Response to Mr. Sullivan's comments 3-22-15 2 p.m.

To: Nancy Pease, Rabbit Creek CC
From: Steve Beardsley, OSOVCC

It should be understood that the Resolution under consideration was generated first by the OSOVCC, not Mr. Pletcher. The OSOVCC and its members have had much experience dealing with the ARRC as to its ROW policy. The frustration they experienced prompted the Resolution, which was passed after much discussion and due consideration.

Mr. Sullivan makes several legal arguments, but the really important issues involve public policy, the right of private property owners not to experience uncompensated reduction in their legal rights, and the right of public access. If the public does not act on this matter, control over the situation will reside totally with the railroad.

Essentially the position of the railroad is that they always owned the ROW or, if not, they should own it when transferred, although nothing in the Transfer Act provides for that. ARRC's repeated reference to ARTA as the authority for exclusive use is misleading and confuses the average reader. Mr. Meacham's explanation as to the applicability is much more accurate and germane to the issue as it applies to public and private land underlying the ROW.

Considering the legalities discussed, we understand the Rabbit Creek Community Council has called on Mr. Meacham for advice. He is a respected specialist in land law and has been practicing in that area for decades. His views, importantly independent of either side on this issue, seem consistent with the proposed Resolution and are at odds with ARRC's position articulated by Mr. Sullivan.

Mr. Meacham's views and representation of ownership interests appear more accurate than those claimed by Mr. Sullivan. It is true that in some places the railroad owns the dirt under the tracks. But in many other areas the land beneath the track is privately held. For example, in South Anchorage, the ROW crosses property homesteaded by Jarvi, Hancock, Sperstad, and Holman. The federal patents conveying fee simple ownership of that land (including that which now underlies the track), reserves "a right of way for construction of railroads, telegraph and telephone lines in

accordance with the Act or March 12, 1914." If the ROW corridor in South Anchorage was "fully owned" by the federal Alaska Railroad as Mr. Sullivan contends, there would have been no reason for consistently specify the ROW easement in each and every patent document issued to homesteaders whose property included the land beneath the tracks. Indeed, the railroad would have had its own patent or conveyance document(s) for those lands in the ROW corridor predating transfer to the State in 1982. They do not. The plat of a lot may begin at the edge of an abutting easement if the lot and the easement came from a common owner (homesteader), while the conveyance carries title to the centerline of the easement. This is explained in Asmussen v US, which can be found on the website www.alaskarailroadeasement.info. Although the opinion of Mr. Meacham does not specifically refer to this "centerline presumption," it is one of the reasons that the underlying property is actually owned by the "adjacent" or, more properly, "underlying" owner.

It is worth noting that if the original ROW were clearly owned by the ARRC, it would not be hard at work with BLM strong-arming others to secure ownership benefits which it otherwise lacks.

Everyone agrees that safety is important, but there has been no evidence that the Alaska Railroad suffers any more accidents caused by other users of the ROW than other US railroads. Is it reasonable to believe that requiring permits and fees will somehow improve safety? We offer these thoughts:

1) 200 feet claimed by the railroad for their total control is unnecessary; that claimed width and the claim of exclusive use are unique with ARRC. No other railroad nationally makes such claims or similarly restricts others for safety or other reasons. Interestingly, ARRC's own RRUP Permit allows structures beginning at 20 feet from the centerline.
2) There is a reasonable width in which structures should not be constructed and the public should avoid when trains pass. The Federal DOT has a "rails with trails' program endorsing such in areas far less than 100 feet of the tracks. Pictures of such are on the Internet.
3) Requiring permits and charging fees does not foster safe operations or activities, it simply exerts control at the expense of others.
4) Some of the claims of safety issues have been exaggerated to support the claim of a safety problem. An example is the Camp Bear Valley incident in 2012 cited by Mr. Sullivan. While there are two sides to every story, it is noteworthy that the people of CBV believe that this incident was largely an

overreaction by the railroad. Regardless, to the extent that some isolated incidents occur, a better approach than seizure of control might be one of public education and outreach. This approach is used successfully by the police and fire department at Community Council meetings and other gatherings. Does the railroad attend your council meetings other than to announce its control?
5) Similar transportation systems such as roads do not enjoy the very favorable safety records of ARRC, yet joint use is allowed where appropriate and the public, with proper education as to safety issues, is welcomed.

Taxation: the railroad claims ownership of the easement, but one does not see them paying taxes either. This tends perhaps to show that the area is not solely owned or managed by anyone involved, nor should it be. The owner of the private property is allowed uses by common law so long as these do not interfere with ARRC's right to use so much of the ROW as is reasonably necessary to conduct its operations. The public should be similarly empowered where appropriate, without the unilateral powers claimed by the railroad.

Our Community Council is concerned about yielding complete control of the situation to a board of directors having no public notice inclinations involving ARRC operations save what they devise themselves. Moreover, they consistently choose to overlook what little public input they receive, and deliberate and conduct business behind closed doors with no legislative or other oversight. An example is the present situation in which the railroad has, through Mr. Sullivan, again announced that these policy changes are "a done deal," while your members and our members have been in the dark since 1982 as to the change that is in progress by ARRC and BLM. While it is certainly late in the game, we still have some power to determine our fate.

We still have the opportunity to voice our views and avoid much of the effect of this, and we urge the support of your Council. If you see fit to work in the public interest on this issue we urge that any resolution that you pass be made public through delivery to your elected representatives and others.