

March 12, 2018

The Honorable Anna MacKinnon
Chair, Senate Finance Committee
Alaska State Legislature
Capitol Building, Suite 516
Juneau, Alaska 99801

Dear Senator MacKinnon:

During the Senate Finance Committee hearing on Monday, March 5, Committee members raised several questions regarding Senate Bill 86. This letter addresses those questions.

One issue raised related to the procedures followed by the Alaska Railroad Corporation (ARRC) Board of Directors (Board) and staff when it considering potential sale of ARRC land. Two layers of public notice and other procedures are designed to make the process fair, public, and in compliance with the Alaska Railroad Corporation Act, AS 42.40. These procedures kick in when ARRC identifies a potential land sale, either after being approached by a party wishing to purchase the land or upon consideration by ARRC which land might be appropriate based on the land's current and potential use and rate of return on investment. Once a potential sale has been identified and is ready for consideration by the Board, public notice is issued for the next Board meeting in accordance with ARRC policies. ARRC also publishes online: the agenda for that meeting, which specifically identifies any proposed land sale that the Board will be considering; any non-confidential information related to the proposed sale that the Board will be reviewing; and the text of any draft Board resolution pertaining to the land sale. The public may comment either in writing by letter or email or in person at the Board meeting.

If a land sale resolution is approved by the Board, another public notice is issued that describes the Board's approval of the proposed land sale and the required findings that the land is not necessary for railroad purposes and that the transaction is in the best interest of the State, as required by AS 42.40.352(b)(1). At the same time, if proposed sale terms are already in place, ARRC will offer a right of first refusal to any current lessee of the land, as required by AS 42.40.352(b)(2). The public notice and offer of a right of first refusal have not been employed by ARRC since AS 42.40.352 was added to AS 42.40 in 2010 because the only land sales that have been proposed since that time were only approved by the Board recently and are awaiting the outcome of SB 86. As has been discussed by the Committee, AS 42.40.352(b) does not specify a duration for either the required public notice or the lessee's right of first refusal. ARRC believes that a public notice period of 60 days

would be sufficient to adequately inform the public of any proposed land sale. ARRC also believes that a right of first refusal notification period of 30 days, with no less than 90 days to close, would afford a meaningful opportunity for a current lessee to make a bone fide offer to match the sale terms. The final step of ARRC land sale procedures is for either ARRC or the prospective purchaser to petition the Legislature for approval. That step would no longer be required if SB 86 passes.

Another question arising at the hearing was how much ARRC land remained without a final U.S. patent. ARRC received title to all federal Alaska Railroad lands in 1985 through a combination of patents, interim conveyances, and exclusive licenses. The interim conveyances and exclusive licenses each expressly had the force and effect of patents. Since 1985, as surveys of the unpatented lands were completed, BLM has issued final patents for a large majority of ARRC land. Of the approximately 36,000 acres of land conveyed to ARRC in 1985 by the United States, approximately 164.5 acres remain without a final patent issued to ARRC. Those properties, and the nature of their conveyance to ARRC, are enumerated below.

Land Conveyed by Interim Conveyances (Total Area: 91± Acres)

- Parcels in Anchorage between Oceanview Drive and Old Seward Highway **(10± Acres)**
- Parcels along the Anchorage International Airport Spur **(60± Acres or less, depending on the surveyed width of the right-of-way)**
- West of Fairbanks between Sheep Creek Road and O'Connor Creek Trail **(6.5± Acres)**
- West of Fairbanks between Hay Way and Miller Hill Road **(14.5± Acres)**
- South of Valdez Airport, between Mineral Creek Loop Road, McKinley Street, and Old Loop Road. **(4± Acres)**

Exclusive Licenses (Total Exclusive License Area: 73.5± Acres)

- Townsite of Nenana, East of Main Street **(60± Acres)**
- Lots in Anchorage north of 3rd Avenue and west of Reeve Boulevard **(10± Acres)**
- Lots on Government Hill on Delaney Street **(0.5± Acres)**
- Easement from Glenn Highway to ARRC ROW near Eklutna Village Road **(3± Acres)**

Questions were also asked regarding the nature of mineral rights in ARRC land and the intent regarding those rights in the context of land sales. ARRC owns the mineral rights in land conveyed to ARRC in fee simple title by the United States. That would include all land



that might be subject to potential land sales (i.e., all non-ROW land and land not otherwise used for railroad purposes).

ARRC intent in the context of any proposed land sales would be to consider whether to include or exclude mineral rights from any resulting conveyance on a case-by-case basis. Such consideration will be based on the potential value of the mineral rights for that particular parcel, the location of the parcel, and the nature of any existing or proposed future development on the land. Some situations may support retaining the mineral rights when a parcel is sold (e.g., tracts of undeveloped rural land with demonstrable mineral value), while others may not (e.g., developed urban parcels with minimal mineral prospects). Addressing mineral rights on a case-by-case basis, rather than applying a rigid rule requiring or prohibiting the severance of mineral rights, will provide ARRC with the flexibility to make economically viable land transactions that take both the nature of the land and its underlying mineral rights into account.

Thank you for your time on this issue.

Sincerely,



for Bill O'Leary

Bill O'Leary, President & CEO
Alaska Railroad Corporation

cc: Senator John Coghill
Representative Adam Wool