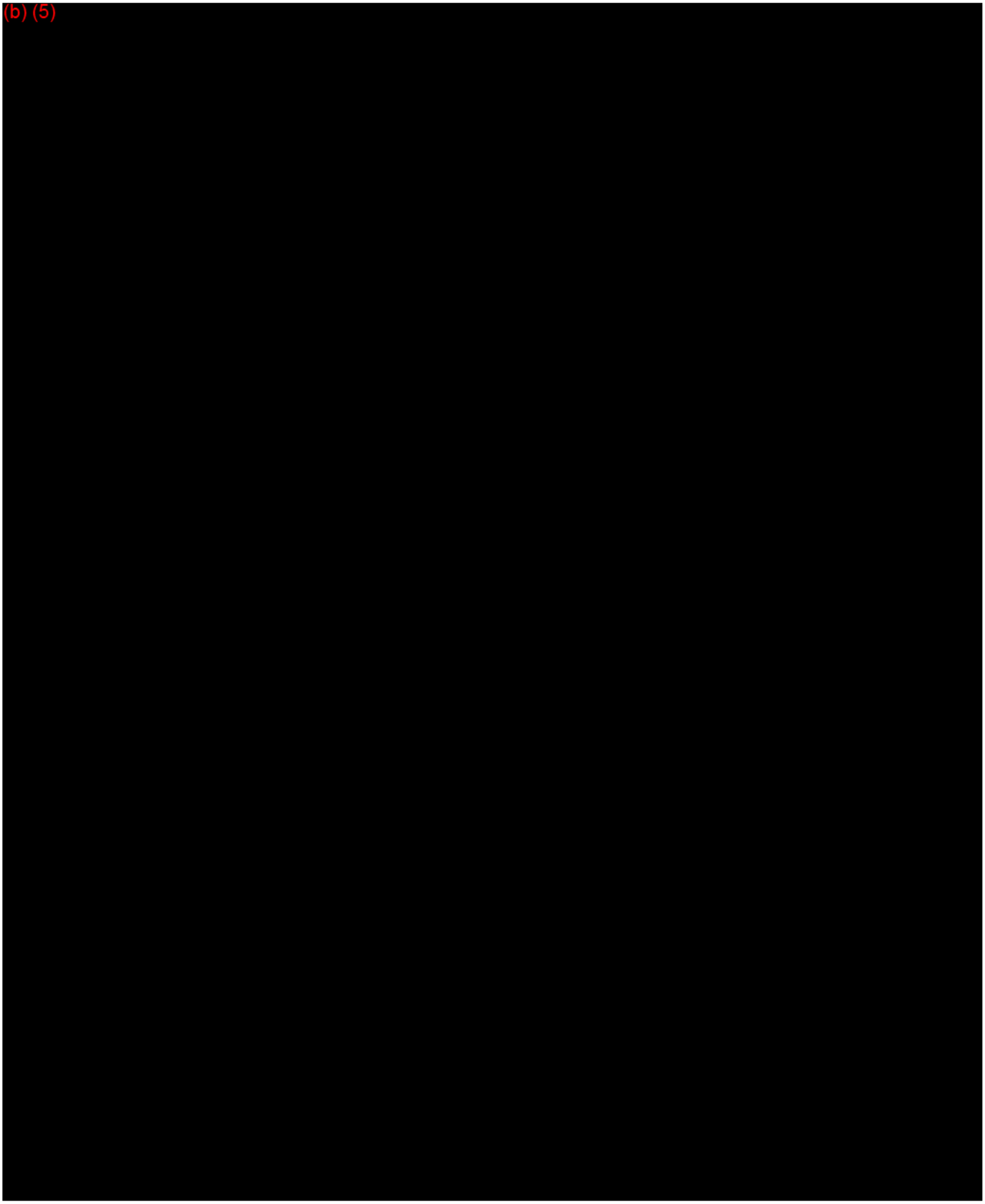
(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Andy Behrend
To: "Scordino, Steven"
Subject: RE: Slaiby draft answer
Date: Tuesday, March 4, 2014 3:07:37 PM

Steve:

Thanks for the feedback. I will look at those issues and work them in. I especially appreciate the insights on the issue of the various types of legal opinions and offered legal opinions and the effect of each. I certainly don't want to overstate what Dennis's letter was. But I still believe it is helpful background for the Board to understand what BLM had in front of it when it decided, albeit that the standard of review is de novo.

I like the focus of your brief on the key issue, which is that ARTA plainly and unambiguously requires BLM to issue the proposed patent for at least an exclusive use easement. That really should be the end of the story, so it makes sense to make that the centerpiece of your presentation. There is a lot to be said about not getting down into the weeds when there is no need to do so.

That ARTA drumbeat is found throughout our brief, too, in addition to the other points we address. The Board may decide (correctly) it does not need to even think about the other stuff, which would be fine. But if it becomes curious about the other issues, it will have our take on many of them.

Thanks again,
Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Tuesday, March 04, 2014 10:10 AM
To: Andy Behrend
Subject: Re: Slaiby draft answer

I decided it wasn't relevant enough for my brief, but in footnote (b) (5) [redacted]

(b) (5) [redacted] I think attorney-advisor was Dennis' title at the time he wrote the memo.

Your brief looks really good overall. My review was a bit cursory, but it hit on the points I hoped you would hit.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300

Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Mar 3, 2014 at 9:39 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

Thanks. Here is ours. It probably will shrink a little bit yet.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, March 03, 2014 3:27 PM
To: Andy Behrend
Subject: Slaiby draft answer

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: FW: Slaiby draft answer
Date: Tuesday, March 4, 2014 5:24:40 PM

Steve:

It looks like Dennis' title was "Senior Attorney" when he wrote the letter regarding the nature of the United States' title in the Potter Hill lots. Does that make any difference to your comment below about the effect of the memorandum he wrote?

Thanks,
Andy

From: Andy Behrend
Sent: Tuesday, March 04, 2014 11:08 AM
To: 'Scordino, Steven'
Subject: RE: Slaiby draft answer

Steve:

Thanks for the feedback. I will look at those issues and work them in. I especially appreciate the insights on the issue of the various types of legal opinions and offered legal opinions and the effect of each. I certainly don't want to overstate what Dennis's letter was. But I still believe it is helpful background for the Board to understand what BLM had in front of it when it decided, albeit that the standard of review is de novo.

I like the focus of your brief on the key issue, which is that ARTA plainly and unambiguously requires BLM to issue the proposed patent for at least an exclusive use easement. That really should be the end of the story, so it makes sense to make that the centerpiece of your presentation. There is a lot to be said about not getting down into the weeds when there is no need to do so.

That ARTA drumbeat is found throughout our brief, too, in addition to the other points we address. The Board may decide (correctly) it does not need to even think about the other stuff, which would be fine. But if it becomes curious about the other issues, it will have our take on many of them.

Thanks again,
Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Tuesday, March 04, 2014 10:10 AM
To: Andy Behrend
Subject: Re: Slaiby draft answer

I decided it wasn't relevant enough for my brief, but in footnote (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]. I think attorney-advisor was Dennis' title at the time he wrote the memo.

Your brief looks really good overall. My review was a bit cursory, but it hit on the points I hoped you would hit.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Mar 3, 2014 at 9:39 PM, Andy Behrend <BehrendA@akrr.com> wrote:
Steve:

Thanks. Here is ours. It probably will shrink a little bit yet.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, March 03, 2014 3:27 PM
To: Andy Behrend
Subject: Slaiby draft answer

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Scordino, Steven
To: Andy Behrend
Subject: Re: FW: Slaiby draft answer
Date: Tuesday, March 4, 2014 5:28:40 PM

It doesn't change the effect of what I said. I would just change his title when you first mention the memo. The Board will recognize it is not an opinion from the Solicitor which speaks for the Secretary. The Board will look at the memo as having the same amount of persuasive authority as the briefs filed in this case.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Tue, Mar 4, 2014 at 5:24 PM, Andy Behrend <BehrendA@akrr.com> wrote:

> Steve:
>
> It looks like Dennis' title was "Senior Attorney" when he wrote the letter regarding the nature of the United States' title in the Potter Hill lots. Does that make any difference to your comment below about the effect of the memorandum he wrote?
>
> Thanks,
>
> Andy
>
> ---
>
> **From:** Andy Behrend
> **Sent:** Tuesday, March 04, 2014 11:08 AM
> **To:** 'Scordino, Steven'
> **Subject:** RE: Slaiby draft answer

Steve:

Thanks for the feedback. I will look at those issues and work them in. I especially appreciate the insights on the issue of the various types of legal opinions and offered legal opinions and the effect of each. I certainly don't want to overstate what Dennis's letter was. But I still believe it is helpful background for the Board to understand what BLM had in front of it when it decided, albeit that the standard of review is de novo.

I like the focus of your brief on the key issue, which is that ARTA plainly and unambiguously requires BLM to issue the proposed patent for at least an exclusive use easement. That really should be the end of the story, so it makes sense to make that the centerpiece of your presentation. There is a lot to be said about not getting down into the weeds when there is no need to do so.

That ARTA drumbeat is found throughout our brief, too, in addition to the other points we address. The Board may decide (correctly) it does not need to even think about the other stuff, which would be fine. But if it becomes curious about the other issues, it will have our take on many of them.

Thanks again,

Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Tuesday, March 04, 2014 10:10 AM
To: Andy Behrend
Subject: Re: Slaiby draft answer

I decided it wasn't relevant enough for my brief, but in footnote (b) (5) [redacted]

(b) (5) [redacted] I think attorney-advisor was Dennis' title at the time he wrote the memo.

Your brief looks really good overall. My review was a bit cursory, but it hit on the points I hoped you would hit.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Mar 3, 2014 at 9:39 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

Thanks. Here is ours. It probably will shrink a little bit yet.

Andy

Andy Behrend

Alaska Railroad Corporation

Senior Attorney, Real Estate & Environmental

behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443

Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, March 03, 2014 3:27 PM
To: Andy Behrend
Subject: Slaiby draft answer

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend
To: "Scordino, Steven"
Subject: RE: FW: Slaiby draft answer
Date: Tuesday, March 4, 2014 5:29:29 PM

Got it. Thanks.

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Tuesday, March 04, 2014 1:29 PM
To: Andy Behrend
Subject: Re: FW: Slaiby draft answer

It doesn't change the effect of what I said. I would just change his title when you first mention the memo. The Board will recognize it is not an opinion from the Solicitor which speaks for the Secretary. The Board will look at the memo as having the same amount of persuasive authority as the briefs filed in this case.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Tue, Mar 4, 2014 at 5:24 PM, Andy Behrend <BehrendA@akrr.com> wrote:
Steve:

It looks like Dennis' title was "Senior Attorney" when he wrote the letter regarding the nature of the United States' title in the Potter Hill lots. Does that make any difference to your comment below about the effect of the memorandum he wrote?

Thanks,
Andy

From: Andy Behrend
Sent: Tuesday, March 04, 2014 11:08 AM
To: 'Scordino, Steven'
Subject: RE: Slaiby draft answer

Steve:

Thanks for the feedback. I will look at those issues and work them in. I especially appreciate the insights on the issue of the various types of legal opinions and offered legal opinions and the effect of each. I certainly don't want to overstate what Dennis's letter was. But I still believe it is helpful background for the Board to understand what BLM had in front of it when it decided, albeit that the standard of review is de novo.

I like the focus of your brief on the key issue, which is that ARTA plainly and unambiguously requires BLM to issue the proposed patent for at least an exclusive use easement. That really should be the end of the story, so it makes sense to make that the centerpiece of your presentation. There is a lot to be said about not getting down into the weeds when there is no need to do so.

That ARTA drumbeat is found throughout our brief, too, in addition to the other points we address. The Board may decide (correctly) it does not need to even think about the other stuff, which would be fine. But if it becomes curious about the other issues, it will have our take on many of them.

Thanks again,
Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Tuesday, March 04, 2014 10:10 AM
To: Andy Behrend
Subject: Re: Slaiby draft answer

I decided it wasn't relevant enough for my brief, but in footnote (b) (5) [redacted]

(b) (5) [redacted] I think attorney-advisor was Dennis' title at the time he wrote the memo.

Your brief looks really good overall. My review was a bit cursory, but it hit on the points I hoped you would hit.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by

applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Mar 3, 2014 at 9:39 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

Thanks. Here is ours. It probably will shrink a little bit yet.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Monday, March 03, 2014 3:27 PM
To: Andy Behrend
Subject: Slaiby draft answer

Here is the draft answer.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: Recent U.S. Supreme Court Case re RR ROWs
Date: Wednesday, April 9, 2014 9:44:15 PM
Attachments: Brandt Case Memorandum.pdf

Steve:

As discussed, here is a non-privileged memo we did on the new Act of 1875 railroad ROW case out of the U.S. Supreme Court. The one issue not discussed in this memo is the fact that Brandt involved the ownership rights in abandoned Act of 1875 ROWs. Because the ARRC ROW has not been abandoned, Brandt would not be relevant to the ARRC ROW at this time even if it applied generally (which it doesn't).

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

MEMORANDUM

Date: April 3, 2014

To: Tim Sullivan, Jr.

From: Andy Behrend

Subject: U.S. Supreme Court Decision in *Brandt Revocable Trust v. United States*

The U.S. Supreme Court recently decided a case, *Brandt Revocable Trust v. United States*, involving an abandoned railroad right-of-way. The question has been raised as to what application or effect, if any, the decision in *Brandt* has with respect to the Alaska Railroad Corporation (ARRC) right-of-way. For the reasons discussed below, the *Brandt* decision neither applies to nor affects ARRC's property rights in its right-of-way.

Brandt involved the question of whether the federal government retained ownership of a railroad right-of-way granted under the federal General Right-of-Way Act of 1875 (Act of 1875) when that right-of-way was abandoned by the private railroad company that had operated on it. The Supreme Court decided the abandoned land was owned not by the federal government, but instead by the landowner who had received a patent for the parcel of land crossed by the right-of-way.

To understand why the *Brandt* decision does not apply to ARRC's right-of-way, one must understand the background in that case. The right-of-way at issue in *Brandt* was granted in 1908 under the Act of 1875. The right-of-way was owned by a series of private railroad companies, which operated railroads on it until it was abandoned in 2004. In the meantime, in 1976, the United States patented an 83-acre parcel in fee simple title to Melvin Brandt. The railroad right-of-way described above crossed that parcel, and the patent stated that the land was granted subject to the right-of-way. When the railroad right-of-way was abandoned, the United States claimed title to the right-of-way where it crossed Mr. Brandt's parcel. Mr. Brandt contested that claim, arguing that he now owned the right-of-way in fee simple because he owned the underlying fee interest in the entire parcel by virtue of the 1976 patent. The Supreme Court ultimately agreed with Mr. Brandt.

The fundamental reason that the *Brandt* decision neither applies to nor affects ARRC's right-of-way is that it involved a railroad right-of-way granted under the Act of 1875. The decision is expressly limited to rights of way granted under that Act. The ARRC right-of-way, on the other hand, is almost entirely composed of land designated by the federal government for the development of the federally-owned and operated Alaska Railroad under the Alaska Railroad Act of 1914 (1914 Act). The 1914 Act did not mention, much less incorporate in any way, the Act of 1875. Nor did the 1914 Act use any of the language of the Act of 1875 to describe the rights-of-way for the Alaska Railroad. In sum, the 1914 Act is entirely unrelated to the Act of 1875, and therefore the *Brandt* decision has no impact on rights-of-way designated under the 1914 Act.

Nor are rights-of-way established under the 1914 Act analogous to Act of 1875 rights-of-way. Whereas the Act of 1875 granted railroad rights-of-way across federal lands to private railroad companies, the 1914 Act directed the President to establish from among federal lands in Alaska rights-of-way that would continue to be owned by the federal government and be used by it to operate the Alaska Railroad. Consequently, almost all of the land in the Alaska Railroad right-of-way never left federal ownership before the land was transferred to ARRC in 1985. Therefore, the federal government owned almost all of the Alaska Railroad right-of-way in fee simple at the time it was transferred to ARRC. The federal Alaska Railroad Transfer Act (ARTA) required the United States to transfer to ARRC the entire federal interest in Alaska Railroad lands. As a result, the vast majority of the Alaska Railroad right-of-way passed to ARRC in fee simple title. In other words, almost all of the ARRC right-of-way is not an easement, but instead is a strip of land owned outright by ARRC. The fact that ARRC owns fee simple title in most of its right-of-way makes the Alaska Railroad right-of-way completely different from rights-of-was granted to private railway companies under the Act of 1875.

The history and language of ARTA confirms the critical differences between Act of 1875 rights-of-way and the Alaska Railroad right-of-way described above. The legislative history of ARTA shows that Congress had investigated and found that the vast majority of the Alaska Railroad right-of-way was owned by the federal government in fee simple. The legislative history also demonstrates that Congress intended that the State of Alaska would receive fee simple title to essentially all of the Alaska Railroad right-of-way. (Congress made an exception for the right-of-way in Denali National Park, in which an exclusive use easement—rather than fee simple title—was to be transferred to the State in order to avoid State inholdings in the Park.)

Moreover, unlike the patent at issue in *Brandt*, homestead patents granted to residents located adjacent to existing Alaska Railroad right-of-way did not include the land located within the right-of-way itself. This further cements the conclusion that the decision in *Brandt* is inapplicable to the ARRC right-of-way.

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: FW: Slaiby Reply Brief Extension
Date: Thursday, April 10, 2014 9:05:37 PM
Attachments: Mtn2ndExtReply (X).pdf

Steve:

I am really annoyed with Roy Longacre. Some of his representations in his extension motion contradict what I told him in my earlier emails. I wish now that we had not changed our initial objection to the extension. I will keep you informed about any developments next week.

Thanks,
Andy

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Thursday, April 10, 2014 4:12 PM
To: steven.scordino@sol.doi.gov; Andy Behrend
Subject: RE: Slaiby Reply Brief Extension

Attached is the [Mtn2ndExtReply (X)].

Roy
----- Original Message -----
From: Andy Behrend <BehrendA@akrr.com>
To: Roy Longacre; "Scordino, Steven" <steven.scordino@sol.doi.gov>
Sent: 4/10/2014 12:20PM
Subject: RE: Slaiby Reply Brief Extension

Roy:

As you know, ARRC responded to the Slaibys' November 12, 2013 letter, which interpreted the grant of easement as allowing them to make any use of the ARRC ROW that did not interfere with railroad operations. As we explained in our response letter of November 18, 2013 (copy attached), the grant of easement is limited to allowing the Slaibys' house to continue encroaching into the ARRC ROW and use of enough of the ROW necessary to maintain and repair the encroaching house. During our negotiation of that limited grant of easement, we also offered the Slaibys a residential use permit for the portion of the ROW they are currently using for lawn and garden purposes. The Slaibys refused that offer. It may be that, as you say, ARRC and the Slaibys interpret the grant of easement differently. But we submit that ARRC's interpretation is the only reasonable reading of the plain language of that document. Even if there was anything ambiguous about the grant of easement, which there is not, there is extensive extrinsic evidence which demonstrate the limited scope of that document.

Given the meeting between Mr. Slaiby and Mr. O'Leary scheduled for next week, ARRC has decided not to oppose your extension request for the reply brief. In doing so, we are not necessarily endorsing further discussions after that meeting. Mr. O'Leary is certainly open to listening to anything Mr. Slaiby may have to say, but ARRC cannot commit to any further discussions until we know what Mr. Slaiby has in mind.

Regards,
Andy

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Thursday, April 10, 2014 9:01 AM
To: Scordino, Steven; Andy Behrend
Subject: Re: Slaiby Reply Brief Extension

Thank you both for your prompt responses.

Last summer Mr. Slaiby and ARRC negotiated and agreed to the attached [GrantEasement(XX)Recorded], but then it became clear that each interpreted the document differently [Slaiby - ARRC Email 2013.11.12 (public comment)].

I do not know what was recently stated between Mr. Slaiby and Mr. O'Leary, but understand Mr. Slaiby's good faith intent in meeting with ARRC is to see if the Grant of Easement can be modified or some other document can resolve the current dispute and result in terms which the parties both understand the effect on their respective rights. Mr. Slaiby is first talking with ARRC because we agree with you that is where the solution likely is. I would expect that if an agreement is reached it would then be appropriate to include BLM in the resolution/dismissal.

Roy

----- Original Message -----
From: Scordino, Steven <steven.scordino@sol.doi.gov>
To: Roy Longacre; Andy Behrend
Sent: 4/10/2014 8:36AM
Subject: Re: Slaiby Reply Brief Extension

Roy,

I have to admit I am also confused by your reference to settlement talks. No one has approached BLM, the agency that issued the decision under appeal to the IBLA, about a settlement. However, BLM is also not in a position where it can change its decision. If you or your client is talking with ARRC about a revocable residential use permit or something within ARRC's domain before you dismiss the appeal, I guess that makes sense. I have no problem with a 30 day extension if that is the goal.

If the goal is to change the BLM decision, there is no reason for a 30 day extension because BLM is not in a situation where it can negotiate. BLM followed the law to the letter in granting the exclusive use easement. As an executive agency, BLM only has authority to follow the law and cannot agree to any settlement which would result in BLM not strictly following the law.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information

that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Wed, Apr 9, 2014 at 7:18 PM, Roy Longacre <roy@longacrelaw.com> wrote:
Gentlemen:

In working with Pete Slaiby on the reply, we discussed the Grant of Easement between ARRC and the Slaibys (addressing the RRUP) and the possibility of a settlement of the pending appeal. Mr. Slaiby was contacted by an ARRC Board member and in return has contacted ARRC's new CEO, Bill O'Leary and discussed the possibility of a settlement. My understanding is that Mr. Slaiby and Mr. O'Leary have set a settlement meeting for April 18th.

Mr. Slaiby has asked me to stop my finalization of the reply brief pending the settlement discussions. The thought is after their discussion and my return (leaving the 12th) to Anchorage on April 28th; if there are settlement points the lawyers could then assist with drafting a settlement agreement.

Discussions and negotiations for the Grant of Easement took over 3 months, but given there is an action pending, one month should be sufficient even with the out-of-town schedules of myself and Mr. Slaiby. The purpose of this email is to ask if you would object to a 30 day extension (until May 12th) for filing of the reply.

Roy

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

	)	IBLA DOCKET NO. IBLA-2014-0027
	)	
PETER SLAIBY and	)	Appeal of the Decision for the
REJANI SLAIBY,	)	Alaska Railroad Selection Application
	)	AA-55129 (2658)(944) mjm/lga
Appellants.	)	Anchorage, Alaska
	)	
	)	

MOTION REQUESTING SECOND EXTENSION OF TIME TO FILE REPLY TO ANSWERS OF ARRC AND BLM

Peter Slaiby and Rejani Slaiby (collectively, "Appellants"), by and through their counsel, Roy Longacre, Esq. move for a second extension of time to file their reply brief such that the reply brief will be due on or before May 12, 2014.

Pursuant to 43 CFR §4.405(c), Appellants have emailed the Bureau Of Land Management (BLM), Alaska State Office and the Alaska Railroad Corporation (ARRC) counsel, Andy Behrend, Esq., and both have indicated that they does not oppose the extension.

The requested extension will not prejudice either the Bureau of Land Management or the Alaska Railroad Corporation. There is good cause for the requested extension because Appellant Peter Slaiby and the Alaska Railroad Corporation's CEO, Bill O'Leary have set an April 18, 2014 meeting to discuss the possibility of a settlement of the pending appeal. Following the parties' meeting, it is anticipated that counsel for the parties will meet and or negotiate the memorialization of the settlement terms[1]. Additional time is also necessary to accommodate previously scheduled out-of-state travel schedules and allow for the drafting and respective approval of a settlement document.

[1] Last year ARRC and Slaiby took over 3 months to come to agreement on resolution of issues with regard to residential use of portions of the right-of-way and memorialization of that agreement.

Respectfully submitted this April 10, 2014.

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501
907-276-6354
907-279-4685 (fax)
Roy@LongacreLaw.com

Attorney for Peter Slaiby
and Rejani Slaiby

CERTIFICATE OF SERVICE

I certify that on April 10, 2014, I served this Motion For Second Extension Of Time To File

Reply To Answers Of ARRC and BLM, as indicated below, upon:

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(by fax (703-235-8349))

Steve Scordino, Attorney Advisor for
Bureau of Land Management, Alaska State Office
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(by fax (907-271-4143) and email:steven.scordino@sol.doi.gov)

Mr. Andy Behrend, Senior Attorney, Real Estate and Environmental
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500
(by fax (265-2443) and email:BehrendA@akrr.com)

/s/ Roy L. Longacre

Roy L. Longacre, Esq.

From:	Andy Behrend
To:	Steve Scordino (steven.scordino@sol.doi.gov)
Subject:	FW: Peter & Rejani Slaiby
Date:	Thursday, May 1, 2014 2:07:10 PM
Attachments:	Letter to Roy Longacre with Attachments 4-29-2014.pdf Draft Residential Use Permit - Slaiby afb 4-29-2014.doc

Steve:

Attached below and above are an email message and a letter with attachments that went to Roy Longacre late on Tuesday. These materials followed up on Mr. Slaiby's meeting with our President/CEO, Bill O'Leary. I apologize for the delay in getting them to you. They are pretty self-explanatory.

Regards,
Andy

From: Andy Behrend
Sent: Tuesday, April 29, 2014 4:42 PM
To: Roy Longacre (roy@longacrelaw.com)
Subject: Peter & Rejani Slaiby

Roy:

Attached to this message is a pdf file that includes a letter following up on Mr. Slaiby's meeting with ARRC President & CEO Bill O'Leary and two attachments. The attachments include a memorandum regarding the U.S. Supreme Court's *Brandt* decision and a draft residential use permit, as explained in the letter. I am also attaching a Word version of the draft permit to facilitate the redlining of any proposed changes or comments you may have.

A hard copy of the letter and attachments has been placed in the U.S. mail today.

Please let me know if you have any questions or any problems opening the attached files.

Regards,
Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

OFFICE OF THE GENERAL COUNSEL
TELEPHONE: (907) 265-2305
FACSIMILE: (907) 265-2443
EMAIL: behrenda@akrr.com

Via Regular U.S. and Electronic Mail

April 29, 2014

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

Re: Peter and Rejani Slaiby
Response to Mr. Slaiby's April 18 Meeting with ARRC CEO Bill O'Leary

Dear Roy:

As you know, on April 18, 2014, Mr. Slaiby met with Alaska Railroad Corporation (ARRC) President and CEO Bill O'Leary. Mr. Slaiby and Mr. O'Leary discussed the differing views the Slaibys and ARRC have regarding property interests in the portion of ARRC's right-of-way (ARRC ROW) adjacent to the Slaibys' home. Mr. O'Leary appreciated the opportunity to meet with Mr. Slaiby and has asked me to write to you to respond to Mr. Slaiby's request that ARRC propose a resolution to the current property interest disagreement.

I know that there is no need to explain in this letter the basis of ARRC's position that it holds an exclusive use easement in the portion of Lots 13 and 14, Block 3, Sunset Hills West Subdivision that lies within the ARRC ROW. We have detailed that position in several letters to you and most recently in ARRC's Answer in the pending IBLA Appeal. We remain confident in that position. In the draft reply brief that Mr. Slaiby shared with Mr. O'Leary, you make the argument that the U.S. Supreme Court's recent decision in the *Brandt* case supports the Slaibys' argument that ARRC's perpetual right-of-way and easement is non-exclusive. I would like to address *Brandt* before discussing what ARRC is prepared to offer to the Slaibys regarding use rights in the disputed property.

The opinion in *Brandt Revocable Trust v. United States* dealt with the question of whether the federal government retained ownership of a railroad right-of-way granted under the federal General Right-of-Way Act of 1875 (Act of 1875) when that right-of-way was abandoned by the private railroad company that had operated on it. The Supreme Court decided the abandoned land was owned not by the federal government, but instead by the landowner who had received a patent for the parcel of land crossed by the right-of-way. For the reasons discussed below, the *Brandt* decision does not apply to or affect ARRC's exclusive property rights in its right-of-way.

To understand why the *Brandt* decision does not apply to ARRC's right-of-way, one must understand the background in that case. The right-of-way at issue in *Brandt* was granted in 1908 under the Act of 1875. The right-of-way was owned by a series of private railroad companies, which operated railroads on it until it was abandoned in 2004. In the meantime, in 1976, the United States patented an 83-acre parcel in fee simple title to Melvin Brandt. The railroad right-of-way described above crossed that parcel, and the patent stated that the land was granted subject to the right-of-way. When the railroad right-of-way was abandoned, the United States claimed title to the right-of-way where it crossed Mr. Brandt's parcel. Mr. Brandt contested that claim, arguing that he now owned the right-of-way in fee simple because he owned the underlying fee interest in the entire parcel by virtue of the 1976 patent. The Supreme Court ultimately agreed with Mr. Brandt.

The fundamental reason that the *Brandt* decision neither applies to nor affects ARRC's right-of-way is that it involved a railroad right-of-way granted under the Act of 1875. The decision is expressly limited to rights of way granted under that Act. The ARRC right-of-way, on the other hand, is almost entirely composed of land designated by the federal government for the development of the federally-owned and operated Alaska Railroad under the Alaska Railroad Act of 1914 (1914 Act). The 1914 Act did not mention, much less incorporate in any way, the Act of 1875. Nor did the 1914 Act use any of the language of the Act of 1875 to describe the rights-of-way for the Alaska Railroad. In sum, the 1914 Act is entirely unrelated to the Act of 1875, and therefore the *Brandt* decision has no impact on rights-of-way designated under the 1914 Act.

Nor are rights-of-way established under the 1914 Act analogous to Act of 1875 rights-of-way. Whereas the Act of 1875 granted railroad rights-of-way across federal lands to private railroad companies, the 1914 Act directed the President to establish from among federal lands in Alaska rights-of-way that would continue to be owned by the federal government and be used by it to operate the Alaska Railroad. Consequently, almost all of the land in the Alaska Railroad right-of-way never left federal ownership before the land was transferred to ARRC in 1985. Therefore, the federal government owned almost all of the Alaska Railroad right-of-way in fee simple at the time it was transferred to ARRC. The federal Alaska Railroad Transfer Act (ARTA) required the United States to transfer to ARRC the entire federal interest in Alaska Railroad lands. As a result, the vast majority of the Alaska Railroad right-of-way passed to ARRC in fee simple title. In other words, almost all of the ARRC right-of-way is not an easement, but instead is a strip of land owned outright by ARRC. The fact that ARRC owns fee simple title in most of its right-of-way makes the Alaska Railroad right-of-way completely different from rights-of-was granted to private railway companies under the Act of 1875.

The history and language of ARTA confirms the critical differences between Act of 1875 rights-of-way and the Alaska Railroad right-of-way described above. The legislative history of ARTA shows that Congress had investigated and found that the vast majority of the Alaska Railroad right-of-way was owned by the federal government in fee simple. The legislative history also demonstrates that Congress intended that the State of Alaska would receive fee simple title to essentially all of the Alaska Railroad

right-of-way. (Congress made an exception for the right-of-way in Denali National Park, in which an exclusive use easement—rather than fee simple title—was to be transferred to the State in order to avoid State inholdings in the Park.)

Even if the *Brandt* case could possibly apply to the ARRC right-of-way—which it does not as explained above—it would have no effect until the ARRC right-of-way was abandoned. The issue in *Brandt* was who owned the Act of 1875 right-of-way once it was abandoned by the railroad company. Since ARRC has not abandoned the Alaska Railroad right-of-way, *Brandt* could not be relevant to ARRC's situation at this time even if it applied in general.

Finally, with respect to the idea that *Brandt* supports the idea that ARRC does not have exclusive rights in its right-of-way and that adjacent owners can therefore use the right-of-way, Brandt provides no such support. *Brandt* does not at any point discuss the exclusivity or non-exclusivity of railroad rights-of-way. For a discussion of how and why railroad rights-of-way have been consistently considered to be exclusive to the railroads holding them, please see our earlier letters and ARRC's answer in the IBLA Appeal.

Your draft reply brief makes other new arguments, such as that ARRC lacks standing in the IBLA Appeal. While those new arguments, which are not appropriately made in a reply brief in any event, lack merit, this letter is not the proper forum for addressing them.[1] We will do so, if necessary, when the Slaibys' reply brief is filed.

We most certainly appreciate that the Slaibys are sincere in their position that they hold a fee simple interest in the portion of Lots 13 and 14 that falls within the ARRC ROW. It is worth mentioning that ARRC has never argued that it holds fee simple title to that land. Based on the warranty deed issued by the Jarvis to the United States and on the minimum title guarantees contained in ARTA, ARRC claims at least an exclusive use easement in the property, as that form of easement is defined in ARTA. The patent proposed by BLM clearly shows that the United States agrees with that assessment. If ARRC's interest in the property is, in fact, an exclusive use easement, then the Slaibys might hold the underlying fee interest in the property.[2] But that interest would be subject to ARRC's exclusive rights under the exclusive use easement.

After his meeting with Mr. Slaiby, Mr. O'Leary conferred with ARRC's senior management regarding the situation involving the Slaibys' property. Management staff

---

[1] With respect to the standing argument based on ARRC's entity status, however, we encourage you to review the Alaska Railroad Corporation Act, AS 42.40 regarding ARRC's corporate form and its responsibility for its own property, liabilities and debts. ARRC's standing to participate in the appeal is clear and its intervention therein was proper.

[2] Such a conclusion, however, appears to be undermined by the fact that the ARRC ROW portion of Lots 13 and 14 was specifically excluded from the Slaiby's warranty deed when they purchased their property. That exclusion was part of a forty-year gap in the chain of title with respect to the ARRC ROW, and it is far from certain that the purported "correction" made by the 2012 quit claim deed changed anything.

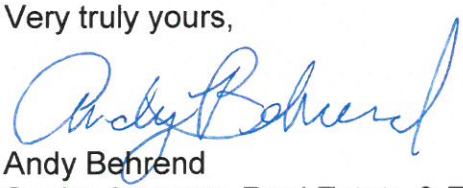
determined that any approach that required ARRC to compromise what it firmly believes are its exclusive rights to the ARRC ROW would be incompatible with its obligation under ARCA to preserve the integrity of the ARRC ROW. Moreover, some of Mr. Slaiby's suggestions, such as that ARRC purchase his home or exercise its eminent domain authority, are inconsistent with ARRC's current financial circumstances and with the federal guarantee to defend ARRC's title to its ROW as at least an exclusive use easement. Staff agreed, however, that it would make sense to try to find a way to provide the Slaibys with clear and transferable residential use rights to the ROW during the pendency of the IBLA appeal and any subsequent appeals of the same. To that end, ARRC makes the following proposal.

ARRC would be willing to enter into a permit with the Slaibys that provides them with clear and transferable residential use rights in the portion of Lots 13 and 14 that fall within the ARRC ROW. The permit would be for a five-year term and would be fully transferrable to purchasers of Lots 13 and 14. It would be automatically renewable for unlimited additional five-year terms upon request by the Slaibys or their successors in interest to Lots 13 and 14. The permit would terminate if the IBLA or another tribunal of competent jurisdiction determines that ARRC does not have the authority to require the Slaibys to obtain a residential use permit. Termination would take effect upon the exhaustion of all appeals of such a determination. The Slaibys would not be charged a permit fee unless and until the IBLA or another tribunal of competent jurisdiction determines that ARRC does have the authority to require a residential use permit. If and when a permit fee kicked in, it would be relatively inexpensive. The permit would state that neither party gives up or modifies any claims, defenses or arguments related to their respective property interests in the property by entering into the permit.

A draft permit in a form acceptable to ARRC is enclosed with this letter. We believe it offers the parties an opportunity to establish a workable status quo while the legal issues are determined by the IBLA or other tribunal on appeal.

Once you and your clients have had an opportunity to review the enclosed draft permit, please contact me with any questions or concerns. I will be happy to discuss it with you at your convenience.

Very truly yours,



Andy Behrend
Senior Attorney, Real Estate & Environmental

cc: Bill O'Leary, President & CEO, ARRC (via email)
William R. Hupprich, Vice President & General Counsel, ARRC (via email)
Jim Kubitz, Vice President, Corporate Planning & Real Estate
Wendy Lindskoog, Vice President, Business Management & Corporate Affairs, ARRC (via email)

ALASKA RAILROAD CORPORATION

MEMORANDUM

To: Roy Longacre, Esq.

From: Andy Behrend, Senior Attorney, Real Estate & Environmental AFB

Date: April 29, 2014

Subject: U.S. Supreme Court Decision in *Brandt Revocable Trust v. United States*

Questions have been raised about what application or effect, if any, the decision in *Brandt Revocable Trust v. United States* has with respect to the Alaska Railroad Corporation (ARRC) right-of-way. For the reasons discussed below, the *Brandt* decision neither applies to nor affects ARRC's property rights in its right-of-way.

The opinion in *Brandt* dealt with the question of whether the federal government retained ownership of a railroad right-of-way granted under the federal General Right-of-Way Act of 1875 (Act of 1875) when that right-of-way was abandoned by the private railroad company that had operated on it. The Supreme Court decided the abandoned land was owned not by the federal government, but instead by the landowner who had received a patent for the parcel of land crossed by the right-of-way. For the reasons discussed below, the *Brandt* decision does not apply to or affect ARRC's exclusive property rights in its right-of-way.

To understand why the *Brandt* decision does not apply to ARRC's right-of-way, one must understand the background in that case. The right-of-way at issue in *Brandt* was granted in 1908 under the Act of 1875. The right-of-way was owned by a series of private railroad companies, which operated railroads on it until it was abandoned in 2004. In the meantime, in 1976, the United States patented an 83-acre parcel in fee simple title to Melvin Brandt. The railroad right-of-way described above crossed that parcel, and the patent stated that the land was granted subject to the right-of-way. When the railroad right-of-way was abandoned, the United States claimed title to the right-of-way where it crossed Mr. Brandt's parcel. Mr. Brandt contested that claim, arguing that he now owned the right-of-way in fee simple because he owned the underlying fee interest in the entire parcel by virtue of the 1976 patent. The Supreme Court ultimately agreed with Mr. Brandt.

The fundamental reason that the *Brandt* decision neither applies to nor affects ARRC's right-of-way is that it involved a railroad right-of-way granted under the Act of 1875. The decision is expressly limited to rights of way granted under that Act. The ARRC right-of-way, on the other hand, is almost entirely composed of land designated by the federal government for the development of the federally-owned and operated Alaska Railroad under the Alaska Railroad Act of 1914 (1914 Act). The 1914 Act did not mention, much less incorporate in any way, the Act of 1875. Nor did the 1914 Act use any of the language of the Act of 1875 to describe the rights-of-way for the Alaska Railroad. In sum, the 1914 Act is entirely unrelated to the Act of 1875, and therefore the *Brandt* decision has no impact on rights-of-way designated under the 1914 Act.

Nor are rights-of-way established under the 1914 Act analogous to Act of 1875 rights-of-way. Whereas the Act of 1875 granted railroad rights-of-way across federal lands to private railroad companies, the 1914 Act directed the President to establish from among federal lands in Alaska rights-of-way that would continue to be owned by the federal government and be used by it to operate the Alaska Railroad. Consequently, almost all of the land in the Alaska Railroad right-of-way never left federal ownership before the land was transferred to ARRC in 1985. Therefore, the federal government owned almost all of the Alaska Railroad right-of-way in fee simple at the time it was transferred to ARRC. The federal Alaska Railroad Transfer Act (ARTA) required the United States to transfer to ARRC the entire federal interest in Alaska Railroad lands. As a result, the vast majority of the Alaska Railroad right-of-way passed to ARRC in fee simple title. In other words, almost all of the ARRC right-of-way is not an easement, but instead is a strip of land owned outright by ARRC. The fact that ARRC owns fee simple title in most of its right-of-way makes the Alaska Railroad right-of-way completely different from rights-of-was granted to private railway companies under the Act of 1875.

The history and language of ARTA confirms the critical differences between Act of 1875 rights-of-way and the Alaska Railroad right-of-way described above. The legislative history of ARTA shows that Congress had investigated and found that the vast majority of the Alaska Railroad right-of-way was owned by the federal government in fee simple. The legislative history also demonstrates that Congress intended that the State of Alaska would receive fee simple title to essentially all of the Alaska Railroad right-of-way. (Congress made an exception for the right-of-way in Denali National Park, in which an exclusive use easement—rather than fee simple title—was to be transferred to the State in order to avoid State inholdings in the Park.)

Even if the *Brandt* case could possibly apply to the ARRC right-of-way—which it does not as explained above—it would have no effect until the ARRC right-of-way was abandoned. The issue in *Brandt* was who owned the Act of 1875 right-of-way once it was abandoned by the railroad company. Since ARRC has not abandoned the Alaska

Railroad right-of-way, *Brandt* could not be relevant to ARRC's situation at this time even if it applied in general.

Finally, with respect to the idea that *Brandt* supports the idea that ARRC does not have exclusive rights in its right-of-way and that adjacent owners can therefore use the right-of-way, Brandt provides no such support. *Brandt* does not at any point discuss the exclusivity or non-exclusivity of railroad rights-of-way. For a discussion of how and why railroad rights-of-way have been consistently considered to be exclusive to the railroads holding them, please see our earlier letters and ARRC's Answer in the IBLA Appeal.

ARRC Contract No. ____

PERMIT

(b) (5)

[redacted]

(b) (5)

(b) (5)

(b) (5)

(b) (5)

[redacted]

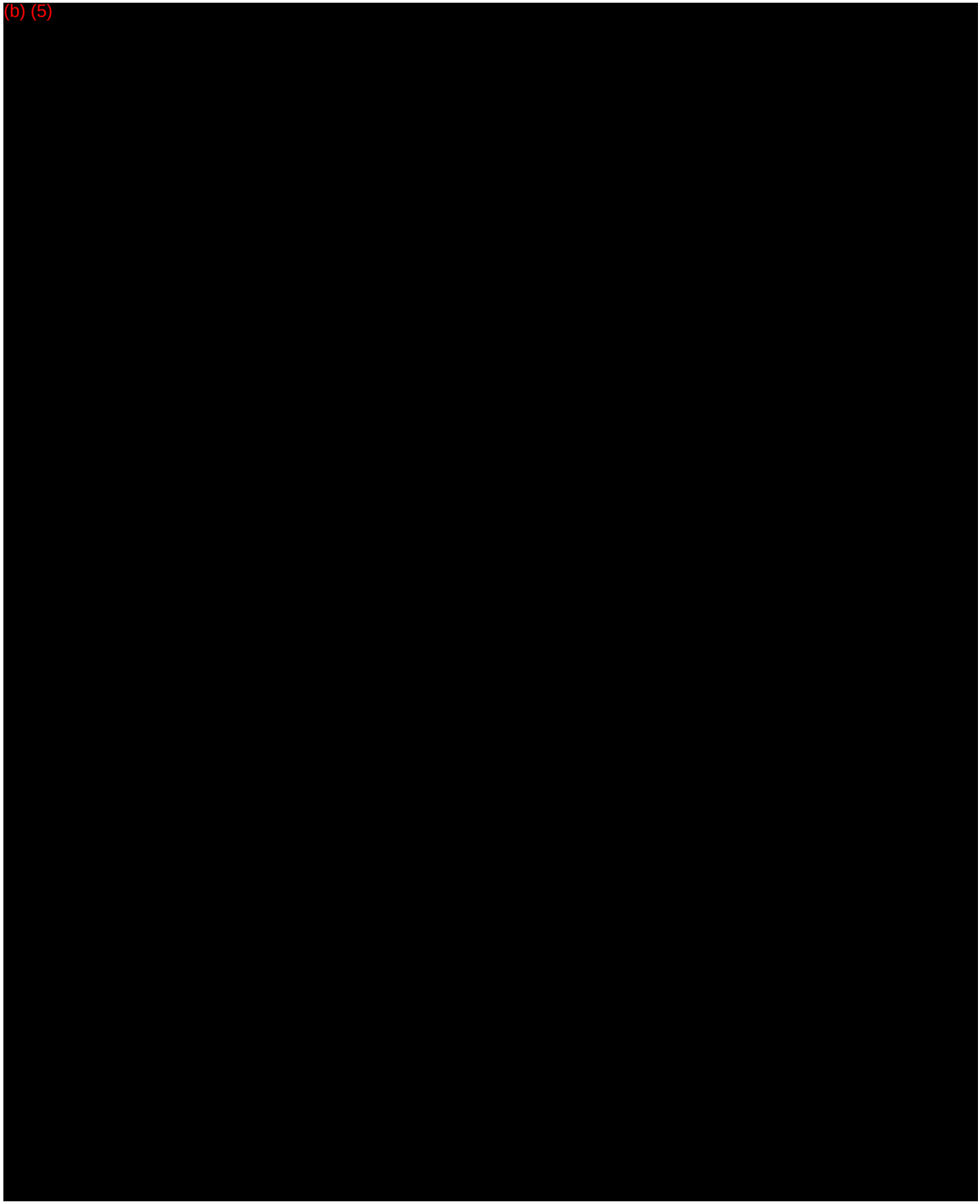
(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Scordino, Steven
To: William Hupprich; Andy Behrend
Subject: opposition to extension
Date: Monday, June 2, 2014 7:19:42 PM
Attachments: Slaiby opp to request for extension.docx

Here is my draft of my opposition.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, May 30, 2014 at 1:25 PM, William Hupprich <Hupprichw@akrr.com> wrote:

> Roy, ARRC will oppose any extension request.
>
> William R. Hupprich
>
> Vice President & General Counsel
>
> Alaska Railroad Corporation
>
> P.O. Box 107500
>
> Anchorage, Alaska 99510-7500
>
> Tel: (907) 265-2455 Fax: (907) 265-2443
>
> Email: hupprichw@akrr.com
>
> This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or coping of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this

message and all attachments.

From: Roy Longacre [mailto:roy@longacrelaw.com]
Sent: Friday, May 30, 2014 8:52 AM
To: William Hupprich; steven.scordino@sol.doi.gov
Cc: (b) (6) gmail.com

Subject: Re: Pletcher FOIA request

Bill:

I am preparing an extension motion requesting the deadline be extended to five business days after receipt of BLM's FOIA documents.

Pursuant to 43 CFR 4.405(c), please let me know if ARRC opposes the motion.

Thanks, Roy

----- Original Message -----

From: Scordino, Steven <steven.scordino@sol.doi.gov>

To: Roy Longacre

Sent: 5/29/2014 8:16AM

Subject: Re: Pletcher FOIA request

Roy,

I will oppose an extension. If I need to file an opposition, I will include the email string where Andy and I asked the intent of the extension. I do not believe that those emails will

reflect well on you and whether the reasons you have given should be trusted. I will also point out that Mr. Slaiby and you have been aware since at least January of 2013 that this action was likely to occur. There would be no need to grant an extension now to wait on a FOIA request when you had over a year to make a FOIA request which would have provided the information you sought in a timely fashion. I will also point out you state now that you did not know about Mr. Pletcher's FOIA request at the time you sought the extension. However, you were cc'd about the extension with the FOIA request on May 6, 2014. The next day you filed the extension, which means you should have known about the FOIA request prior to filing the request.

Steve

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Thu, May 29, 2014 at 11:56 AM, Roy Longacre <roy@longacrelaw.com> wrote:

Steve:

Sorry that I did not provide more background information, but I did not anticipate BLM would oppose an extension necessitated by BLM's delay in producing requested documents. The prior extension request was based on waiting for ARRC's settlement offer and the need to discuss same with my client.

During this time I became aware of Mr. Pletcher's FOIA request made while I was on vacation. When public documents were made available we immediately reviewed those documents April 29th and requested copies. I believe some of those documents are pivitol and will be included in the Reply; but important documents including emails were not made available to us and were required to go through a screening process. I have diligently worked with BLM's FOIA officer and contacted you to do all that is possible from this end in expediting the document production, including my May 20th advance $794 payment, which I made as soon as I understood it would help expedite document production.

If the documents had been provided, no further extension would be necessary, but I am not willing to file the reply without reviewing identified evidence, because BLM is busy. Hopefully this explanation will merit your reconsideration; it not, please let me know so that I may file an appropriate motion.

Roy

----- Original Message -----

From: Scordino, Steven <steven.scordino@sol.doi.gov>

To: Roy Longacre

Sent: 5/28/2014 2:20PM

Subject: Re: Pletcher FOIA request

Roy,

I do not find it understandable that you would need additional time to file your reply based on the response time to the May 5, 2014, FOIA request. According to your representation of why you sought an extension, the FOIA should not be relevant to the need for an extension. Specifically, Andy Behrend responded to your request for a 3 week extension with the following: "I assume that your request for the extension is solely based on the time needed to consider ARRC's proposal and not the time necessary to finalize your reply. I say that because I have seen your draft reply brief, which is in draft form but was well along as of April 18. Based on that assumption, ARRC will not oppose your 3-week extension request." Without providing any clarification, you filed the request for extension stating that ARRC did not oppose the extension. You have had plenty of time to file a reply and I will oppose any future request for an extension.

Sincerely,

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300

Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Wed, May 28, 2014 at 5:57 PM, Roy Longacre <roy@longacrelaw.com> wrote:

Hi Steve:

I understand the projected date BLM documents will be available is after June 4th which is after the existing June 2nd Reply deadline. Understandably I would like to look at the rest of the BLM documents prior to finalizing and filing the Reply. Would it be possible to obtain an extension for the Reply of 5 business days after the BLM documents are produced?

Roy

----- Original Message -----

From: Scordino, Steven <steven.scordino@sol.doi.gov>

To: Roy Longacre

Sent: 5/23/2014 12:47PM

Subject: Re: Pletcher FOIA request

Roy,

There is nothing you can do to help me through the review of the FOIA documents.

Thank you,

Steve Scordino

Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Fri, May 23, 2014 at 4:36 PM, Roy Longacre <roy@longacrelaw.com> wrote:

Hi Steve:

John Pletcher has included me in his BLM FOIA request. I understand there is material not available in the public documents that Dayle Sherba assembled and provided to you last week for review prior to release.

I understand you are swamped, but wanted to let you know of my involvement and to ask you to let me know if there is anything I can do on this end to help expedite the process.

Thanks, Roy

STEVEN SCORDINO, Attorney-Advisor
Office of the Solicitor – Alaska Region
United States Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508-4626
(907) 271-4131/Fax (907) 271-4143

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

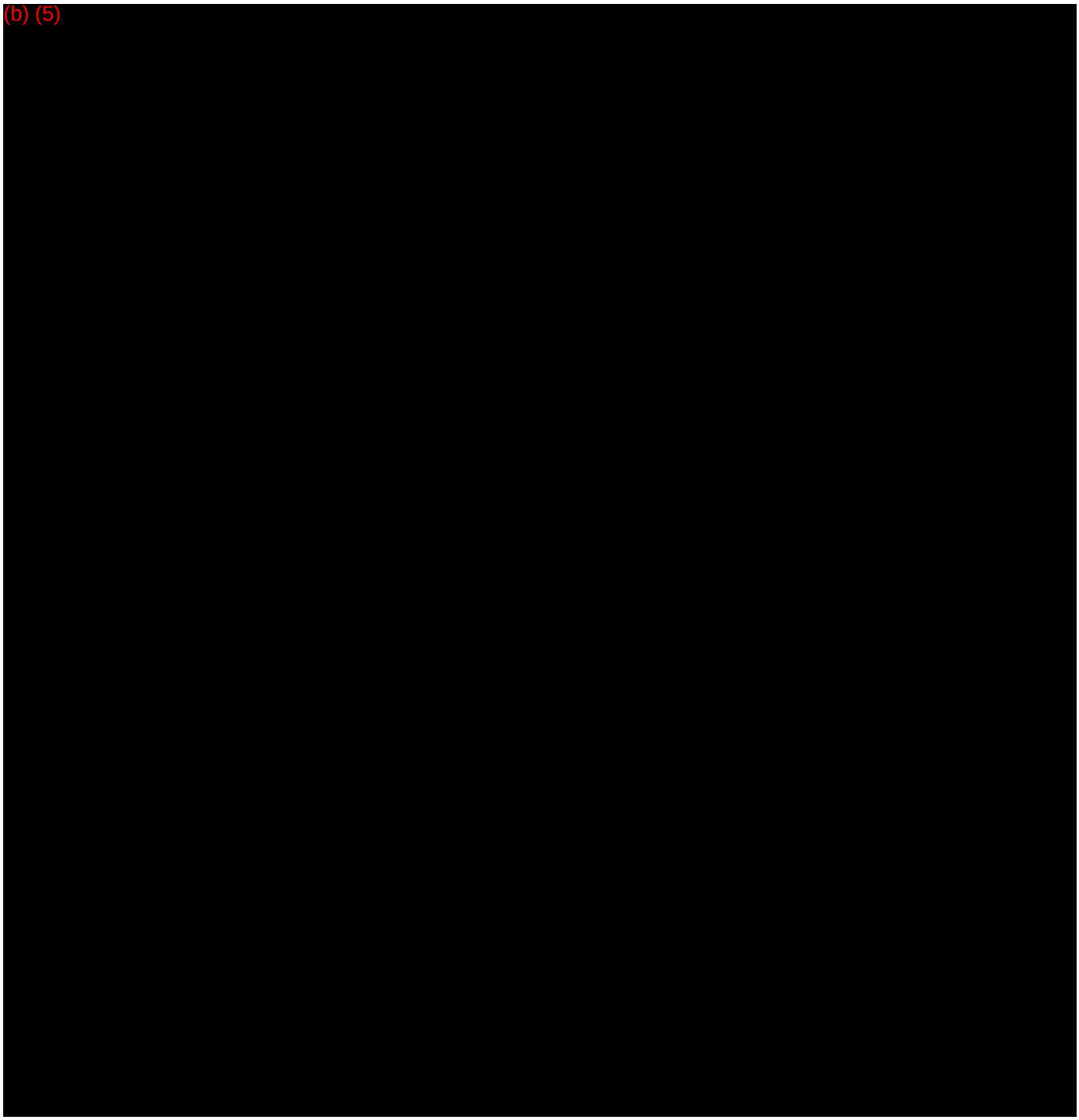
IBLA 2014-27	)	
	)	AA-55129
PETER SLAIBY AND REJANI SLAIBY	)	

OPPOSITION TO APPELLANTS' FOURTH REQUEST FOR EXTENSION OF TIME TO FILE REPLY TO ANSWERS OF ARRC AND BLM

(b) (5)

(b) (5)

(b) (5)


(b) (5)

(b) (5)

From: Scordino, Steven
To: john pletcher
Subject: Re: Alaska railroad right of way
Date: Monday, December 15, 2014 1:28:27 PM

Mr. Pletcher,

I read the case, The Alaska Railroad, 65 IBLA 376. The issue of that case was whether the railroad right-of-way appropriated the land or otherwise made land selected by the State of Alaska unavailable for entry under the Statehood Act. "The issue raised by this appeal is whether the land within the right-of-way granted to the Alaska Railroad is occupied, appropriated, and/or reserved so as to be exempt from State selection. Neither counsel for appellant nor counsel for the State of Alaska have cited any cases on point and this appears to be a case of first impression." 65 IBLA at 377-78. That case has no bearing on whether the Alaska Railroad Transfer Act granted an exclusive use easement on private lands where the railroad existed at the time of the Act or any other issue in this case. In fact, this case does not in anyway interpret the Alaska Railroad Transfer Act.

Steve

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Dec 15, 2014 at 9:09 AM, john pletcher <(b) (6) gmail.com> wrote:

> Steve,
>
> I do hope that you will reconsider the approach you took in our conversation at about 8:20 AM.
>
> You asked for a citation to the IBLA decision which is 65 IBLA 376 (July 20, 1982). The Alaska Railroad was a party.
>
> Although the law judge may very well find this, I think that a better approach would be to bring this to his or her attention.
>
> See below. If this does not open properly please contact me and I can assist. The doc may be found on Google “IBLA Alaska Railroad right of way 1982” or similar.

John Pletcher

From: Scordino, Steven
To: Andy Behrend
Subject: Slaiby - Answer to Supplemental
Date: Thursday, June 4, 2015 8:24:55 PM
Attachments: Slaiby - Answer to Supplemental SOR.docx

I have worked hard to remove my sarcasm and obvious irritation from this brief. I think that is still a work in progress. I plan to file this next week and will be out of the office tomorrow.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

STEVEN SCORDINO, Attorney-Advisor
Office of the Solicitor – Alaska Region
United States Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508-4626
(907) 271-4131/Fax (907) 271-4143

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
801 N. Quincy St., Suite 300
Arlington, Virginia 22203

IBLA 2014-27	)	
	)	AA-55129
PETER SLAIBY AND REJANI SLAIBY	)	

ANSWER TO SUPPLEMENTAL STATEMENT OF REASONS

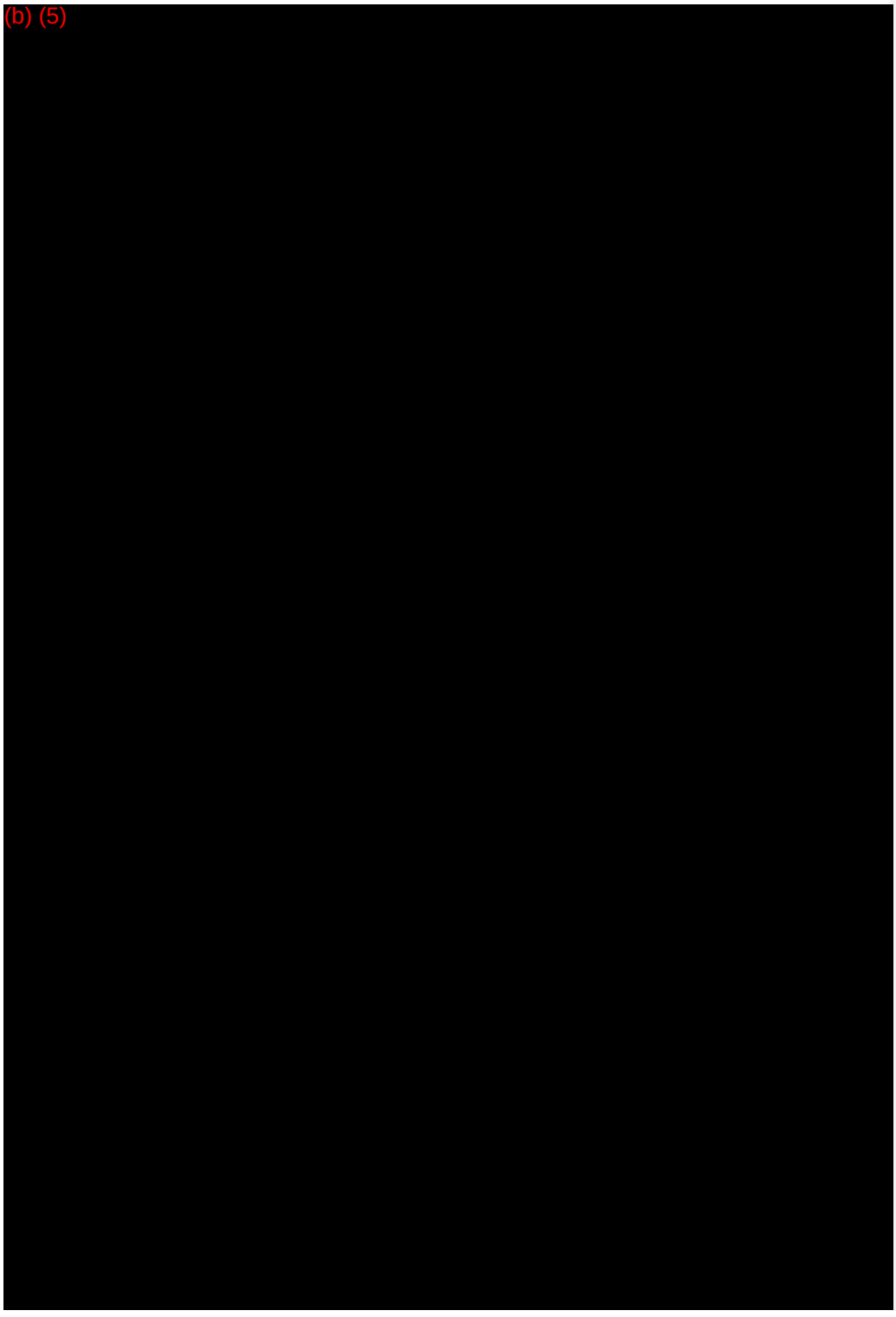
(b) (5)

I. The Alaska Railroad

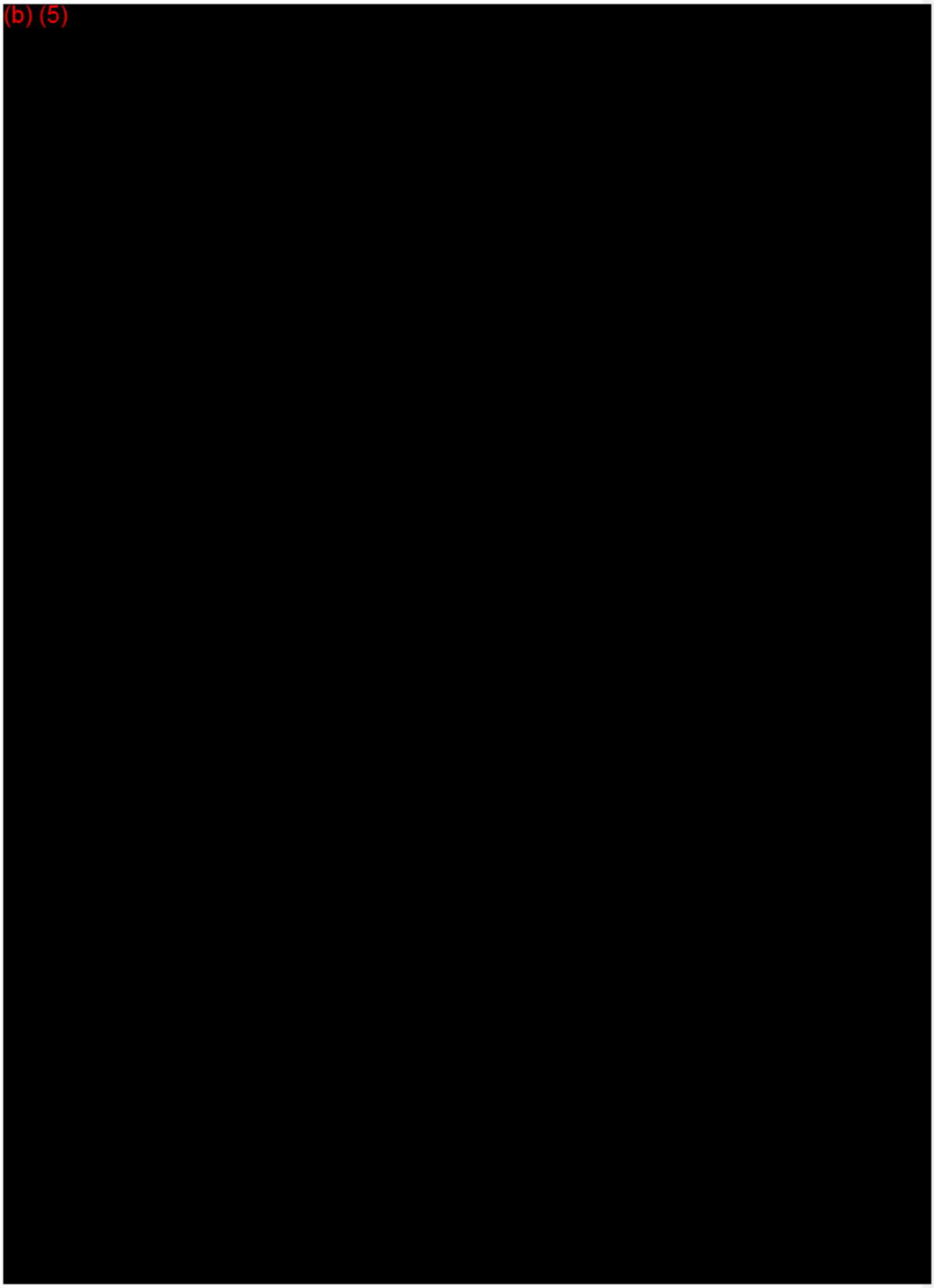
(b) (5)

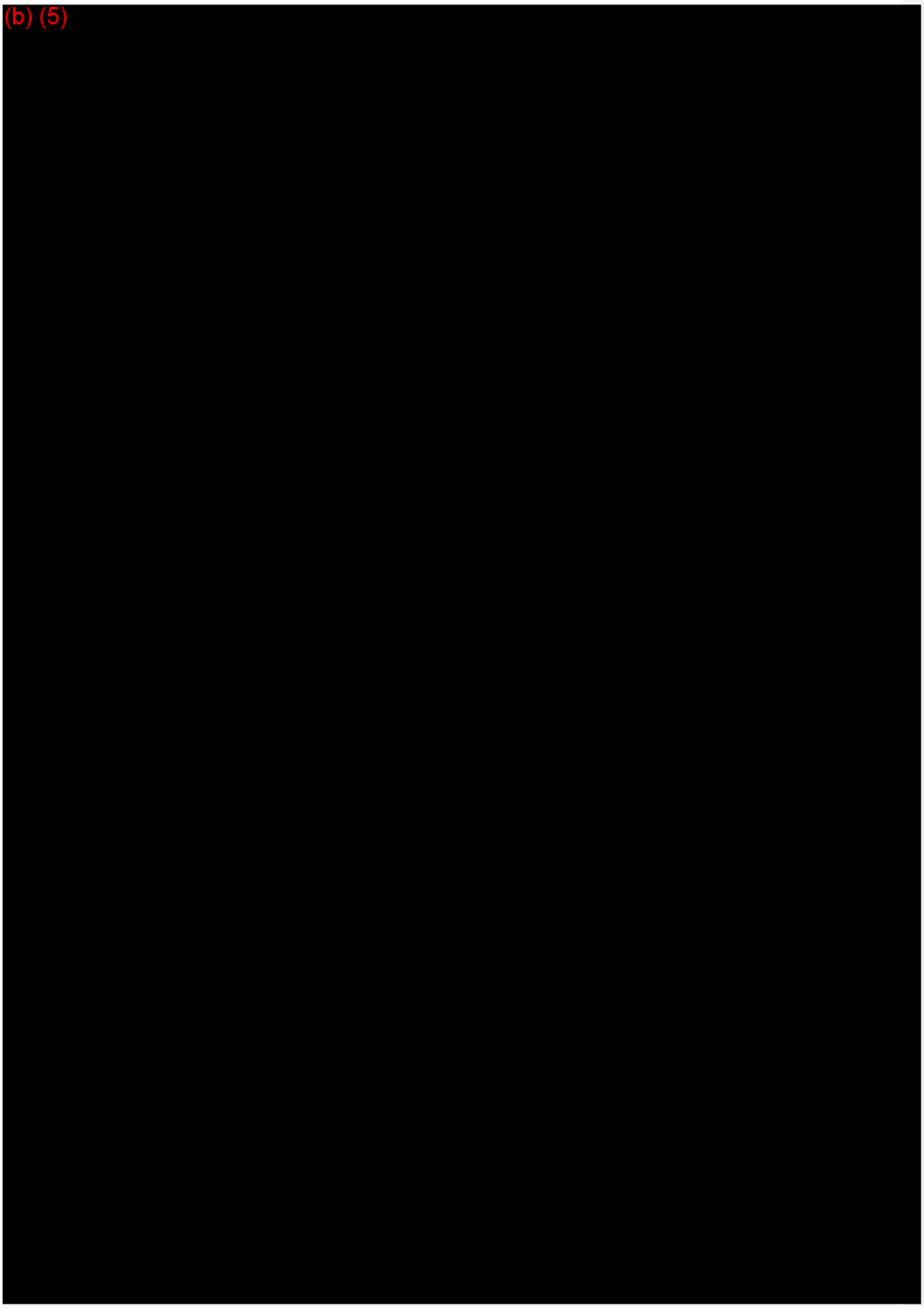
[redacted]

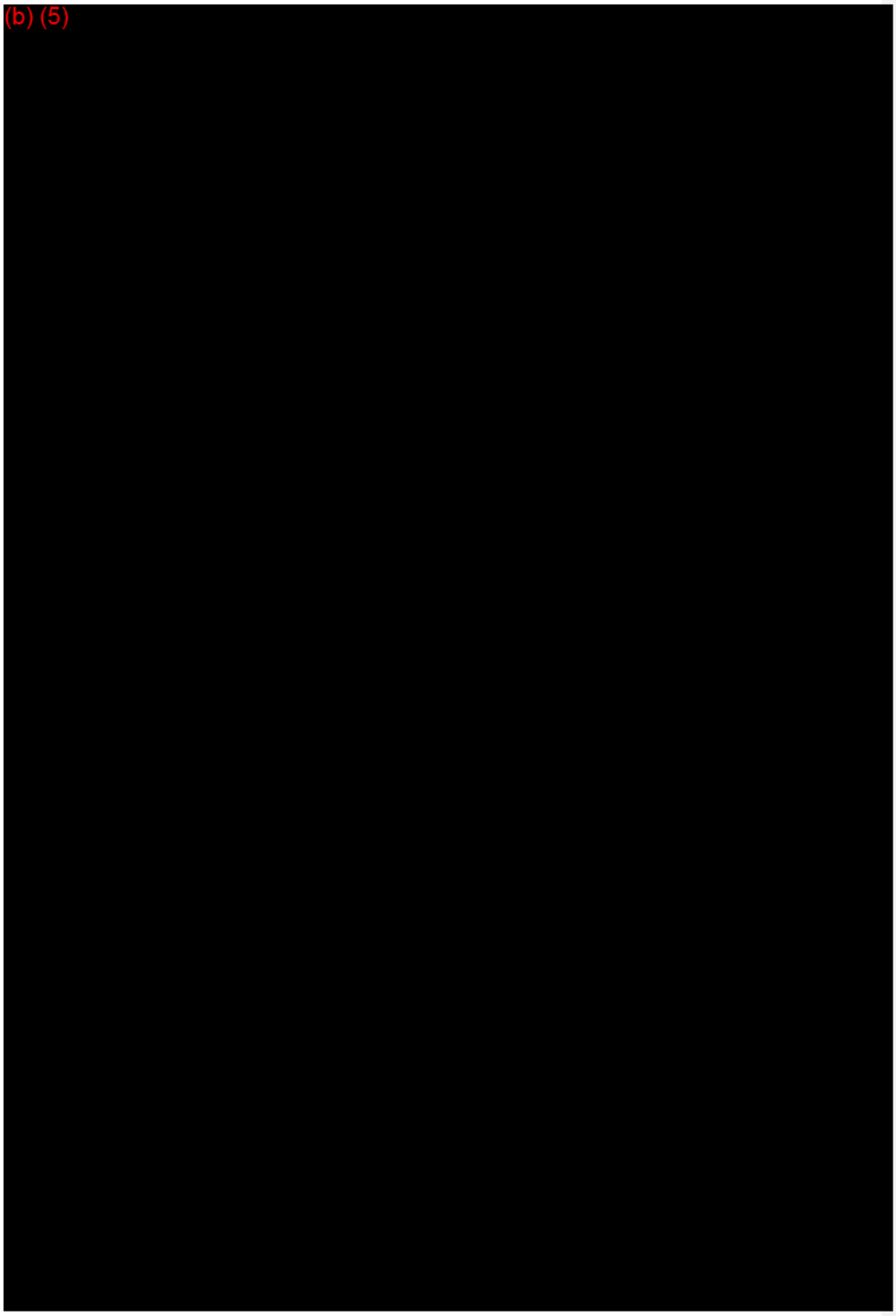
Commented [SS1]: Need to attach Dennis' memo


(b) (5)

(b) (5)




(b) (5)


(b) (5)

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: FW: Slaiby - Answer to Supplemental
Date: Monday, June 8, 2015 10:49:16 PM
Attachments: Slaiby - ARRC"s Answer to Supplemental Statement of Reasons.docx

---

Steve:

Attached is our initial draft of the answer to the appellants' supplemental statement of reasons. Any thoughts would be appreciated.

I liked your draft brief. It was straight to the point. I did not think (b) (5) [redacted]

I did see a couple minor typos in your brief, but do not have them in front of me right now. I will check your draft tomorrow and let you know. I am guessing you caught them in proofing.

I calculate that this brief must be filed by Wednesday. Our working plan is to file it that day or late tomorrow if we get it together by then.

Thanks,
Andy

From: Andy Behrend
Sent: Thursday, June 04, 2015 6:05 PM
To: 'Scordino, Steven'
Subject: RE: Slaiby - Answer to Supplemental

Thanks, Steve.

I will be drafting tomorrow, circulating for internal comment on Monday and should have a draft for you by Monday afternoon. I will provide you with any comments on your draft once I have reviewed it tomorrow. I believe the brief is due for filing on or before next Wednesday.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, June 04, 2015 4:25 PM
To: Andy Behrend

Subject: Slaiby - Answer to Supplemental

I have worked hard to remove my sarcasm and obvious irritation from this brief. I think that is still a work in progress. I plan to file this next week and will be out of the office tomorrow.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

DRAFT

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

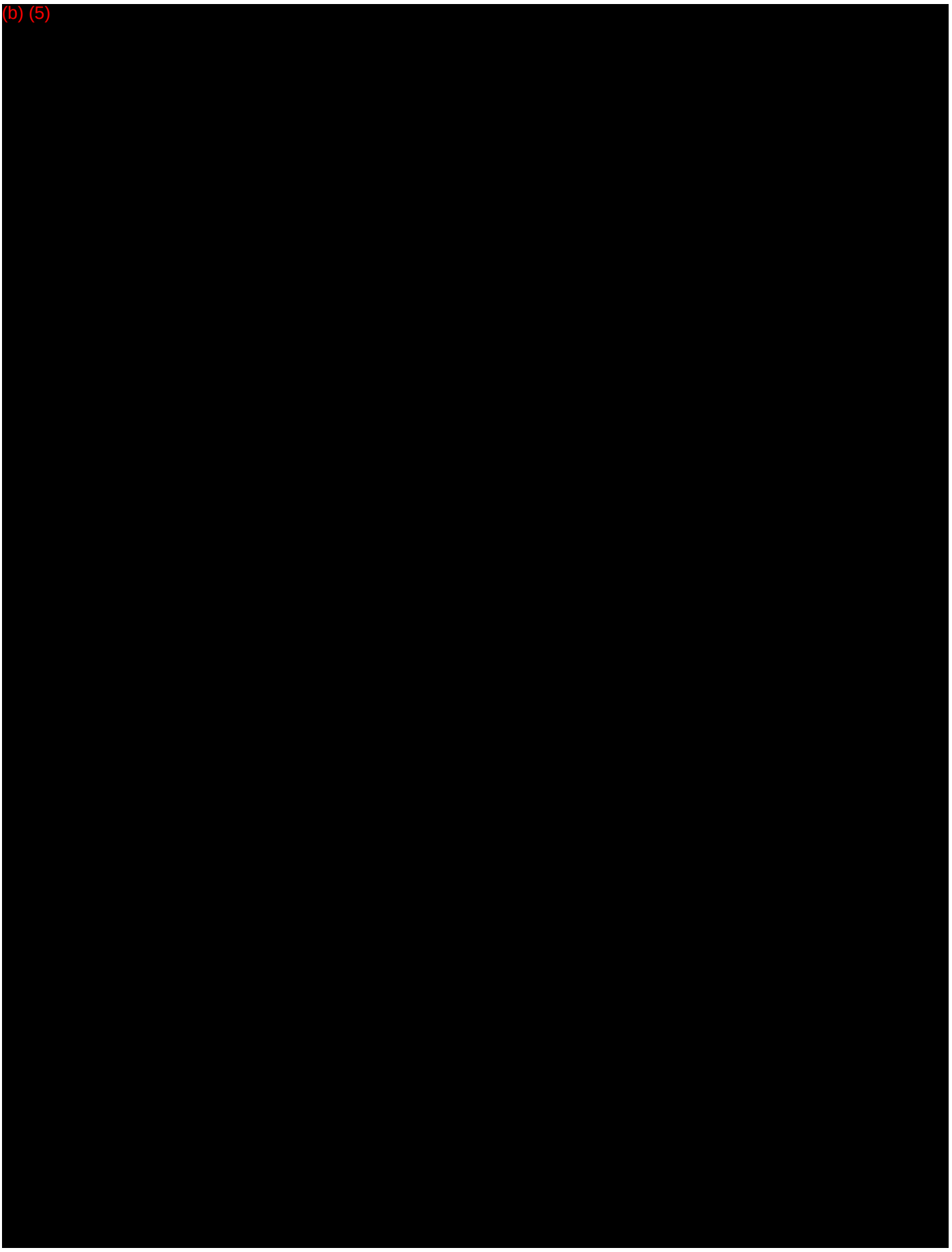
IBLA 2014-27	)	AA-55129
	)	
PETER SLAIBY AND REJANI SLAIBY,	)	Land Conveyance
	)	
Appellants.	)	
	)	

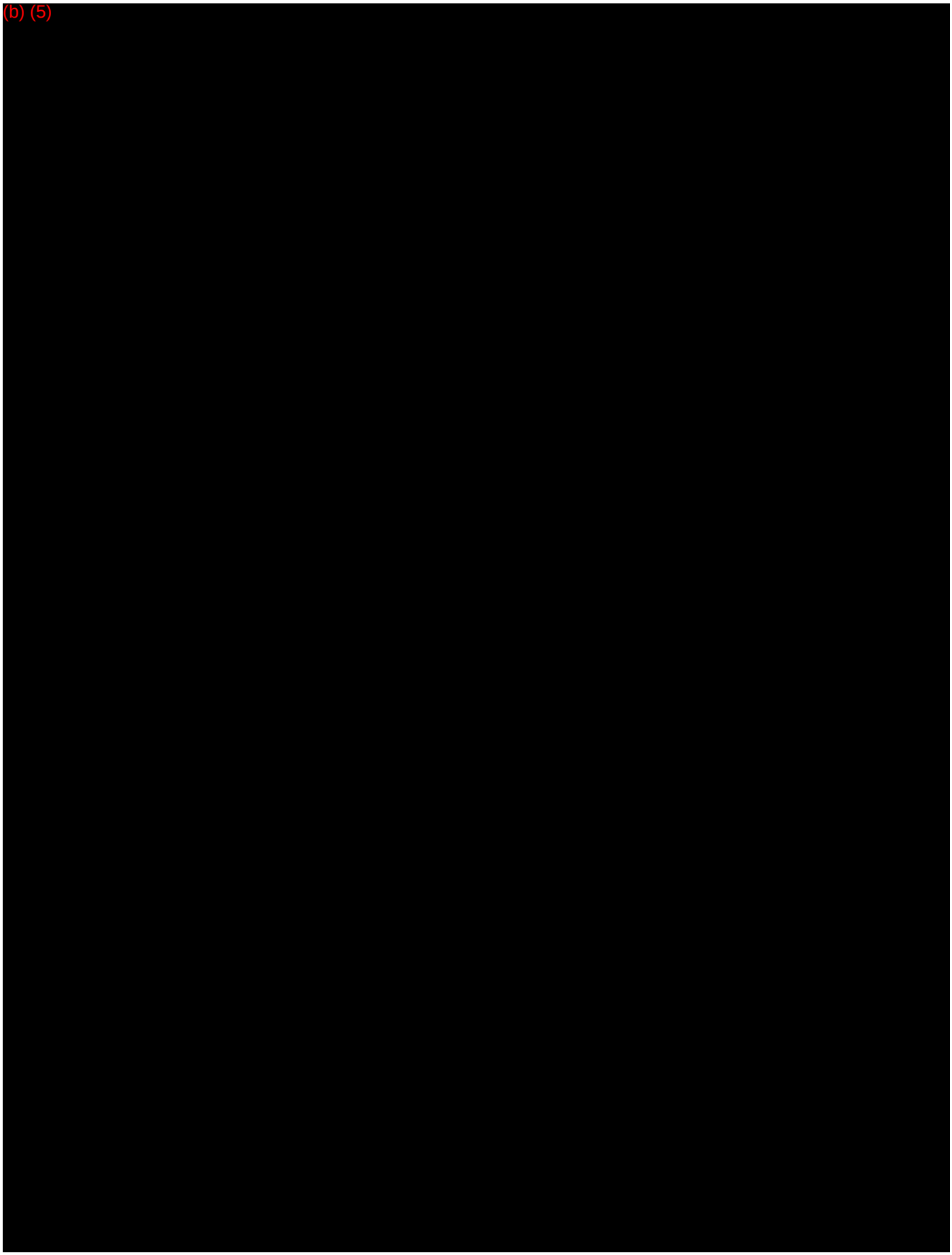
INTERVENOR ALASKA RAILROAD CORPORATION'S ANSWER TO APPELLANTS' SUPPLEMENTAL STATEMENT OF REASONS

(b) (5)

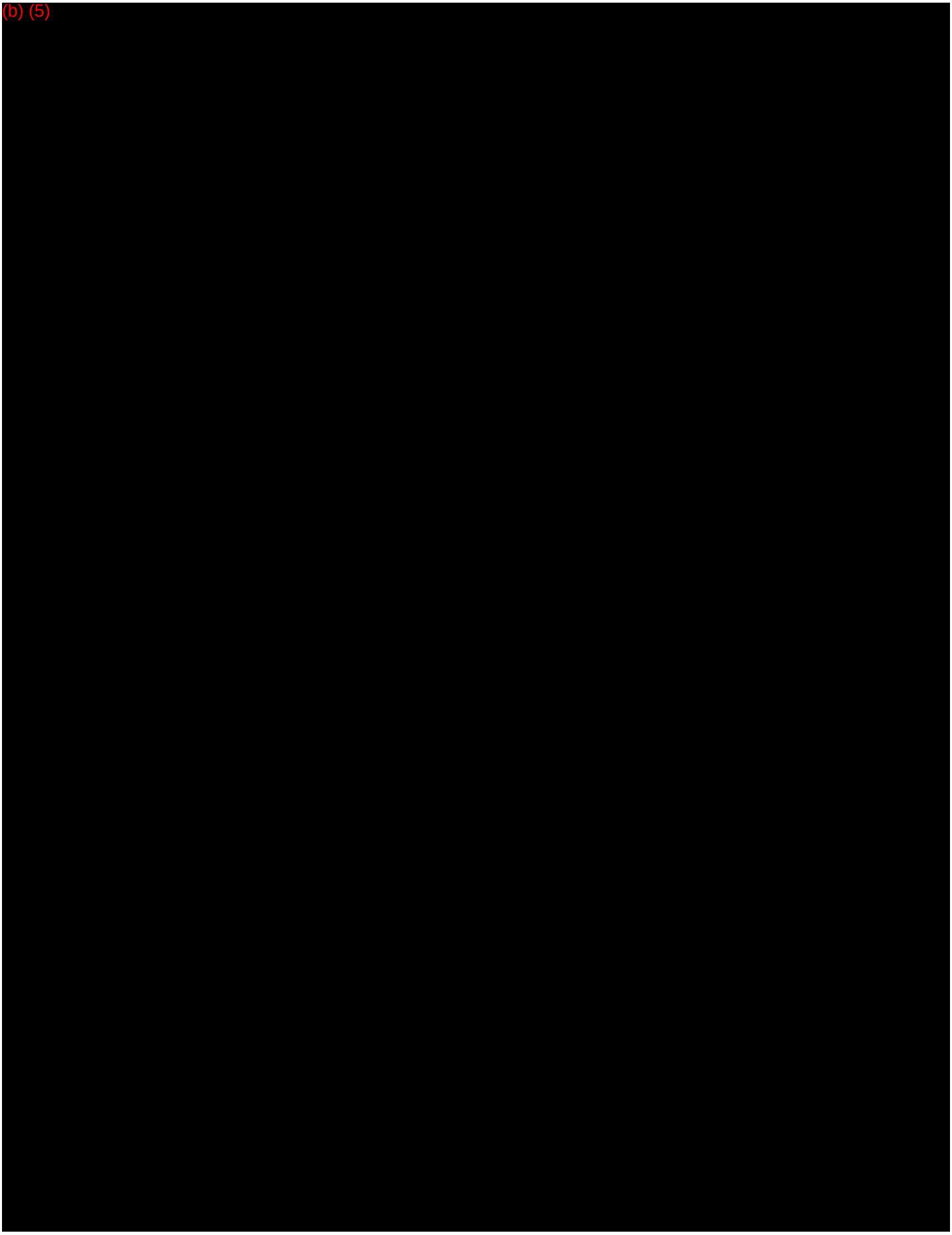
[redacted]

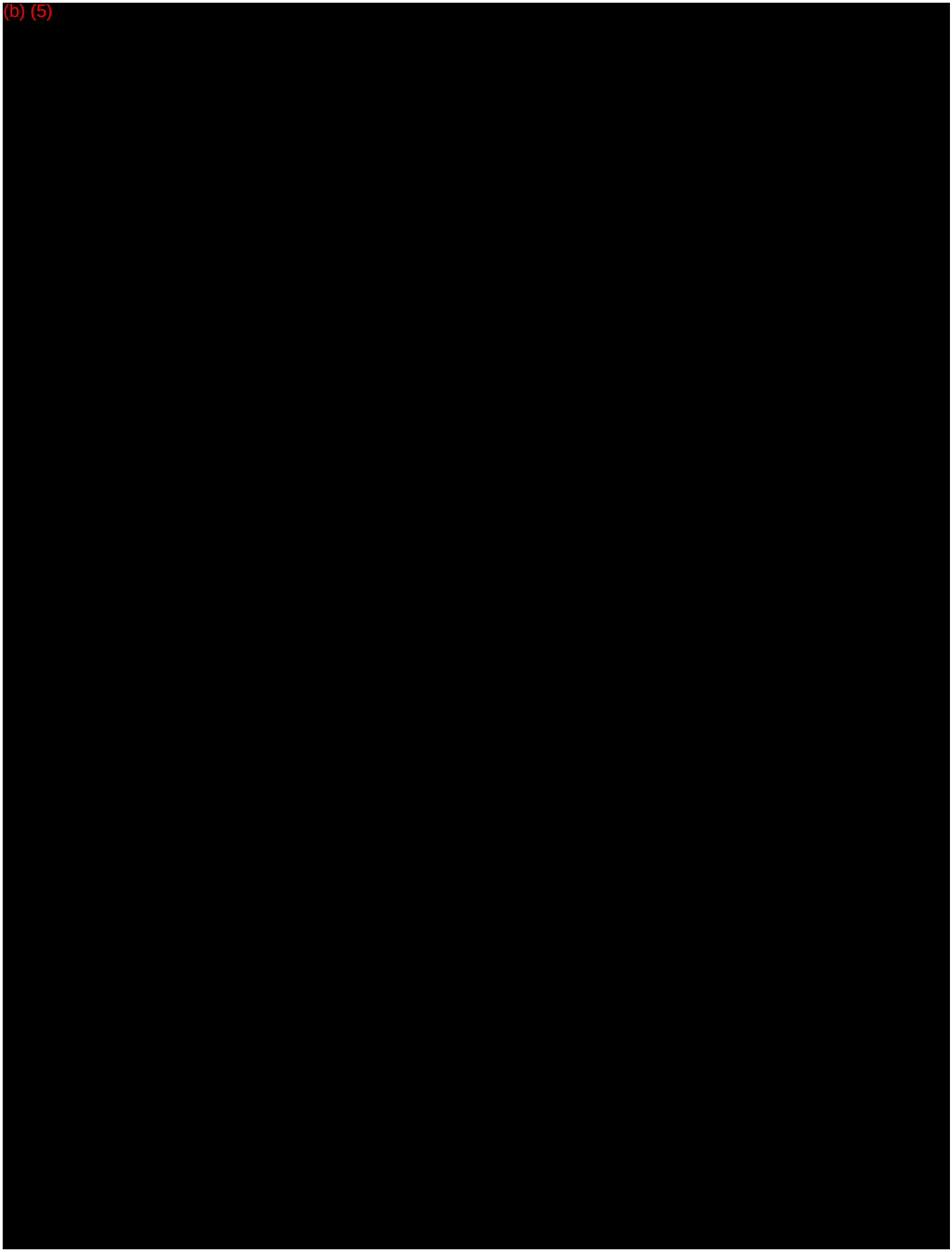
(b) (5)

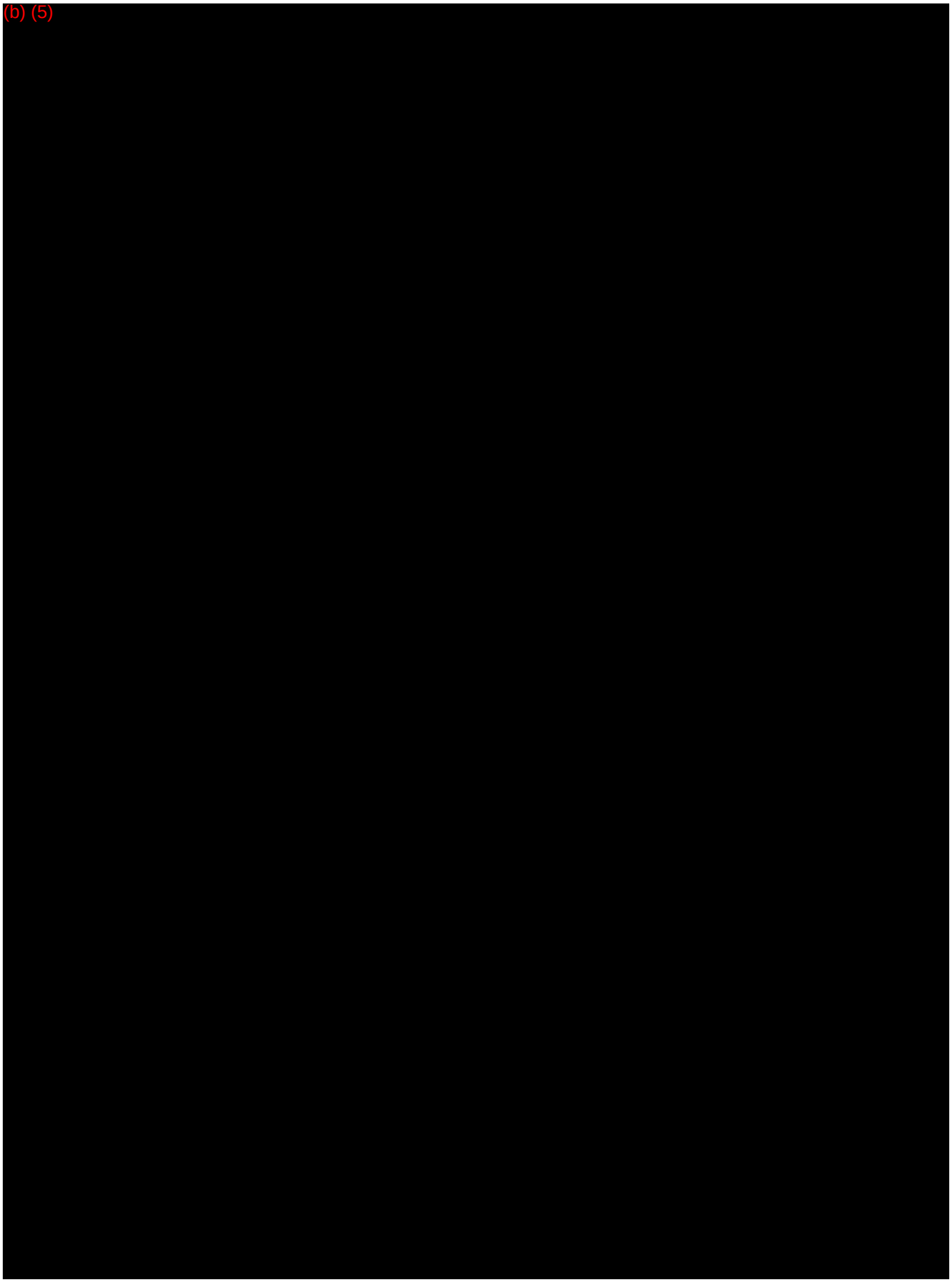


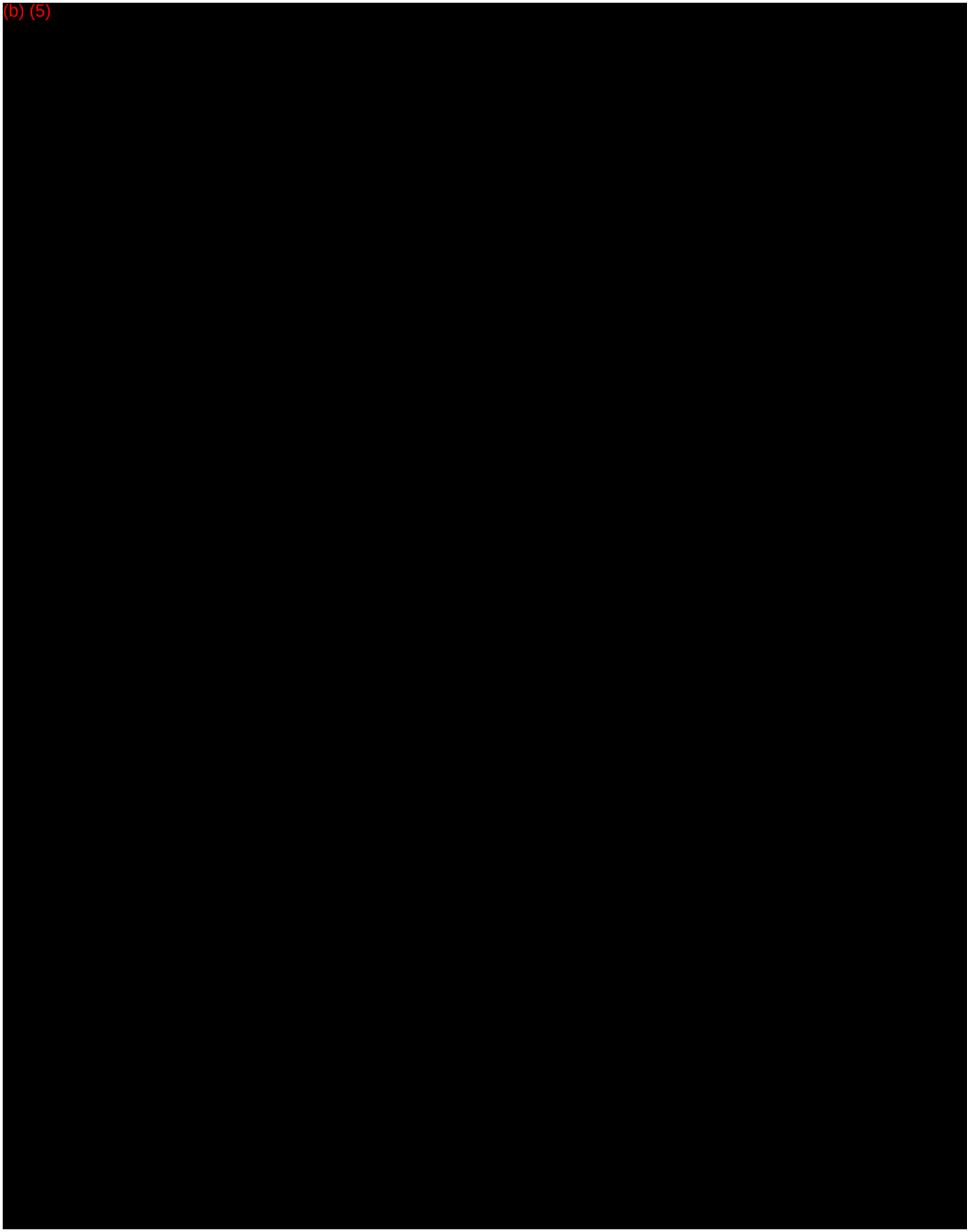

(b) (5)

(b) (5)

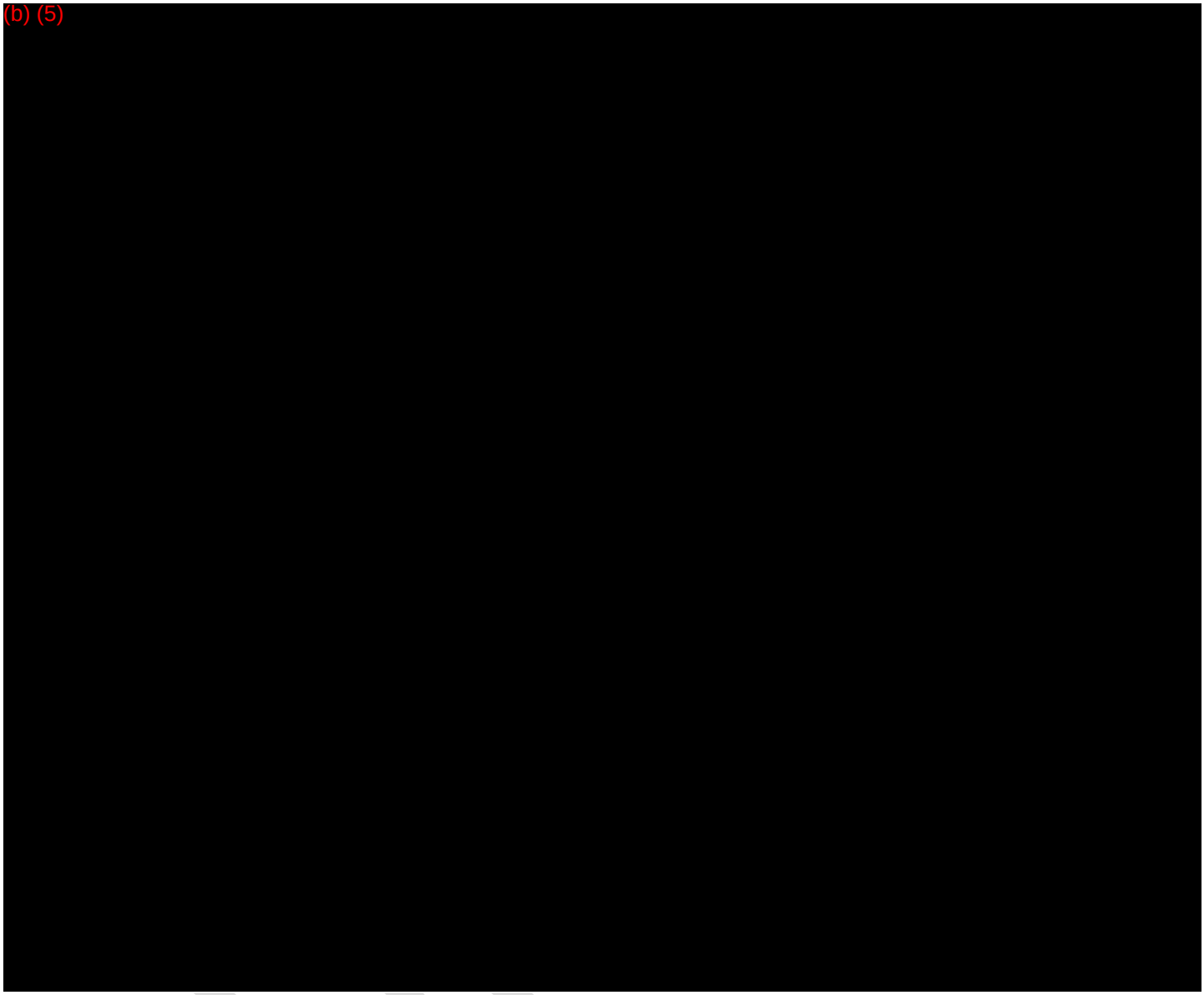



(b) (5)


(b) (5)


(b) (5)

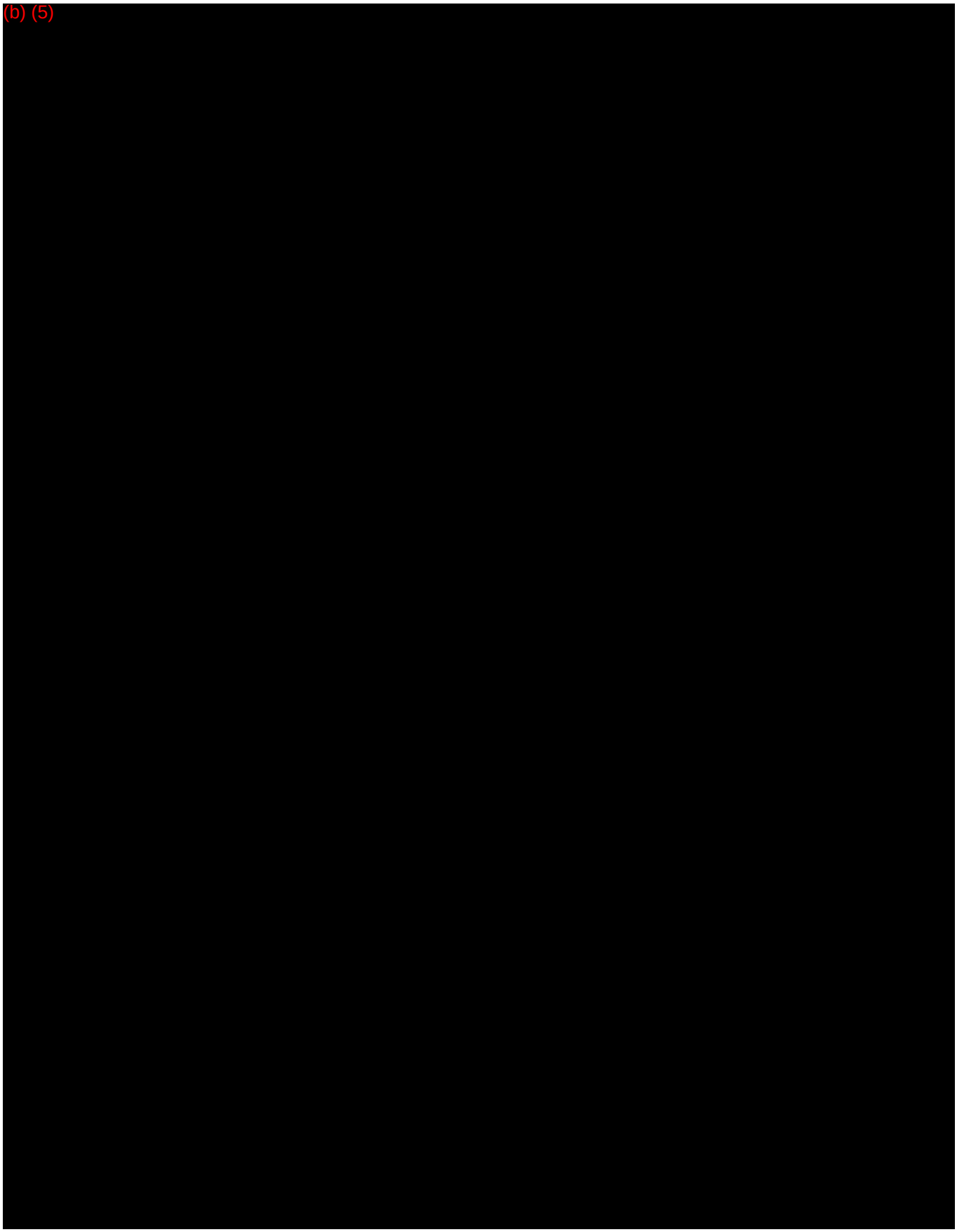
(b) (5)



(b) (5)

CERTIFICATE OF FILING AND SERVICE

(b) (5)



From: Andy Behrend
To: "Scordino, Steven"
Subject: RE: FW: Slaiby - Answer to Supplemental
Date: Wednesday, June 10, 2015 5:09:01 PM

Steve:

That's not a coincidence. The truth always sounds the same . . .

I appreciated seeing your draft brief. It helped me organize my thoughts. And I outright stole the 2014 California case you cited; lots of the cases relating to exclusive use are older (because that issue was decided so long ago), so it is nice to have fresh new renditions of that issue. I hadn't seen that case before.

We will likely be sending our brief out today.

Thanks,
Andy

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Wednesday, June 10, 2015 1:01 PM
To: Andy Behrend
Subject: Re: FW: Slaiby - Answer to Supplemental

I just read your brief. It hits nearly the same points that I hit, so it must be brilliant.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Mon, Jun 8, 2015 at 6:49 PM, Andy Behrend <BehrendA@akrr.com> wrote:
Steve:

Attached is our initial draft of the answer to the appellants' supplemental statement of reasons. Any thoughts would be appreciated.

I liked your draft brief. It was straight to the point. I did not think (b) (5) [redacted]

(b) (5) [redacted]

I did see a couple minor typos in your brief, but do not have them in front of me right now. I will check your draft tomorrow and let you know. I am guessing you caught them in proofing.

I calculate that this brief must be filed by Wednesday. Our working plan is to file it that day or late tomorrow if we get it together by then.

Thanks,
Andy

From: Andy Behrend
Sent: Thursday, June 04, 2015 6:05 PM
To: 'Scordino, Steven'
Subject: RE: Slaiby - Answer to Supplemental

Thanks, Steve.

I will be drafting tomorrow, circulating for internal comment on Monday and should have a draft for you by Monday afternoon. I will provide you with any comments on your draft once I have reviewed it tomorrow. I believe the brief is due for filing on or before next Wednesday.

Andy

Andy Behrend
Alaska Railroad Corporation
Senior Attorney, Real Estate & Environmental
behrenda@akrr.com Tel. 907.265.2305 Fax. 907.265.2443
Cell (b) (6) [redacted]

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, June 04, 2015 4:25 PM
To: Andy Behrend
Subject: Slaiby - Answer to Supplemental

I have worked hard to remove my sarcasm and obvious irritation from this brief. I think that is still a work in progress. I plan to file this next week and will be out of the office tomorrow.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Scordino, Steven
To: Andy Behrend
Subject: Fwd: IBLA 2014-27 - Peter & Rejani Slaiby
Date: Thursday, September 10, 2015 3:02:28 PM
Attachments: 2014-0027 - 186 IBLA 143 - Affirmed.pdf

Congratulations, Andy. I don't think this will end it, especially when the Board states, "As to those and other issues, the parties may wish to have their rights determined by an appropriate court. See, e.g., Dias v. State of Alaska, 240 P.3d 272 (Alaska 2010)." However, I think ARRC now has its title to the exclusive use easement free and clear.

Interestingly, I drove by the Slaiby house while taking my kids to Oceanview Park. It looks like it is still up for sale. Perhaps this will ease their sale to have some finality out of this case.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

---------- Forwarded message ----------
From: **of Land Appeals, OHA Interior Board** <ibla@oha.doi.gov>
Date: Thu, Sep 10, 2015 at 10:34 AM
Subject: IBLA 2014-27 - Peter & Rejani Slaiby
To: roy@longacrelaw.com, Steven Scordino <steven.scordino@sol.doi.gov>, behrenda@akrr.com

A decision has been issued by the Board in the above-referenced appeal and is attached for your reference.

Hard copies will be sent via U.S. Mail, Certified Return Receipt.

Ruth Hughes
Legal Assistant
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203
(703) 235-3750

Procedural Rules for Practicing before the Board of Land Appeals

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203

703-235-3750 703-235-8349 (fax)

PETER SLAIBY & REJANI SLAIBY

IBLA 2014-27 Decided September 10, 2015

Appeal from a decision by the Alaska State Office, Bureau of Land Management, to convey not less than an exclusive-use easement on private lands to the Alaska Railroad Corporation, pursuant to the Alaska Railroad Transfer Act of 1982, 45 U.S.C. §§ 1201-1214 (2012). AA-55129-20.

Affirmed.

1. Alaska: Generally–Conveyances: Interest Conveyed–Rights-of-Way: Nature of Decision

The Alaska Railroad Transfer Act of 1982, 45 U.S.C. §§ 1201 - 1214 (2012), requires the United States to convey no less than an exclusive-use easement to the State of Alaska (or a State-owned railroad) if land within a Federal railroad right-of-way was conveyed out of Federal ownership prior to January 14, 1983. Since that requirement applies without regard to whether the United States actually owns an exclusive-use easement, we affirm BLM determining it proper for the U.S. Secretary of Transportation to issue a patent for an exclusive-use easement to the Alaska Railroad Corporation, a State-owned railroad.

APPEARANCES: Roy L. Longacre, Esq., Anchorage, Alaska, for Appellants; Andrew F. Behrend, Esq., Anchorage, Alaska, for the Alaska Railroad Corporation; and Steve Scordino, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Peter and Rejani Slaiby, husband and wife, appeal from a decision dated September 16, 2013, by the Alaska State Office, Bureau of Land Management (BLM), under the caption "Lands Found Proper for Conveyance to the Alaska Railroad Corporation" (Decision). BLM was then acting pursuant to the Alaska Railroad

Transfer Act of 1982 (ARTA), 45 U.S.C. §§ 1201 - 1214 (2012), which directed the U.S. Secretary of Transportation, after consultation with the Secretary of the Interior, to transfer all "rail properties of the Alaska Railroad[[1]] to the State" or the Alaska Railroad Corporation (ARRC), a State-owned railroad.[2] 45 U.S.C. § 1203(a); *see* 45 U.S.C. §§ 1202(1) (definition of "Alaska Railroad"), (10) (definition of "rail properties of the Alaska Railroad"), (14) (definition of "State-owned railroad"); *see also* Report to Congress, "Alaska Railroad: Federal Role Should End; Some Management Problems Remain" (General Accounting Office, Feb. 25, 1982), Ex. 26 (GAO Report). BLM found it proper for the Secretary of Transportation to grant a patent to ARRC for an "exclusive-use easement" over Appellants' residential property, which is on and adjacent to a portion of the Alaska Railroad's right-of-way (ROW). Decision at 1 (citing 45 U.S.C. § 1202(6)).[3] The Board granted ARRC's motion to

---

[1] The Alaska Railroad, a Federal railroad, was created by the Act of Mar. 12, 1914, commonly referred to as the Alaska Railroad Act, 38 Stat. 305, 43 U.S.C. § 975 (1980). The Act granted the power of eminent domain to the Alaska Railroad and authorized it to purchase real and personal property for a railroad to aid in developing the Territory of Alaska. Although originally administered by this Department, the Alaska Railroad was transferred to the U.S. Department of Transportation in 1966 and subsequently became the responsibility of its Federal Railroad Administration.

[2] The Department of Transportation will issue the patent at issue, but it will do so only if this Department (BLM) finds it proper under the ARTA. Thus, BLM's finding it proper to convey an exclusive-use easement to ARRC constitutes an appealable decision.

[3] An "exclusive-use easement" is defined by ARTA as an easement granting to Alaska or a state-owned railroad (ARRC):

> (A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes; (B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used; (C) subjacent and lateral support of the lands subject to the easement; and (D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix tracks, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

45 U.S.C. § 1202(6).

intervene in this appeal, by Order dated December 5, 2013.[4] For the reasons discussed below, we affirm BLM's decision under ARTA.

Legal and Factual Background

After over 50 years of Federal ownership and operation of the Alaska Railroad, Congress enacted the ARTA, "pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States." 45 U.S.C. § 1201(4) (2012). ARTA required the U.S. Secretary of Transportation to "transfer all rail properties of the Alaska Railroad to the State" on the date of transfer (*i.e.*, the day he simultaneously delivers to the State the bill of sale, interim conveyance, exclusive license, and deed described in 45 U.S.C. § 1203(b)(1)[5]). 45 U.S.C. § 1203(a); *see* 45 U.S.C. § 1202(4). The Act broadly defines "rail properties of the Alaska Railroad" and established a transition period for identifying, inspecting, and determining their fair market value.[6]

---

[4] Appellants filed a statement of reasons (SOR), with numbered exhibits. BLM responded on Mar. 20, 2014 (Answer), as did ARRC (ARRC Answer), with lettered exhibits. The Slaibys replied on June 16, 2014 (Reply), with additional exhibits. For simplicity, we cite these exhibits by number or letter. BLM also supplied the Board with its case file for AA055129/D (Case File). Pursuant to Order dated May 5, 2015, Appellants filed a supplemental SOR (SSOR), which BLM and ARRC responded to. This matter is now ripe for review and decision by the Board.

[5] 45 U.S.C. § 1203(b)(1) states in relevant part:

> On the date of transfer, the Secretary shall simultaneously: (A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property; (B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) and this paragraph and are not subject to unresolved claims of valid existing rights; (C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad . . . pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights; (D) convey to the State a deed granting the State . . . an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park.

[6] Despite ARTA's prescriptive procedures, the record does not include any document identifying or valuing the ROW at issue under 45 U.S.C. § 1204 (a), (d), or an interim conveyance of that real property interest on the date of transfer, as required by 45 U.S.C. § 1203(b)(1)(B), or an exclusive license pending resolution of valid existing rights under 45 U.S.C. § 1203(b)(1)(C).

See 45 U.S.C. §§ 1202(10), 1204(a), (b), (d). Based on that valuation by the United States Railway Association, the State paid $22.7 million to the United States for the rail properties of the Alaska Railroad. *See* 45 U.S.C. § 1203(d)(5).

Edwin A. Jarvi was granted patent to 150 acres of public land on September 6, 1950. *See* Ex. 5. After the catastrophic Good Friday 1964 earthquake, trackage in southern Alaska needed to be realigned and reconstructed. As part of that process, the Alaska Railroad purchased three parcels of land from Jarvi on July 2, 1965, plus a "perpetual right of way and easement [ROW] to construct, reconstruct, operate and maintain a railroad line and appurtenances" on Lots 4, 13, and 14, Block 3, Sunset Hills West Subdivision (plat of survey filed July 17, 1961), which were all in T. 12 N., R. 3 W., Seward Meridian, Alaska. More than 30 years later, the Slaibys acquired a home at 14200 Jarvi Drive, Anchorage, Alaska, which is on Lots 13 and 14 of the Sunset Hills West Subdivision. *See* Exs. 4, 16 at 51-65.

In apparent response to comments on impacts to the Slaibys' property under a proposed ARRC Residential Right-of-Way Use Policy, its counsel explained that the Alaska Railroad had acquired a real property interest in their property because the 1964 earthquake "caused the bluff in the vicinity of what is now Jarvi Drive to slide" and "the federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area." ARRC Letter dated July 24, 2012 (copy to Deputy BLM State Director (DSD)), Ex. 28 at 22. Counsel stated ARRC has an exclusive right of use and occupancy, including "the right to prohibit or to require a permit for any residential uses of or structures" within its ROW, and while that ROW is still owned by the Federal government, the "intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA." *Id.* at 22, 23; *see* DSD email dated Aug. 13, 2012 (Case File) ("I am working with the BLM Alaska staff to finalize our conveyance for this property to the ARR."); ARRC email to Dennis J. Hopewell, Esq., Office of the Regional Solicitor (copy to DSD), dated Sept. 13, 2012, Ex. 21 at 3-4.

The Slaibys responded to ARRC counsel on December 6, 2012, who forwarded their response to Hopewell (copy to DSD). He then replied to them on December 21, 2012 (copy to Hopewell and DSD). *See* Case File. Meanwhile, based on the July 2012 ARRC response, the Slaibys wrote to the DSD to urge BLM not to grant an "exclusive use easement" and to grant ARRC only what had been acquired by the United States in 1965, a "limited easement." Letter dated Dec. 19, 2012 (Case File) at 3.[7] At about that same time, Hopewell issued an opinion in which he stated:

---

[7] "A few feet behind their house is a 50 foot 30 degree bluff at the bottom of which there is 30 feet of property on their lot on which the railroad lies." Letter dated Dec. 19, 2012 (Case File), at 1. Since the 1965 grant of a limited ROW "has been more than sufficient for railroad purposes since it was authorized in 1914," the Slaibys (... continued)

"ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive-use easement." Memorandum dated Dec. 20, 2012 (Case File), at 1; *see id.* ("the property can be conveyed by patent using the same legal description used in the acquisition of the land by the United States").

By decision dated September 16, 2013, BLM found it proper to convey "the full and complete right, title, and interest of the United States in and to" the Slaibys' residential property, which "shall be not less than an exclusive use easement as defined in Sec. 603(6) of ARTA [45 U.S.C. § 1202(6)]." Decision at 1 (citing 45 U.S.C. § 1205(b)(4)(B)). Attached to its decision was a draft patent to be executed by the Secretary of Transportation. This appeal timely followed.

Discussion

Appellants contend that the "exclusive-use easement" defined in 45 U.S.C. § 1202(6) is significantly and substantially more than the limited ROW acquired by the United States in 1965 for the realignment and reconstruction of the Alaska Railroad. *See* SOR at 9-10; Reply at 3-7; *supra* note 2. They contend that since the United States cannot convey what it does not own, BLM erred in finding it proper to grant ARRC a patent to an "exclusive-use easement" over their residential property. *See* SOR at 13-14; Reply at 8-12. BLM counters by claiming "this case turns on the construction of 45 U.S.C. 1205(b)(4)(B).[[8]]" Answer at 4. Moreover, according to BLM: "Appellants may ask for the Board to determine the extent of the interest conveyed in the 1965 Deed. However, this is beyond the scope of the question before the Board. ARTA requires BLM to convey all Federal interest to the lands within the Alaska Railroad right-of-way, but at a minimum an exclusive use easement." *Id.* at 7 (citing 45 U.S.C. § 1205(b)(4)(B)); *see id.* at 4 ("ARTA requires the United States to issue a

---

(... continued)
feared that granting an exclusive-use easement to ARRC under the ARTA would result in its building a fence and requiring them to pay fees to use their land on the bluff. *Id.*

[8] 45 U.S.C. § 1205(b)(4)(B) provides, "to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way," that

> Where lands within the right-of-way . . . have been conveyed from Federal ownership prior to January 14, 1983, . . . the conveyance to the State [under 45 U.S.C. § 1203(b)(1)(B)] shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by [45 U.S.C. § 1203(b)].

patent for the lands. 45 U.S.C. § 1205(b)(2).”). The ARRC response is substantially similar.[9] *See* ARRC Answer at 14-16, 23-26.

[1] ARTA states that if lands within a railroad ROW were conveyed out of Federal ownership prior to January 14, 1983, the U.S. Secretary of Transportation “shall grant not less than an exclusive-use easement in such properties [to ARRC].” 45 U.S.C. § 1205(b)(4)(B). Appellants’ property was patented to Jarvi “prior to January 14, 1983,” and the ROW he granted to the Alaska Railroad in 1965 is a rail property subject to transfer under 45 U.S.C. § 1203(b)(1)(B). The language of ARTA is clear. Under such circumstances, where the lands have been surveyed, the U.S. Secretary of Transportation must issue a patent to ARRC for not less than an “exclusive-use easement.” *See* 45 U.S.C. § 1203(b)(3) (“the Secretary shall issue a patent therefor”). We therefore affirm the Decision, but in doing so, we express no view as to what was acquired by the United States in 1965 (*e.g.*, whether its acquisition of that real property interest included the right to erect a fence and/or exclude successors-in-interest from their land on the top of the bluff). *See* 45 U.S.C. § 1202(6); *supra* note 2. As to those and other issues, the parties may wish to have their rights determined by an appropriate court. *See, e.g., Dias v. State of Alaska*, 240 P.3d 272 (Alaska 2010).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

James K. Jackson
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge

[9] However, ARRC separately claims the ROW acquired “from the Jarvis in 1965 meets ARTA’s definition of an exclusive use easement,” but even if it does not, BLM would still be obligated “to convey to ARRC at least an exclusive use easement.” ARRC Answer at 18; *see id.* at 18-23.

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: FW: House Bill 93
Date: Thursday, February 16, 2017 6:22:00 PM
Attachments: image001.png
HB0093A.PDF

Sorry, here is the attachment.

From: Andy Behrend
Sent: Thursday, February 16, 2017 2:15 PM
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: House Bill 93

Steve:

Thanks for the conversation today. As promised, a copy of the draft legislation filed by Alaska Rep. Chuck Kopp is attached to this message.

On the other front we discussed, I will be looking into the International Airport Spur issues and get back to you.

Regards,
Andy

Andy Behrend
Senior Attorney Env & Real Est
907-265-2305 *office* | (b) (6) *mobile*
mailing: PO Box 107500, Anchorage, AK 99510-7500
physical: 327 W Ship Creek Ave, Anchorage, AK 99501
web: www AlaskaRailroad.com

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

ALASKA

RAILROAD

HOUSE BILL NO. 93

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOPP

Introduced: 1/30/17
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to railroad rights-of-way."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 42.40.350 is amended by adding new subsections to read:

(e) Notwithstanding any other provision of law, the corporation may not block, limit access to or use of, or impose a charge for access to or use of a corporation right-of-way, as defined in 45 U.S.C. 1202(11), by an adjacent landowner. Nothing in this subsection prohibits the corporation from bringing an action to enjoin use of a railroad right-of-way that materially interferes with or causes substantial safety issues related to rail operations. This subsection does not limit the corporation's power of eminent domain under AS 42.40.385.

(f) The corporation shall record a notice of adjacent landowner rights in a recording district in which the corporation previously recorded a patent the corporation received that describes a railroad right-of-way, as defined in 45 U.S.C. 1202(11). The notice must

(1) contain the language in (e) and (g) of this section; and

(2) reference the previously recorded patent number, property description, and the book and page number of the previous recording.

(g) In this section, "adjacent landowner" means a patent holder, or successor, as to all or a portion of real property

(1) located adjacent to a railroad utility corridor;

(2) the title to which vested before January 1, 1983; and

(3) that contained or was required to contain a reservation for the Alaska Railroad under former 43 U.S.C. 975, et seq. (Alaska Railroad Act of 1914).

From: Andy Behrend
To: Steve Scordino (steven.scordino@sol.doi.gov)
Subject: Latest in the ARRC ROW Wars
Date: Wednesday, February 28, 2018 10:29:07 PM
Attachments: image001.png
HJR038A.PDF

Hi, Steve:

Attached is a copy of House Joint Resolution 38, which has been introduced by Representative Chuck Kopp, the legislator for the folks in Potter Hill and Oceanview. It has been fast-tracked in its first House committee (State Affairs), which is holding public testimony tomorrow (it was just introduced a week ago). We suspect it will pass out of that committee either tomorrow or soon thereafter and head to the Judiciary Committee. We believe we will have more time to prepare to resist it in that committee.

In our opinion, there are a lot of things wrong with HJR 38, both factually and legally. That stated aim of this HJR is to try to get Congress to act in some way to fix the terrible injustice against adjoining property owners that is asserted.

I know that the Solicitor's office generally doesn't weigh in once patents are issued. But this situation is a different from a mere title fight. The proposed resolution accuses both USDOI and ARRC of issuing and accepting illegal conveyances for the ARRC ROW. Not only that, but I think the passage of this resolution might make challenges to ARRC's exclusive use easement interest more likely, which could in turn trigger ARTA's requirement that the federal government defend ARRC's title to the ROW. So I'm wondering whether your office would consider weighing in on this proposed joint resolution?

At the very least, I'd like to hear your thoughts on the HJR. Maybe we could talk about this later this week? I'm out of pocket tomorrow, but will have some time on Friday.

Regards,
Andy

Andy Behrend
Chief Counsel
907-265-2305 *office* | (b) (6) *mobile*
mailing: PO Box 107500, Anchorage, AK 99510-7500
physical: 327 W Ship Creek Ave, Anchorage, AK 99501
web: www AlaskaRailroad.com

ALASKA RAILROAD

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

ALASKA

RAILROAD

HOUSE JOINT RESOLUTION NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE KOPP

Introduced: 2/21/18
Referred:

A RESOLUTION

Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Alaska Railroad was authorized by former 43 U.S.C. 975 et seq. (Alaska Railroad Act, repealed January 5, 1985), which directly granted interests in federal land for railroad rights-of-way for "the construction of railroads, telegraph and telephone lines"; and

WHEREAS construction of the Alaska Railroad was substantially completed in 1923; and

WHEREAS, before and after completion of the Alaska Railroad, the federal government conveyed into private ownership land affected and burdened by the rights-of-way under former 43 U.S.C. 161 et seq. (Homestead Act, repealed October 21, 1976) and similar enactments; and

WHEREAS patents and other conveyance documents show a railroad right-of-way reserved over that land; and

WHEREAS the federal government operated the Alaska Railroad from the time of

completion until January 14, 1983, and held as assets during that time the rights-of-way reserved in land patents and other conveyance documents; and

WHEREAS the state acquired the Alaska Railroad from the federal government in 1983 and created the Alaska Railroad Corporation to oversee operations as an instrumentality of the state operating under the former Department of Commerce and Economic Development; and

WHEREAS 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) provided for the transfer from the federal government of "all rail properties of the Alaska Railroad to the State," and 45 U.S.C. 1202(10) provided a definition of "rail properties of the Alaska Railroad" to mean "all right, title, and interest of the United States" in those properties; and

WHEREAS, on January 14, 1983, the federal Alaska Railroad reserved and owned right-of-way interests on private properties that were provided for in patents and other conveyance documents; and

WHEREAS, if "all right, title, and interest of the United States" in the rights-of-way did not include, at a minimum, an "exclusive-use easement" as defined in 45 U.S.C. 1202(6), the easement could not have been included in the transfer under the plain language of the Alaska Railroad Transfer Act of 1982; and

WHEREAS, during the transfer of rail properties under the Alaska Railroad Transfer Act of 1982, the United States Department of the Interior erroneously issued, and the Alaska Railroad Corporation accepted, an interim conveyance of interests in real property not owned by the federal government, including "exclusive-use easements" as defined in 45 U.S.C. 1202(6); and

WHEREAS the interim or actual conveyance of any "right, title, and interest" in property not held in federal ownership on January 14, 1983, is contrary to the Alaska Railroad Transfer Act of 1982 and to privately held property rights recognized by common law; and

WHEREAS property owners of land burdened by an easement can continue to have a substantial common law interest and remaining rights of use in the easement area; and

WHEREAS the claim or transfer of an "exclusive-use easement" over what is otherwise reserved in patent and conveyance documents as a lesser property interest would constitute an unauthorized taking of validly held property rights, creating enormous liability for the state; and

WHEREAS, under AS 42.40.285, the Alaska Railroad Corporation must receive legislative approval before applying for or receiving a grant of federal land within a municipality, and the corporation has applied for and received transfers under the Alaska Railroad Transfer Act within a municipality without the requisite legislative approval; and

WHEREAS the exception under AS 42.40.285(5)(C) for a conveyance of all rail properties of the Alaska Railroad, as defined in 45 U.S.C 1202(10), would not apply to transfers of property not conclusively owned by the federal government at the time of transfer; and

WHEREAS the preservation of private property rights is secured by the Constitution of the State of Alaska and the United States Constitution;

BE IT RESOLVED that the Alaska State Legislature believes, as it pertains to privately held properties in the state that contain or are required to contain a reservation for the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in which associated rights, titles, or interests were not conclusively owned by the federal government at the time of the transfer, are contrary to law; and be it

FURTHER RESOLVED that the Alaska State Legislature believes that certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that were sought or obtained without the legislative approval required under AS 42.40.285 are contrary to law; and be it

FURTHER RESOLVED that the Alaska State Legislature believes that any right, title, or interest not conclusively owned by the federal government at the time of the Alaska Railroad Transfer Act of 1982 that was erroneously conveyed to the Alaska Railroad Corporation, and certain interests in land conveyed to the Alaska Railroad Corporation without the legislative approval required under AS 42.40.285, should be disclaimed as a matter of law; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in Congress to recognize the views of the Alaska State Legislature expressed in this resolution and to take appropriate action to encourage the recognition of validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act of

1982.

COPIES of this resolution shall be sent to Jon Cook, Chair of the Board of Directors of the Alaska Railroad Corporation; Sharon J. Walsh, Executive Administrator of the Alaska Real Estate Commission; the Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

From: Scordino, Steven
To: Andy Behrend
Subject: Re: [EXTERNAL] Fw: Our Conversation Earlier
Date: Wednesday, April 4, 2018 1:40:28 PM
Attachments: image003.png
image001.png
image004.png

I'm sorry, I dropped the ball there.

There wasn't a claim process with ARTA. BLM was adjudicating the entries along the Alaska Railroad right of way which would have been on the books since prior to the passage of FLPMA in 1976, most likely. The vast majority of what was being adjudicated was Native allotment and Native village and corporation selections which date back to ANCSA (which ended the Native allotment program and gave selection rights to the villages and corporations).

When BLM then moved to convey the interests, it made the affected people aware. Case in point, the Slaiby's knew we were conveying the right of way because they were given notice.

I'm thinking that this isn't helpful.

Give me a call if you need me to clarify anything.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Wed, Apr 4, 2018 at 7:49 AM, Andy Behrend <BehrendA@akrr.com> wrote:

> Hi, Steve:
>
> I'm wondering whether you had a chance to think about my question below regarding whether you had seen anything regarding public notice. We are heading for Juneau Friday for a hearing and I am trying to track down any loose ends.
>
> Thanks,
> Andy
>
> ---
>
> **From:** Andy Behrend
> **Sent:** Tuesday, March 20, 2018 11:20:06 AM
> **To:** 'Scordino, Steven'
> **Subject:** RE: Our Conversation Earlier
>
> Hi, Steve:
>
> Again, thanks for looking into this information. One last (hopefully) question: In looking at the issue of the claims

process, did you ever come across anything that indicated (one way or the other) whether USDOI in general or BLM in particular ever issued any public notice regarding ARTA and its claim process?

Rep. Kopp is pushing the idea that there was no public notice regarding the planned conveyance of railroad lands or that there was a claims adjudication process. I've never seen anything on this, but wonder whether you have.

Regards,

Andy

Andy Behrend

Chief Counsel

907-265-2305 *office* | (b) (6) *mobile*

mailing: PO Box 107500, Anchorage, AK 99510-7500

physical: 327 W Ship Creek Ave Anchorage AK 99501

web: www.AlaskaRailroad.com

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, March 15, 2018 4:06 PM
To: Andy Behrend
Subject: Re: Our Conversation Earlier

My understanding from BLM, which matches my reading of ARTA, is that BLM was solely considering entries on the land within the right of way corridor. BLM was not aware of any records of adjudicating the nature of the right of way interest, ie whether it was less than an exclusive use easement, over any portion of the railway properties.

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the

intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Thu, Mar 15, 2018 at 4:00 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Okay, thanks, Steve. I take it from your response that nothing about your review of the claims situation suggests that any railroad interest in the ROW less than an exclusive use easement was contemplated? (Frankly, that would be contrary to ARTA, so it's not surprising.)

Andy Behrend

Chief Counsel

907-265-2305 *office* | (b) (6) *mobile*

mailing: PO Box 107500, Anchorage, AK 99510-7500

physical: 327 W Ship Creek Ave Anchorage AK 99501

web: www.AlaskaRailroad.com

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, March 15, 2018 3:39 PM

To: Andy Behrend
Subject: Re: Our Conversation Earlier

Andy,

There was no record of adjudications specific to the railroad corridor. BLM and I take the provision of ARTA to mean that BLM needed to adjudicate all of the land entries, probably mainly Native allotments, along the railroad corridor so that by the end of the 3 years BLM would know for the whole stretch whether it would be granting fee simple or just an exclusive use easement. BLM was not aware of any adjudications of the extent of RR ownership, if that was the specific question.

Steve

Steve Scordino

Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Thu, Mar 8, 2018 at 12:34 PM, Andy Behrend <BehrendA@akrr.com> wrote:

No problem. I appreciate your help.

Andy Behrend

Chief Counsel

907-265-2305 *office* | (b) (6) *mobile*

mailing: PO Box 107500, Anchorage, AK 99510-7500

physical: 327 W Ship Creek Ave Anchorage AK 99501

web: www.AlaskaRailroad.com

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

From: Scordino, Steven [mailto:steven.scordino@sol.doi.gov]
Sent: Thursday, March 08, 2018 12:34 PM
To: Andy Behrend
Subject: Re: Our Conversation Earlier

Andy,

A lot of BLM employees are in training today so it is taking longer than expected for me to even learn the right person to address questions about railroad issues. I'm sorry it is being a slow process today.

Steve

Steve Scordino
Attorney Advisor
4230 University Drive, Suite 300
Anchorage, Alaska 99508
(907) 271-4204 / fax (907) 271-4143

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is attorney-client privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

On Thu, Mar 8, 2018 at 12:20 PM, Andy Behrend <BehrendA@akrr.com> wrote:

Steve:

FYI, our External Affairs Director, Tim Sullivan, mentioned to me today that yesterday he reached out to Steve Wackowski, USDOI's Senior Advisor for Alaska regarding the information request by Rep. Kopp that you and I discussed. Mr. Wackowski told Tim that he would be forwarding the request to the Solicitor's office. So you may see this coming at you from that route, too. Just to be clear, both inquiries relate to the same information request from Rep. Kopp. Sorry for any duplication or confusion.

Thanks,

Andy

Andy Behrend

Chief Counsel

907-265-2305 *office* | (b) (6) *mobile*

mailing: PO Box 107500, Anchorage, AK 99510-7500

physical: 327 W Ship Creek Ave Anchorage AK 99501

web: www.AlaskaRailroad.com

ARRC Attorney Disclaimer: This transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, you have received this transmittal in error. Any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify us immediately by reply or by telephone (907) 265-2461 and immediately delete this message and all attachments.

ALASKA

RAILROAD

ALASKA

RAILROAD