



Nancy Pease
Rabbit Creek Community Council
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Dear Nancy:

As you requested when we spoke last week, I am writing on behalf of the Alaska Railroad to address issues regarding the Alaska Railroad right-of-way (ROW) raised with the Rabbit Creek Community Council (RCCC) by John Pletcher. As I mentioned at the RCCC March 12 meeting, we disagree with Mr. Pletcher's analysis. While we have previously issued in-depth materials explaining the legal status of the ROW and addressing Mr. Pletcher's arguments, this letter contains a basic summary of the issues stated in non-technical terms. We can provide much more detailed information should you or any council members wish to delve deeper into these issues.

Mr. Pletcher suggests that the Alaska Railroad has overstepped its authority over the ROW and is attempting to undermine private property rights. That is not the case, and the railroad appreciates this opportunity to set the record straight.

In a nutshell, Mr. Pletcher asserts that he and other adjoining property owners, rather than the Alaska Railroad, "own" the land on which the railroad tracks sit and have an unrestricted "right" to use the ROW for any purpose that does not interfere with railroad operations. We disagree. Both the history of the ROW and the laws determining ownership of it support the railroad's position that it owns the vast majority of the ROW outright and has an exclusive right to use all of it. Although the Alaska Railroad can and does allow a wide variety of people and businesses to cross or use the ROW, either with or without payment depending on circumstances, the authority to control what goes on within the ROW lies with the Alaska Railroad.

Like the Alaska Railroad generally, the ROW has an interesting history. In 1914, Congress directed the establishment of a federally constructed and owned railroad in Alaska. The Act of Congress that established the Alaska Railroad required that federal land be used for railroad rights-of-way and other operating areas for the new railroad. Contrary to Mr. Pletcher's assertions, the Act of 1914 did not establish non-exclusive easements for the new railroad. Instead, the federal government established the Alaska Railroad ROW and other operating land from land owned by the federal government in fee simple (that is, the same full ownership interest that many of us have in our homes). As a result, the vast majority of the Alaska Railroad corridor — including the ROW land running through South Anchorage — was fully owned by the federal Alaska Railroad beginning from the date of its construction between 1914 and 1923.

That is the way things stood in 1982, when the U.S. Congress passed the Alaska Railroad Transfer Act (ARTA), providing for the sale of the federal Alaska Railroad and all its land to the State of Alaska. Under ARTA, full fee simple title to the vast majority of the ROW transferred to the State-owned Alaska Railroad Corporation (ARRC) in 1985 when the state's purchase of the Alaska Railroad became final, exactly as Congress intended. As U.S. Senator Ted Stevens

explained in Congressional hearings on ARTA “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.”

Even in the few areas where the Alaska Railroad does not own full fee simple title to the ROW, it still has the exclusive right to use it. In ARTA, Congress guaranteed not only the transfer to ARRC of fee simple ownership in most of the ROW, but also ensured that ARRC would have at least “exclusive use easement” in the few portions of ROW the federal government did not own outright or where there were conflicting claims to the ROW. Again, in the words of Senator Stevens “an exclusive use easement . . . represents the minimal interest the State is to receive in the Alaska Railroad right-of-way” ARTA defines the rights granted by an exclusive use easement in specific detail. Among those rights are (1) the exclusive right to use and possess the ROW for transportation, communication, and transmission purposes; and (2) the discretionary right to fence the ROW and to exclude other parties from the ROW.

Congress made it clear in passing ARTA that it was critical to the State’s ability to operate a safe and economical railroad for the ROW to be within the exclusive control of the Alaska Railroad. The very nature of railroad operations makes the reason clear.

As is true for all railroads, the ROW is the Alaska Railroad’s artery, carrying its “lifeblood” of train traffic and utility transmissions, such as electrical and communications lines. A railroad ROW also serves as a vital safety buffer zone protecting the public and railroad employees, passengers and equipment. The basis for the exclusivity of a railroad ROW lies in the nature and risk of railroad operations. With mammoth and powerful equipment in an industrial setting, the railroad operating environment is inherently hazardous. Railroad employees have extensive railroad-related safety training and are made aware of train movements. Trespassers and adjoining property owners are not. As a result, trespassing along railroad ROWs in the United States results in about 500 deaths each year. At least eight such fatalities have occurred along the ARRC ROW since 1985, and emergency stops necessary to avoid people, pets and items on the tracks threaten injuries to Alaska Railroad passengers and crews. (Many residents represented by RCCC probably remember the situation in 2012 where an Alaska Railroad train had to make an emergency stop to avoid striking children from Camp Bear Valley who were led onto the ROW and tracks during a field trip.) Opening the ROW to unrestricted use by adjoining landowners and the public, as Mr. Pletcher suggests, would inevitably increase these tragic incidents and pose an unacceptable liability for the Alaska Railroad.

The ROW buffer also protects adjoining property owners in the event of a derailment. The safety value of a 100-foot buffer on each side of the tracks is easy to understand considering that many railcars measure 80 feet long. The ROW safety buffer also enhances the railroad’s economic viability by allowing trains to run safely at faster speeds. Some aspects of the Alaska Railroad’s current commercial operations would be rendered economically infeasible under the slower train speeds that might have to be employed if the ROW was open to unrestricted public use.

The fact that ARRC owns full title to almost all of its ROW explains why a typical plat for a subdivision adjacent to the ROW (for example, the plat for Deniwood Subdivision where Mr. Pletcher lives) shows residents’ properties extending up to, not into, the ROW boundary. Moreover, the plats for the ROW itself show the ROW does not overlap with the lots in adjoining subdivisions. State land records, therefore, confirm that adjoining property owners do not own any interest in the ROW. This conclusion is consistent with the fact that residents whose properties adjoin the ROW do not pay property taxes on ROW land abutting their property.

Even with exclusive control of the ROW, the Alaska Railroad continues to allow neighbors and a wide variety of people and organizations to cross or use the ROW in various ways where it can be done safely. The railroad grants road and trail crossing permits to cities, boroughs and in some cases even residents and private businesses. In areas where permitted road or trail crossings are unavailable, individual hikers, hunters and other recreational users may cross the ROW quickly and directly while carefully watching for trains and continue their adventures on the other side. Ice climbers and wind-surfers may similarly cross the tracks and, with an appropriate permit, may even use the periphery of the ROW for climbing and launching purposes. Under the railroad's new Residential Right-of-Way Use Policy, neighboring residents may use portions of the ROW for lawns, gardens and some other historical residential uses by obtaining a permit. In each of these cases, ARRC exercises its discretion to allow the public to pass through or use the ROW when it can be done safely. As far as the charges the Alaska Railroad makes for such uses, which generally do little more than defray administrative expenses, those charges are in line with the Alaska Railroad Corporation Act (AS 42.40), which requires the Railroad to obtain fair market value for allowing use of its land.

The Alaska Railroad is neither depriving Alaska landowners of any property rights nor seeking to restrict public access any more than it has in the past. As explained above, the railroad has exclusive legal rights to control access to its ROW, rights which are critical to maintaining safe and economical rail operations. The Alaska Railroad also allows the public to cross the ROW and, under certain circumstances and with proper permits, even use outer portions of the ROW, when those activities can be done safely. None of that is changing and Mr. Pletcher's assertions otherwise are simply incorrect.

As mentioned above, the railroad has developed a lot of information on the ownership and control of the ROW. Much of this information directly and in detail addresses the arguments made by Mr. Pletcher. Relevant materials include a detailed legal analysis memorandum and an in-depth letter responding to one sent to the ARRC Chief Executive Officer by Mr. Pletcher. We would be happy to share these materials with council members if they would like to explore these issues in more depth.

Thank you very much for this opportunity to weigh in on this issue. If you have any questions or would like additional information, please feel free to contact me.

A handwritten signature in black ink, appearing to read 'Tim Sullivan', written in a cursive style.

Tim Sullivan
Manager External Affairs
Alaska Railroad Corp.