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# HOUSE COMMITTEE REPORT

(5)

Date Referred: March 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5/4/89

The TRANSPORTATION Committee considered:

HB 234

HOUSE BILL NO. 234

[ALASKA RAILROAD CROSSING AGREEMENTS]

"An Act relating to standardized railroad crossing permit agreements of the Alaska Railroad Corporation; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass No Rec Amend

Bette Cate

Ben Sommers

Richard Jones

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	Do Not Pass	No Rec	Amend

Bette Cate  
Chairman's Signature



# Representative Bette Cato, Chair House Transportation Committee

DATE: 5/2/89

PLACE: House Transportation #17

SUBJECT OF MEETING:  
CS/SB 92  
HB 234  
HJR 41

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Bill Brown	DMV	P.O. Box 11 Juneau	99811		4335	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 92
Mike Miller	Dist. 18	P.O. Box Juneau	99804		<del>4375</del>	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 234
Barnaby	Rep Davis				<del>4330</del> 4330	<input checked="" type="radio"/> Y <input type="radio"/> N	HJR 41
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Administration  
 Title: An Act relating to Veteran's preference in State employment BRU: Personnel  
 Sponsor: Cato, Grussendorf, et al. Components: Personnel  
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER 1034	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not have a fiscal impact on the Division of Personnel either in Fiscal Year 90 or in subsequent years.

Prepared by: David K. F. Otto *DKFO* Phone: 465-4430  
 Division: Personnel Date: 1/22/90  
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/23/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)



# HOUSE COMMITTEE REPORT

(5)

Date Referred: March 21, 1989

FURTHER REFERRALS: JUDICIARY

5/2/89

Date of Committee Action: 5/2/89

The TRANSPORTATION Committee considered:

HB 234

HOUSE BILL NO. 234 [ALASKA RAILROAD CROSSING AGREEMENTS]  
"An Act relating to standardized railroad crossing permit agreements of the Alaska Railroad Corporation; and providing for an effective date."

- RECOMMENDATIONS:
- [ ] be replaced with \_\_\_\_\_ [ ] the same title
  - [ ] have attached amendment(s) [ ] a new title
  - [  ] do pass
  - [ ] do not pass
  - [ ] no recommendation
  - [ ] individual recommendations
  - [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)
- [  ] fiscal impact CEO [ ] fiscal note(s) \_\_\_\_\_
  - [ ] zero fiscal note \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_
  - [ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

<u>Bette Cato</u> CATO			
<u>Bar ...</u> GRUSSENDORF			
<u>Richard ...</u> FOSTER			

Bette Cato  
Chairman's Signature

# Alaska State Legislature

REPRESENTATIVE  
MIKE W MILLER  
PO Box 55094  
North Pole, Alaska 99705  
(907) 488-2687

District 18  
North Pole  
Badger Road  
Eielson  
Moose Creek  
Salcha



While in Juneau  
PO Box V  
Juneau, Alaska 99811  
(907) 465-4976

## House of Representatives

### MEMORANDUM

TO: Representative Bette Cato  
Chair, House Transportation Committee

FROM: Representative Mike Miller *M.W. Miller*

RE: House Bill 234, An Act relating to standardized  
railroad crossing permit agreements of the Alaska  
Railroad Corporation

DATE: 4/10/89

-----  
Thank you for making arrangements to hold a Joint House and Senate Transportation Committee meeting to discuss HB 234 and SB 233; identical bills dealing with railroad crossing permit agreements of the Alaska Railroad Corporation.

Many railbelt municipalities, and individual property owners, have grown increasingly frustrated with the Alaska Railroad Corporation's (ARRC) attitude stemming from its railroad crossing permit policy. This policy allows ARRC to make decisions involving maintenance, upgrading, and closing of railroad crossings with minimal or no input from the individuals or municipalities that hold specific crossing permits. This power has left many municipal leaders and private land owners feeling as if they are continually given "take it or leave it" proposals from ARRC.

Under the existing standardized permit system, permit holders are required to bear 100% of the cost of maintaining permitted crossings while ARRC makes 100% of the decisions on what maintenance work needs to be done on them, when it will be done, and who will do it.

HB 234 and SB 233 were introduced in an attempt to bring a sense of balance back to the issue of safe access across the Alaska Railroad right-of-way. The bills establish a system by which all future standardized crossing agreements must be brought before the Legislature for review before they can be implemented by ARRC. In addition, the bills direct ARRC to renegotiate all the existing crossing permits once the first standardized permit is approved in 1990.

I have placed in each members packet copies of letters, agreements, resolutions and newspaper articles I have collected in the one and a half years I have been following this issue.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 234  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Railroad Corporation  
Title: Relating to Standardized  
Crossing Permit Agreements BRU: \_\_\_\_\_  
Sponsor: \_\_\_\_\_ Rep. Miller Components: \_\_\_\_\_  
Requester: DCED

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	\$10.0	\$115.0				
TRAVEL						
CONTRACTUAL						
SUPPLIES		1				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$10.0	\$111.0				

\*ARRC operates on a calendar fiscal year.

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER ARRC	\$10.0	\$111.0				
TOTAL						

POSITIONS:

FULLTIME		1				
PARTTIME		1				
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This fiscal note is for informational purposes only, as the Alaska Railroad is not subject to the Executive Budget Act.

(CONTINUED - NEXT PAGE)

Prepared by: Larry D. Wood  
Division: Alaska Railroad Corporation

Phone: 265-2461  
Date: 4-10-89

Approved by Commissioner: Larry Mercurieff *S.M.*  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: \_\_\_\_\_

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

3809D-3/041189a

## STATE OF ALASKA LEGISLATIVE SESSION

### FISCAL NOTE

#### ANALYSIS:

The legislation requires the Alaska Railroad Corporation (ARRC) to develop a new railroad crossing permit form by January 20, 1990. Development of a new form will cost approximately \$8,000 to \$10,000. The existing form will be revised by real estate staff and reviewed by attorneys. Revision costs will vary sharply if public comments are to be solicited as a result of an extensive hearing process. Once the form is authorized by legislative action or inaction, the bill next requires renegotiation of all railroad crossing permit agreements. There are approximately 273 crossings under permit to federal, state, university and private entities which would be affected by this requirement. Existing agreements have been negotiated over the course of many years and involve many different permittees. Consequently, a real estate leasing specialist position would be added to commit full-time personnel resources to the enormous task of renegotiating all of these agreements within a 12-month period. The engineering department will commit the equivalent of one-half man year of time to various levels of internal review, comment, and analysis. The estimate includes the expenses associated to an additional leasing specialist position and associated benefits, legal and engineering review, and printing, word processing, and supply costs.

The estimate does not include any other expenses which may be assessed against the ARRC after a new form is prepared. For example, if, as a result of legislative review, ARRC is required to pay for signal maintenance costs under revised permit terms, such costs will accrue at the rate of approximately \$3,700 per signalized crossing. Sight triangle, sign, and road surface maintenance costs are additional expenses associated with grade crossing which also have previously been the financial responsibility of requesting agencies. Finally, the shifting of grade crossing liabilities to ARRC will add less ascertainable, but certainly significant, costs to the other burdens imposed by this legislation.

By: The Railbelt  
Coalition  
Introduced: April 8, 1989  
Approved: April 8, 1989

A JOINT RESOLUTION OF THE FOUR BOROUGH'S OF THE RAILBELT AREA  
RELATING TO THE ALASKA RAILROAD CORPORATION

WHEREAS, AS 42.40.910 provides that the Alaska Railroad Corporation "exists for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions."; and

WHEREAS, according to AS 42.40.010, the Alaska Railroad Corporation has a legal existence independent and separate from the state; and

WHEREAS, the Alaska Railroad Corporation has complete and absolute control over its property; and

WHEREAS, while the Alaska Railroad would not hesitate to request funds from the State, if needed, but does not deposit any of its profits into the General Fund; and

WHEREAS, the State Legislature is considering reducing funds for municipal assistance, revenue sharing and education; and

WHEREAS, the Alaska Railroad Corporation has previously maintained its crossings and is now taking an antagonistic attitude with municipalities and property owners along its route in relation to railroad crossings and adjacent property; and

WHEREAS, the Alaska Railroad Corporation provides subsidies to certain shippers and not others and competes unfairly with private transportation modes because it does not have to pay taxes; and

WHEREAS, the Alaska Railroad corporation has increased easement and permit costs, maintenance costs, in some cases, blocked railroad crossings in communities, threatened to close roads unless crossing maintenance fees are paid, and generally is assessing unfair charges to communities and local citizens.

RESOLUTION FROM THE  
RAILBELT COALITION

NOW, THEREFORE, BE IT RESOLVED that if the legislature does not wish to allow municipalities to tax the Alaska Railroad Corporation, the Governor or the Alaska Railroad Corporation Board of Directors are requested to:

- (1) reduce or eliminate the costs of maintaining railroad crossing to municipalities and private land owners;
- (2) use Alaska Railroad Corporation profits to maintain railroad crossings.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to Steve Cowper, Governor, State of Alaska, David G. Hoffman, Commission of the Department of Community and Regional Affairs and all legislators representing the Railbelt Coalition.

PASSED AND APPROVED THIS 8TH DAY OF APRIL, 1989

MUNICIPALITY OF ANCHORAGE

FAIRBANKS NORTH STAR BOROUGH

By Heather Meyer

By Juanita Sheno

KENAI PENINSULA BOROUGH

MATANUSKA-SUSITNA BOROUGH

By Jan U. Skogstad

By Dorothy A. Jones

# ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069



Contract No. 5881  
Permit For: Private Road Crossing  
ARRC Milepost: 193.56  
DOT ID No.: 910 226Y

## PERMIT

THIS PERMIT, dated \_\_\_\_\_, 1987, is made by and between the ALASKA RAILROAD CORPORATION, a public corporation of the State of Alaska formed pursuant to AS 42.40 ("ARRC"), and PACCO, INC., (check one)  a sole proprietorship or an individual  a general partnership  a limited partnership  a(n) Washington corporation (insert state of incorporation)  a governmental unit ("Permittee").

1. GRANT OF PERMIT. ARRC hereby grants to the Permittee a permit to construct, reconstruct, operate and/or maintain a private road crossing at Milepost 193.56 (the "Facility") upon ARRC's track right-of-way, communications pole line right-of-way, or other property of ARRC, as set forth on the drawing attached as Exhibit A (the "Site"). The permission herein granted is subject to the terms and conditions set forth in this permit.

2. TERM. This permit shall be for a term of five (5) years, commencing September 1, 1987 and ending August 31, 1992. ARRC may terminate this permit at any time on ninety (90) days' written notice.

3. PERMIT FEE. As partial consideration for this permit, Permittee shall pay an annual fee of four hundred dollars (\$400) which is due upon the execution of this permit and on every September 1 thereafter.

### 4. PLANS AND SPECIFICATIONS.

4.1 Permittee's predecessor in interest has constructed the Facility in the location outlined in red on Exhibit A.

4.2 Permittee shall construct, reconstruct, operate and/or maintain the Facility in the location shown outlined in "red" on Exhibit A.

4.2 Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any part of the Facility covered by this permit, or prior to commencing any such work itself, the Permittee shall submit to ARRC for approval all plans and specifications and all amendments, additions or corrections thereto, for the original construction and all future modifications of the Facility. Permittee agrees not to commence any associated work until the aforesaid approval has been received.

PRIVATE ROAD CROSSING PERMIT

4.3 Permittee agrees that any Facility construction shall be substantially in accordance with Permittee's plans and specifications as first approved by ARRC.

4.4 Permittee agrees that if, at any time during the term of this permit, ARRC deems it necessary to have additional safety equipment installed for the protection of its passengers, personnel, or equipment, the Permittee will, upon request from ARRC, install such equipment or safety devices as are prescribed by ARRC. Permittee agrees to comply with all ARRC standards for side and overhead clearances, which may be obtained from ARRC.

4.5 The Standard Specifications for Work on Railroad Property (the "Standard Specifications") attached as Exhibit B are incorporated herein by reference. Permittee hereby agrees that all construction, reconstruction, operation and maintenance upon ARRC property shall be performed in accordance with the Standard Specifications and any supplemental conditions required by paragraph 4.6 of this document or by any supplements hereto. Permittee agrees to make the Standard Specifications and any supplemental conditions part of all contractual bid specifications which the Permittee may publish for work associated with its Facility covered under this permit. In the event the Standard Specifications are revised by ARRC prior to termination of this permit, Permittee agrees that any changes in or additions to the Facility shall be performed in accordance with such revised Standard Specifications, provided that ARRC has given notice of the change to Permittee.

4.6 Permittee hereby agrees to the supplemental conditions, if any, to this permit attached as Exhibit C.

4.7 If automatic crossing signal devices (including improved crossing protection devices required by revised industry standards) are required by applicable law or regulation, by railroad industry standards, or by either party, such signals shall be furnished, installed and maintained by ARRC at the expense of the Permittee.

#### 5. MAINTENANCE OF FACILITY: INSTALLATION OF GATE.

5.1 During the term of this permit, the Permittee shall maintain the Facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations. If no industry standards, laws or regulations exist, then the Permittee shall maintain its Facility to the satisfaction of ARRC. Sight triangles shall be maintained by Permittee free of vegetation and other obstructions to vision in accordance with the table entitled "Sight Triangle Distance" attached as Exhibit D and as otherwise established and revised from time to time by ARRC.

5.2 Permittee shall, within two (2) months of the date of execution of this permit, construct a gate and erect signage at the Facility in accordance with pages 2.76 and 2.77 of the ARRC's Standard Plan attached to this permit as Exhibits E and F.

#### 6. PAYMENT FOR WORK.

6.1 Permittee shall pay for all Facility construction, reconstruction, operation and/or maintenance, including the cost of ARRC inspectors and flagmen whose duties will be to protect the interests of ARRC and to insure the completion of the work to the satisfaction of ARRC.

6.2 Permittee shall reimburse ARRC for all costs in connection with the granting and operation of this permit, including but not limited to, labor, materials, and equipment furnished by ARRC. Such reimbursement shall be at rates established by ARRC, and shall be due and payable within thirty (30) days following the date invoices are submitted by ARRC to the Permittee.

6.3 Permittee acknowledges that ARRC has previously performed work in connection with the construction of the Facility at the request of Permittee's predecessor in interest. In further consideration for this permit, Permittee shall pay ARRC the sum of one thousand five hundred one dollars (\$1,501.00) representing the labor expended by ARRC in connection with such construction. Receipt of such amount is acknowledged by execution of this permit by ARRC.

## 7. INTEREST IN RAILROAD PROPERTY.

7.1 It is understood that the Permittee acquires no interest in or title to ARRC property by means of this permit. Permittee shall have, at the discretion of ARRC, access to ARRC property for the purpose of construction, reconstruction, operation and/or maintenance of the Facility. This shall be done at times which will not in any way interfere with the operation of ARRC.

7.2 ARRC reserves the right of ingress to and egress from the Site and the right to enter any part of the Site, including buildings thereon, for the purpose of inspection at any reasonable time, and in time of emergency. All inspections will be coordinated with the Permittee in order to minimize interference with the Permittee's activities on the Site.

7.3 Prior to the expiration or termination of this Permit, the Permittee will remove the Facility and other property of Permittee and restore the Site to its original condition unless otherwise directed by ARRC. Failure of the Permittee to do so by the expiration or termination date will result in ARRC removing the Facility and other property of Permittee and restoring the Site at the Permittee's expense, which expense Permittee agrees to pay ARRC upon demand.

## 8. NON-EXCLUSIVE USE/RAILROAD CONSTRUCTION.

8.1 ARRC reserves the right to grant permission to others to use and occupy the Site, provided that said use and occupancy will not, in the opinion of ARRC, unreasonably interfere with the Permittee's use of the Facility.

8.2 In the event ARRC finds it is necessary to alter or add to its construction within the Site, the Permittee shall make all alterations to the Facility necessary to accommodate ARRC's construction without cost to ARRC.

## 9. INSURANCE AND INDEMNIFICATION.

9.1 Workers' Compensation. Permittee shall ensure that, with respect to all personnel performing work on the Facility, Permittee maintains in effect at all times during the term of this permit, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

9.2 Liability Insurance. Prior to construction, reconstruction, operation and/or maintenance of the Facility, Permittee shall secure such liability insurance as will protect Permittee and ARRC from and against any and all claims and liabilities arising out of bodily harm (including death) or property damage that may result from such construction, reconstruction, operation and/or maintenance. All such insurance shall be placed with such insurers and under such forms of policies as may be acceptable to ARRC. Without limiting the generality of the foregoing, such insurance shall include the following; provided however, that the provisions of this paragraph shall control over any inconsistent provisions contained in the Standard Specifications attached hereto:

(a) Comprehensive general liability insurance (including, but not limited to, premises-operations, products, contractual, broad-form property and independent contractors) with a combined single limit per occurrence of not less than one million dollars (\$1,000,000) for bodily harm (including death) and property damage.

(b) comprehensive automobile liability insurance (including owned, hired, and non-owned) with a combined single limit per occurrence of not less than five hundred thousand dollars (\$500,000) for bodily harm (including death) and property damage.

(c) explosion, collapse and underground damage insurance with a combined single limit per occurrence of not less than N/A Dollars (\$ \_\_\_\_\_).

(d) excess umbrella liability insurance of not less than N/A dollars (\$ \_\_\_\_\_).

(e) Railroad protective liability insurance, naming the Alaska Railroad Corporation as insured, of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and one million dollars (\$1,000,000) per occurrence for property damage; provided that such insurance shall be required only during the period(s) of time during the term of this permit that Permittee is performing work on ARRC right-of-way property.

The amounts and types of insurance set forth in this paragraph 9.2 are subject to review and reasonable change annually by ARRC. ARRC shall provide Permittee written notice of a change sixty (60) days' prior to the effective date.

9.3 Evidence of Insurance. Permittee shall deliver to ARRC certificates of insurance prior to the construction reconstruction, operation and/or maintenance of the Facility (or within such further time as ARRC may allow in writing), and such additional assurance certified by an authorized representative of the insurer as ARRC may from time to time request.

9.4 Additional Insured. Permittee shall ensure that any policies of insurance that Permittee carries against loss of or damage to property or against liability for property damage or bodily harm that may occur in connection with the Facility or this permit shall name ARRC as an additional insured.

9.5 No Limitation. The requirements of this permit as to insurance and acceptability to ARRC of insurers and insurance to be

maintained by Permittee is not intended to and shall not in any manner limit or qualify the liabilities and obligations of Permittee under this permit.

9.6 Indemnity. Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, operation, use and existence of the Facility located on, under, or over the Site. Permittee releases and shall defend, indemnify and hold harmless ARRC from and against all royalties, claims, losses, harm, costs, liabilities, damages, and expenses (including, but not limited to, attorneys' fees), whether suffered by ARRC or any other person or entity, in any manner directly or indirectly arising out of or due to:

(a) any act, omission, fault, negligence, or strict liability of Permittee in connection with or incident to the Facility or performance of this permit;

(b) any bodily harm (including death) to any person or damage to any property or to the environment in connection with or incident to the Facility or performance of this permit by Permittee;

(c) any lien or asserted liens upon the property of ARRC arising out of or in connection with the Facility or the performance of this permit by Permittee;

(d) any failure of Permittee to comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, or any governmental authority;

(e) any failure of Permittee to secure and maintain insurance as required by this permit; or

(f) any failure of Permittee to comply with the requirements of this permit.

To the fullest extent permitted by applicable law, the provisions of this paragraph 9.6 shall apply regardless of any acts, omissions, fault, negligence, or strict liability of any employees or agents of ARRC; provided, however, that Permittee shall not be required by this permit to indemnify any person against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of such person or such person's agents or employees.

## 10. DEFAULT AND REMEDIES.

10.1 Default. The occurrence of any one or more of the following events shall constitute a material default by Permittee.

(a) The failure by Permittee to make any payments required to be made by Permittee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from ARRC to Permittee;

(b) Except as otherwise provided in this permit, the failure by Permittee to observe or perform any of the covenants, conditions or provisions of this permit to be observed or performed by Permittee, other than described in paragraph (a) above, where such failure shall continue

for a period of ten (10) days after written notice thereof from ARRC to Permittee;

(i) the making by Permittee of any general arrangement or general assignment for the benefit of creditors;

(ii) Permittee becomes a debtor in bankruptcy;

(iii) the appointment of a trustee or receiver to take possession of substantially all of Permittee's assets;

(iv) the attachment, execution or other judicial seizure of substantially all of Permittee's assets.

(c) The discovery by ARRC that any financial statement given to ARRC by Permittee, any assignee of Permittee, any successor in interest of Permittee or any guarantor of Permittee's obligation hereunder, was materially false at the time given.

(d) Vacation or abandonment of the Facility by Permittee.

10.2 Remedies. In the event of any material default by Permittee, ARRC may at any time thereafter, without notice or demand and without limiting ARRC in the exercise of any right or remedy which ARRC may have by reason of such default:

(a) Terminate Permittee's rights under this permit and ARRC may pursue other remedies.

(b) Maintain Permittee's rights under this permit in which case this permit shall continue in effect. In such event ARRC shall be entitled to enforce all of ARRC's rights and remedies under this permit, including the right to recover the payments due hereunder.

(c) Pursue any other remedy now or hereafter available to ARRC under the laws or judicial decisions of the State of Alaska.

10.3 Late Charges; Interest. If any payment due from Permittee shall not be received by ARRC when such amount shall be due, then, without any requirement for notice to Permittee, Permittee shall pay to ARRC all charges and interest as set forth in ARRC's credit policy. This late charge does not waive, excuse or cure any default.

## 11. LAWS AND TAXES.

11.1 This permit is issued subject to all requirements of the laws of the State of Alaska and regulations of ARRC relating to the granting of privileges on ARRC lands and facilities.

11.2 Permittee shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority including, but not limited to, matters of health, safety, sanitation and the environment. Permittee shall execute and deliver to ARRC copies of all documents as may be required to effect or to evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses, and permits required to be incorporated in agreements of this character are incorporated herein by this reference.

11.3 Unless otherwise specified in this permit, the attachments hereto or as directed by ARRC, Permittee shall obtain and pay for all permits, inspections, licenses and fees and shall furnish all bonds, security or deposits required to construct, reconstruct, operate and/or maintain the Facility in accordance with this permit. Permittee shall advise ARRC in writing and consult with ARRC prior to applying for any permit or other authorization from, or entering into any agreement with, any governmental authority with regard to the construction, reconstruction, operation and/or maintenance of the Facility.

11.4 Permittee agrees to notify ARRC of any claim, demand or lawsuit arising out of the Permittee's occupation or use of the Site. Upon ARRC's request, the Permittee will cooperate and assist in the investigation and litigation of any such claim, demand or lawsuit.

11.5 ARRC makes no specific warranties, expressed or implied, concerning the title or condition of the Site, including survey, access or suitability for any use, including those uses authorized by this permit. Permittee's use of the Site is subject to any and all of the covenants, terms and conditions affecting ARRC's title to the Site.

12. LIENS. Permittee shall keep the Site free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the Site, and hold ARRC harmless from liability for any liens, including costs and attorneys' fees. This provision shall not be interpreted to mean that ARRC in any way recognizes a liability on its part for any such liens.

13. IMPOSSIBILITY OF PERFORMANCE; FORCE MAJEURE

13.1 Defined. The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected which could not be overcome with reasonable diligence and effort, including: Acts of God, acts of public enemy, insurrection, war, blockades, strikes, lockouts, other labor stoppage, riots, other public disorders, storms, landslides, avalanches, floods, washouts, earthquake, lightning, civil or military disturbances, restraint by court or public authority, boycotts, embargoes, or acts of military authorities.

13.2 Procedure for Claim of Force Majeure.

13.2.1 The party asserting a claim of Force Majeure shall, as soon as reasonably practical after knowledge of the start of such Force Majeure, provide notice to the other party hereto in writing, certifying all available facts and circumstances surrounding the occurrence of the Force Majeure, including, but not limited to: its causes; expected duration; efforts to overcome; and the claimed effect on the party's obligations to perform under this permit.

13.2.2 When the Force Majeure condition has terminated, the party claiming the Force Majeure shall, within thirty (30) days of termination, certify in writing all available facts and circumstances surrounding the occurrence of the event, including, but not limited to: its causes; time of start and end, and duration of condition; efforts taken to overcome; and the effect on the parties' obligations to perform under this permit. The party shall, upon request, promptly provide additional documentation of supporting facts and calculations relating to the claim of Force Majeure.

13.3 Effect Hereunder. If because of Force Majeure, any party is unable to carry out any of its obligations under this permit, and if such party shall, as soon as reasonably practical after knowledge of the start of Force Majeure, give to the other party notice of such Force Majeure, then the obligations of all parties shall be suspended to the extent made necessary by the Force Majeure and during its continuance; provided, however, the party experiencing Force Majeure shall take prompt and reasonable action to overcome such causes of Force Majeure and its operation shall be resumed immediately after such causes have been removed. Nothing contained in this paragraph shall cause the party affected by the Force Majeure to submit to what it considers to be an unreasonable labor agreement.

14. ASSIGNMENT. This permit shall not be assigned or in any manner transferred without the prior written consent of ARRC. This shall not be construed to impair or prevent the carrying out by public agencies of responsibilities not inconsistent with the operation and policies of ARRC relative to reconstruction, maintenance or control of the Facility.

15. NOTICES. Any notice permitted or required to be given hereunder shall be in writing and either delivered by hand, sent by certified or registered mail, return receipt requested, or sent by telegram with confirmed delivery;

- |                         |   |
|-------------------------|---|
| (a) If to ARRC, at      | ALASKA RAILROAD CORPORATION<br>P.O. Box 107500<br>Anchorage, AK 99510-7500<br>ATTN: Director, Real Estate |
| (b) If to Permittee, at | PACCO, INC.<br>P.O. Box 759<br>Tenino, WA 98589<br>ATTN: Brian Martin                                     |

Notice shall be deemed to have been given on the date delivered to the recipient, regardless of any other date indicated thereon.

16. NO WAIVER. The failure of ARRC to insist in any one or more instances upon the strict performance by the Permittee of any provision or covenant in this permit shall not be considered as a waiver or relinquishment for the future, and any such provision or covenant will continue in full force, unless ARRC issues an authorized written waiver therefrom.

17. VALIDITY OF PARTS. If any provision or covenant of this permit is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

18. INTERRELATIONSHIP OF PROVISIONS. The basic provisions, general covenants, special covenants, supplements, addendums and drawings contained herein are essential parts of this permit and are intended to be co-operative in designating and describing the respective rights and obligations of the parties to this permit. Should discrepancies appear, special covenants govern over basic provisions, both of which govern over general covenants, and figured dimensions govern over scaled dimensions unless obviously incorrect.

19. HEADINGS AND CAPTIONS. The heading and captions used in this permit have been inserted solely for convenience of reference and shall

not affect, or be deemed to affect, the meaning of any provision of this permit.

20. BINDING. Subject to the provisions of paragraph 14 above, this permit shall be binding on the successors and assigns of Permittee and ARRC.

21. INTEGRATION AND MERGER. This permit sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Facility and the Site, whether oral or written. No modification of this permit is effective unless made in writing and signed by both parties.

22. GOVERNING LAW. This permit and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the applicable laws of the State of Alaska and of the United States of America. Permittee shall not commence or prosecute and sue, proceeding or claim to enforce the provisions of this permit, to recover damages for breach or default under this permit, or otherwise arising under or by reason of this permit, other than in the courts of the State of Alaska or the District Court of the United States for the District of Alaska. Permittee hereby irrevocably consents to the jurisdiction of the courts of the State of Alaska with venue laid in the Third Judicial District or the District Court of the United States for the District of Alaska.

Dated: \_\_\_\_\_

ALASKA RAILROAD CORPORATION

By: \_\_\_\_\_

Larry J. Houle  
Director, Real Estate

Dated: \_\_\_\_\_

PACCO, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attachments [check as attached]:

- Exhibit A - Map/legal description
- Exhibit B - Standard Specifications
- Exhibit C - Supplemental Conditions
- Exhibit D - Sight Triangle Distance
- Exhibits E and F - Pages 2.76, 2.77, ARRC Standard Plan

2411R

# ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

Contract No. 5719

Permit For: Two Public Road Crossings,  
Public Roadway and Bicycle  
Path

ARRC Milepost: G-15.77 (Cross Way St.)  
G-16.39 (8th Ave.) and  
G-16.37 to G-16.76 (8th  
Ave. to Grange)

JAN 28 1988

## PERMIT AND CONSTRUCTION AGREEMENT

THIS PERMIT (herein called "this Permit") is made this 27th day of February, 1987, by and between the ALASKA RAILROAD CORPORATION (herein called "Permitter"), whose principal place of business is P.O. Box 107500, Anchorage, Alaska, 99510-7500, and CITY OF NORTH POLE, (herein called "Permittee"), whose principal place of business is P.O. Box 55109, North Pole, Alaska, 99705.

### WITNESSETH:

Railroad hereby grants to the Permittee a permit to construct, reconstruct, operate and maintain two at-grade public road crossings at Milepost G-15.77 (Cross Way Street) and G-16.39 (8th Ave.); bicycle path crossing the Railroad's tracks at Milepost G-16.39 (8th Ave.) and a public roadway within the Railroad's right-of-way from Milepost G-16.37 to G-16.76 (8th Ave. to Grange). (herein called the "facility"), upon Railroad's track right-of-way, communications pole line right-of-way, or other property of Railroad, as designed on the print attached hereto, which by this reference is made a part hereof. The permission herein granted is subject to the following terms and conditions:

#### 1. TERM

This permit shall be for a term of TWENTY (20) YEARS, commencing JUNE 1, 1985. Provided, however, that this permit may be terminated at any time by Permittee or by Railroad should Permittee fail to comply with the terms and conditions of this permit.

#### 2. PLANS AND SPECIFICATIONS

a. Permittee shall construct the facility in the location shown outlined in "red" on the print attached hereto.

MUNICIPAL XING PERMIT  
(THIS HAS BEEN VOIDED BY NORTH POLE)

b. Permittee agrees that the facility construction at Milepost G-16.39 shall be performed in accordance with State of Alaska's plans and specifications dated March 5, 1985, ARRC Contract No. 5718 with the State of Alaska, and that the facility construction at Milepost G-15.77 (Cross Way Street) and the public roadway from Milepost G-16.37 to G-16.76 (8th Ave. to Grange) be performed in accordance with the Permittee's plans and specifications dated July, 1986.

c. Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any part of the facility covered by this permit, the Permittee shall submit to Railroad's Chief Engineer for approval all plans and specifications and all amendments, additions or corrections thereto, for the original construction and all future modifications. Permittee agrees not to commence any associated work until the aforesaid approval has been received.

### 3. PERMIT FEE

As consideration for this Permit, Permittee agrees to pay a TWO HUNDRED DOLLAR (\$200.00) administrative fee per annum payable ANNUALLY in advance on JANUARY 1 of each year to the ARRC.

### 4. WORK BY THE PERMITTEE

Permittee shall perform, at its own expense and in accordance with the prior-approved plans and specifications, all work associated with this permit, excepting such work as may be performed by Railroad at the expense of the Permittee, as hereinafter set forth.

### 5. MAINTENANCE OF FACILITY

During the term of this permit, the Permittee shall maintain the facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations. If no industry standards, laws or regulations exist, then the Permittee shall maintain its facilities to the satisfaction of Railroad.

### 6. PAYMENT FOR WORK

a. Permittee shall pay for all facility construction, reconstruction, operation and maintenance, including the cost of Railroad inspectors and flagmen whose duties will be to protect the interests of Railroad and to insure the completion of the work to the satisfaction of Railroad.

b. Permittee shall reimburse Railroad for all costs in connection with the granting of this permit, including but not limited to, labor, materials, and equipment furnished by Railroad. Such reimbursement shall be at rates established by Railroad, and shall be due and payable within thirty (30) days following the receipt of invoices submitted by Railroad to the Permittee.

### 7. INDEMNITY

Permittee shall indemnify and save harmless Railroad from and against all losses and all claims, demands, payments, suits, actions, recoveries, legal expenses and judgments of every nature and description made, brought or recovered against

Railroad by reason of any act or omission of the Permittee, its bidders, contractors, subcontractors, agents or employees, in the execution of work or in guarding the same. Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, use and existence of the facility located on or over the permit area. This provision shall not be interpreted to mean that the Permittee shall assume liability for the negligence of railroad employees while acting within the scope of their employment.

8. ASSIGNMENT

This permit shall not be assigned or in any manner transferred without the prior written consent of Railroad. This shall not be construed to impair or prevent the carrying out by public agencies of responsibilities not inconsistent with the operation and policies of Railroad relative to reconstruction, maintenance or control of the facility.

9. INTEREST IN RAILROAD PROPERTY

It is understood that the Permittee acquires no interest in or title to Railroad property by means of this permit. Permittee shall have, at the discretion of Railroad, access to Railroad property for the purpose of construction, reconstruction, operation and maintenance of the facility. This shall be done at times which will not in any way interfere with the operation of Railroad.

10. FUTURE PERMITS/EASEMENTS

Railroad reserves the right to grant permission to others to use and occupy the permit area, provided that said use and occupancy will not, in the opinion of Railroad, unreasonably interfere with the Permittee's use of the permit area.

11. FUTURE RAILROAD CONSTRUCTION

In the event Railroad finds it is necessary to alter or add to its construction within the permit area, the Permittee shall make all alterations to the facility necessary to accommodate Railroad's construction without cost to Railroad.

12. AUTOMATIC CROSSING PROTECTION (Applies only to Highway and Public Road Crossing Permits)

If automatic crossing signal devices are required by either party, such signals shall be furnished, installed and maintained by Railroad at the expense of the Permittee.

13. SAFETY EQUIPMENT

Permittee agrees that if, at any time during the term of this permit, Railroad deems it necessary to have additional safety equipment installed for the protection of its passengers, personnel, or equipment, the Permittee will, upon request from Railroad, install such equipment or safety devices as are prescribed by Railroad. Permittee agrees to comply with all Railroad standards for side and overhead clearances, which may be secured from Railroad's Chief Engineer.

14. REMOVAL OF FACILITIES

Prior to the expiration or termination of this Permit, the Permittee will remove its facilities and restore the permit area to its original condition. Failure of the Permittee to do so by the expiration or termination date will result in Railroad removing said facilities and restoring the permit area at the Permittee's expense, which expense Permittee agrees to pay Railroad upon demand.

15. INTEGRATION AND MERGER

This permit sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the premises, whether oral or written. No modification of this permit is effective unless made in writing and signed by both parties.

16. INGRESS/EGRESS

Railroad reserves the right of ingress to and egress from the premises and the right to enter any part of the premises, including buildings thereon, for the purpose of inspection at any reasonable time, and in time of emergency. All inspections will be coordinated with the Permittee in order to minimize interference with the Permittee's activities on the premises.

17. SECURITY OF AGREEMENT

a. Railroad warrants that no person or selling agency has been employed or retained to solicit or secure this permit upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by Railroad for the purpose of securing business. For breach or violation of this warranty, the Permittee shall have the right to annul this permit without liability for the annulment or, in its discretion, to deduct from the permit fees or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this permit, may be considered as bonafide agencies within the exception contained in this clause).

b. No member of or delegate to congress, or resident commissioner shall be entitled to any share or part of this permit, or to any benefit that may arise therefrom.

18. EXECUTION BY RAILROAD

This permit is of no effect until it has been signed by an authorized representative of Railroad.

19. DISCRIMINATION

Permittee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of

persons in any manner prohibited by federal or state law. Permittee recognizes the right of Railroad to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

20. LAWS AND TAXES

a. This permit is issued subject to all requirements of the laws of the State of Alaska and regulations of Railroad relating to the granting of privileges on Railroad lands, and facilities.

b. At no expense to Railroad, the Permittee will conduct all activities or business authorized by this permit in compliance with all applicable federal, state and local laws, ordinances, rules and regulations now or hereafter in force, including but not limited to matters of health, safety, sanitation and the environment. Permittee must obtain all necessary licenses and permits, pay all fees and charges assessed under applicable public statutes or ordinances.

c. Permittee agrees to notify Railroad of any claim, demand or lawsuit arising out of the Permittee's occupation or use of the premises. Upon Railroad's request, the Permittee will cooperate and assist in the investigation and litigation of any such claim, demand or lawsuit.

d. Railroad makes no specific warranties, expressed or implied, concerning the title or condition of the property, including survey, access or suitability for any use, including those uses authorized by this permit. Permittee takes the premises subject to any and all of the covenants, terms and conditions affecting Railroad's title to the premises.

21. LIENS

Permittee shall keep the premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the premises, and hold Railroad harmless from liability for any liens, including costs and attorney fees. This provision shall not be interpreted to mean that Railroad in any way recognizes a liability on its part for any such liens.

22. NO WAIVER

The failure of Railroad to insist in any one or more instances upon the strict performance by the Permittee of any provision or covenant in this permit shall not be considered as a waiver or relinquishment for the future, and any such provision or covenant will continue in full force, unless Railroad issues an authorized written waiver therefrom.

23. MODIFICATION

Railroad may modify this permit to meet the revised requirements of federal or state grants or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party. Provided, that a modification may not act to reduce the rights or privileges granted the Permittee by this permit nor act to cause the Permittee financial loss.

24. VALIDITY OF PARTS

If any provision or covenant of this permit is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

25. INTERRELATIONSHIP OF PROVISIONS

The basic provisions, general covenants, special covenants, supplements, addendums and drawings contained herein are essential parts of this permit and are intended to be co-operative, in designating and describing the respective rights and obligations of the parties to this agreement. Should discrepancies appear, special covenants govern over basic provisions, both of which govern over general covenants, and figured dimensions govern over scaled dimensions unless obviously incorrect.

26. IMPOSSIBILITY OF PERFORMANCE

In the event any cause not due to the fault or negligence of either the Permittee or Railroad renders the premises unusable or makes the performance of this permit impossible, this permit may be terminated by either party upon written notice to the other party.

27. NOTICES

Any notice required by this permit must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this permit or to any other address which the parties subsequently designate in writing.

28. STANDARD SPECIFICATIONS ON RAILROAD PROPERTY

a. The attached Standard Specifications for Work on Railroad Property are incorporated herein by reference.

b. Permittee hereby agrees that all construction, reconstruction, operation and maintenance upon Railroad property shall be performed in accordance with the Standard Specifications for Work on Railroad Property and any supplemental conditions required by paragraph 3 of this document or by any supplements hereto.

c. Permittee agrees to make said Standard Specifications for Work on Railroad Property and supplemental conditions part of all contractual bid specifications which the Permittee may publish for work associated with its facility covered under this permit.

d. Any changes in the insurance provision in Section 3 of the Standard Specifications for Work on Railroad Property must be complied with on the next anniversary date of the Permittee's insurance policy following date of notification of change in Section 3.

29. SUPPLEMENTAL CONDITIONS TO THE STANDARD SPECIFICATIONS FOR WORK ON RAILROAD PROPERTY

Permittee hereby agrees to the following supplemental conditions to the Standard Specifications for Work on Railroad Property included herein:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ALASKA RAILROAD CORPORATION

Dated: 10 February

By: [Signature]  
Larry J. Houle,  
Director, Real Estate

CITY OF NORTH POLE

Dated: 2-4-89

By: [Signature]  
Its: Mayor

STATE OF ALASKA            )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of February 1989, by Larry J. Houle, Director of Real Estate, of the Alaska Railroad Corporation, a public corporation created by Alaska Statute 42.40, on behalf of the corporation.

Kathleen A. Novasad  
Notary Public in and for Alaska  
My Commission expires: 1-21-89

STATE OF Alaska )  
 )ss.  
Fourth JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of February, 1987, by Carbita Jensen of Town of City of North Pole, a Municipality corporation, on behalf of the corporation.

Deirda J. Hayward  
Notary Public in and for North Pole  
My Commission expires: 9/11/90

# ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 4, 1987

Mr. David T. Bloom  
Project Manager  
State of Alaska, DOT/PF  
Northern Region  
2301 Peger Road  
Fairbanks, Alaska 99709-6394

Re: Eighth Avenue Grade Crossing Signalization  
DOT/PF Project No. RRP-2(31)/64017, ARRC MP G16.39  
ARRC Contract No. 23-87-018, ARRC Permit No. 5719

Dear Mr. Bloom:

Enclosed are two copies of the Automatic Crossing Signal Construction Agreement.

Please execute both originals and return the originals to me at:

Alaska Railroad Corporation  
Engineering Department  
P.O. Box 107500  
Anchorage, Alaska 99510-7500

An original Agreement will be returned for your files when the Agreement is fully executed. Thank you for your prompt attention and cooperation in this matter.

Sincerely,

Francis C. Weeks, P.E.  
Chief Engineer

Enclosures: 2 copies of Automatic Crossing Signal Construction Agreement

cc: City of North Pole  
Contract No. 23-87-010  
Permit No. 5719  
Work Order #25599  
Work Order #21899

0011E

NORTH POLE 8<sup>TH</sup> AVE. CROSSING  
UPGRADE AGREEMENT (PLACED  
ON HOLD UNTIL THE CROSSING  
ISSUE IS SETTLED)

# ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

ARRC Contract No. 23-87-018  
DOT/PF Project #RRP-2(31)/64017  
Project: 8th Avenue Grade Crossing  
Signalization  
ARRC Milepost G16.39

## AUTOMATIC CROSSING SIGNAL CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 1988, by and between ALASKA RAILROAD CORPORATION, herein referred to as "ARRC" and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, 2301 Peger Road, Fairbanks, Alaska 99709-6394, hereinafter referred to as "DOT/PF".

### WITNESSETH:

WHEREAS, the following contract has been signed for the right to construct and maintain road crossings.

PERMITTEE	PERMIT NO.	ROAD NAME	ARRC MP.	AAR-DOT INV. #
City of North Pole	5719	8th Avenue, North Pole	G16.39	868-463-X

WHEREAS, DOT/PF has requested ARRC, to construct automatic crossing signals, and provide flag protection for DOT/PF contractor in accordance with plans submitted by the DOT/PF.

WHEREAS, improvements made under this agreement will be maintained in accordance with the permit listed above.

NOW THEREFORE, of and in consideration of the mutual covenants herein recited, the ARRC and DOT/PF hereby agree as follows:

1. Plans and specifications for this project are being developed. A condition precedent to any rights or obligations accruing under this agreement is the ARRC Chief Engineer's final approval in writing of DOT/PF final plans and specifications (which may be withheld at the Chief Engineer's sole discretion).

2. Under the terms of this agreement, DOT/PF or DOT/PF through its contractor(s) will:
  - a. Perform all clearing required for sight triangles.
  - b. Provide and install the load center and all conduit (except conduit from controller base to J-Box No. 1) and junction boxes for the railroad warning system and provide power to the signal controller panel. Electrical work for the signal system shall be coordinated with the ARRC Manager, Telecommunications & Signaling to assure power is available for operation of the crossing signals and gates per ARRC schedule.
  - c. Construct embankment widenings for signal/gate bases and construct an approach for access to the controller and load center.
  - d. Be responsible for all traffic control and construction signing except for railroad flag protection and railroad signals which are the responsibility of ARRC.
3. Under the terms of this agreement, the ARRC will:
  - a. Furnish and install signals, gates, controller and controller base, and wire the railroad warning system from controller to J-boxes to signals and gates.
  - b. Provide all railroad flag protection for the project.
4. Standard Specifications for Work on Railroad Property.
  - a. ARRC Standard Specifications for Work on Railroad Property as modified in the advertised specifications for the subject project, Section 107-1.08, Railroad Highway Provisions, are hereby incorporated herein and by this reference made a part of this Agreement.
5. Reimbursement:
  - a. DOT/PF will reimburse the ARRC for costs of all services, labor and materials furnished by the ARRC for the aforesaid project. Reimbursement for overhead, material handling and equipment rates will be based upon the audited rates in effect at the time the work is accomplished.
  - b. Billing procedures will be as established by ARRC and approved by the DOT/PF.
  - c. Volume 1, Chapter 4, Section 3 and Volume 6, Chapter 6, Section 2, Subsection 1 of the Federal-Aid Highway Program manual will also apply where applicable.
  - d. ARRC estimated completion date is dependent upon DOT/PF Contractor. Billing will be made during the project with final billing to be made within 90 days after project completion.

5. Reimbursement:  
Continued...

- e. ARRC estimate for this work is \$87,316 based upon 1988 construction costs and 1987 overhead rate.
- f. City of North Pole will pay for signal maintenance costs directly to the ARRC as provided for in Permit #5719.

ARRC WORK ORDER

PROJECT CODE		EXHIBIT	AMOUNT
25599	MP G16.39 Crossing Signal (8th Avenue)	1A	84,404
21899	Railroad Flag Protection	2	<u>1,120</u>
	TOTAL		<u>\$87,316</u>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPROVED:

FEDERAL HIGHWAY ADMINISTRATION

THE ALASKA RAILROAD CORP.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

VICE PRESIDENT, OPERATIONS

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION &  
PUBLIC FACILITIES

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF NORTH POLE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBITS: 1A, Project Estimate, Install Gates/Signals  
1B, Materials List  
2, Project Estimate, Railroad Flag Protection

0011E

cc: Work Order #25599  
Work Order #21899  
Permit No. 5719

EXHIBIT 1A

ALASKA RAILROAD CORPORATION  
ENGINEERING DEPARTMENT  
Project Estimate Sheet  
December 10, 1987

Project #25599 Project Title Install Signal Gates 8th Avenue, North Pole, Alaska

Description of Work: Install post mounted gates and motion predictor controller at 8th Avenue, North Pole, ARRC MP G16.39

Average base hourly rate \$22.00 x Est Hrs 450 = 9,900.00

Total base hourly pay	\$ 9,900.00
Agreed Overhead FY 88 - 160.00% of total base hourly rate	15,840.00
Per Diem and Travel	1,800.00
Vehicle Rental	1,600.00
Contractual Services - Boom truck and backhoe	600.00
Materials - Post mounted gates with flashing lights, motion predictor controller, bonds, chargers, wire, and miscellaneous material	48,450.00
12% Material Handling	5,814.00
ARRC Equipment - Trencher	<u>400.00</u>
Total Estimated Cost	<u>84,404.00</u>

EXHIBIT 2

ALASKA RAILROAD CORPORATION  
ENGINEERING DEPARTMENT  
Project Estimate Sheet  
December 10, 1987

Project #21899 Project Title Install Signal Gates 8th Avenue, North Pole, Alaska

Description of Work: Provide Railroad flag protection for installation of post mounted gates and motion predictor controller at 8th Avenue, North Pole, ARRC MP G16.39

Railroad flagging rate	$\$14.00 \times \text{Est Hrs } 80 = \$1,120.00$	
Total base hourly pay		\$1,120.00
Agreed Overhead FY 88 - 160.00% of total base hourly rate		1,792.00
Total Estimated Cost		<u>2,912.00</u>

# ALASKA RAILROAD CORPORATION



D. Box 107500 • Anchorage, Alaska 99510-7500

April 4, 1989

The Honorable Carleta Lewis  
Mayor  
City of North Pole  
P.O. Box 55109  
North Pole, Alaska 99705

Dear Carleta,

Over the past few months the Alaska Railroad and the City of North Pole have been unable to agree on the specifics of our railroad/highway crossings permits, especially regarding 8th Avenue. We would like to resolve this issue, and I'm sure you would, too.

Therefore, we have asked that a representative from the State Ombudsman's Office review the matter and act as an impartial third party to evaluate both our positions. We have asked specifically that your concerns about crossing liability and maintenance fees be reviewed. I hope the City of North Pole will accept this idea as a starting point for resolving our differences regarding railroad/highway crossings and that you will participate in the process. I'm sure you will receive an inquiry from the Ombudsman's Office soon.

Attached is a copy of a news release we are issuing today to announce the pending review by the State Ombudsman. If you have any questions or comments, I would welcome an opportunity to discuss them with you.

Sincerely,

F. G. Turpin  
President and Chief Executive Officer

cc: Sen. Jack B. Coghill  
Rep. Mike Miller

# ALASKA RAILROAD CORPORATION



107500 • Anchorage, Alaska 99510-7500

## News Release

No. 79  
April 4, 1989  
For Immediate Release

Contact: Vivian Hamilton (907) 265-2675  
or: Ombudsman's Office (800) 478-4970

### Ombudsman To Review Railroad/Highway Crossing Issues

The Alaska Railroad Corporation has asked the state ombudsman to review its railroad/highway crossing permit process in an attempt to resolve differences between the railroad and local communities regarding crossing liability and crossing maintenance costs.

"The ombudsman is an impartial third party who can review both sides of the issue objectively and suggest solutions that might be acceptable to all of us," explained Frank Turpin, railroad president and CEO.

Recently several Railbelt communities have expressed concerns about accepting liability for railroad/highway crossings in their communities and about what they consider high maintenance costs for crossings and automatic crossing signals.

It is the railroad's position that all costs relating to highway crossings on the railroad right-of-way should be the responsibility of the road owner.

There are 359 crossings along the Alaska Railroad, the majority of which are public crossings permitted to local, state or federal

(more)

## ADD ONE--Railroad Seeks Ombudsman Review

governmental agencies. The railroad's crossing permits require road owners to have liability insurance or be self-insured to cover crossings. Some communities have argued that crossing liability should be the responsibility of the railroad.

Of the 359 crossings, 76 have signals which are inspected weekly by a specialized maintenance team. The cost for signal maintenance is billed to the signal owners. In addition, any maintenance required for crossing upkeep is charged to the road owner. Some communities have argued that the cost of maintenance for crossings and automatic signals should be borne by the railroad.

The Alaska Railroad is a state-owned corporation which is operated as a for-profit business without state funding. In 1988 the railroad reported \$58 million in revenue and a net income of \$5.8 million, which is being reinvested in capital improvements during 1989.

###

### RAILROAD/HIGHWAY CROSSING PERMITS IN ALASKA

	Number of <u>Crossings</u>	Number with <u>Signals</u>
DOT/PF	106	48
Anchorage	55	16
Fairbanks	20	0
Other Local Gov't	33	3
Alaska Railroad	27	2
Military	19	5
University of Alaska Fairbanks	2	0
Other State/Federal Agencies	9	1
Private/Commercial	48	1
Unpermitted	<u>40</u>	<u>0</u>
TOTAL	359	76

4/6/89  
FBKs DNM

## Ombudsman to review ARR crossings policy

AP and News-Miner reports

ANCHORAGE—A flap between the Alaska Railroad and some communities over the issue of railroad crossing upkeep and liability is headed for review by the state Ombudsman.

Duncan Fowler said his office is looking into the flap at the request of the railroad. He will review the railroad's current crossing permit policy, which requires the owner of roads crossing railroad tracks to be responsible for the costs and to have liability insurance or assume self-insurance.

The community of North Pole initiated complaints, and Wasilla joined in questioning the current policy requiring communities, agencies and entities to take responsibility for some of the 359 crossings in the state.

In North Pole, signals have been proposed for the crossing at Eighth Avenue. An ARR spokeswoman said the railroad's position is the city should maintain the signals because those would be installed to benefit community residents and visitors.

The railroad estimates it costs \$3,200 a year for average maintenance on crossings without signals.

There are 76 crossings with signals; the railroad provides weekly maintenance on those, and bills the permit-holder.

According to ARR information, 106 of the 359 crossings are the responsibility of the Alaska Department of Transportation and Public Facilities.

Twenty crossings are assigned to Fairbanks and 33 to local governments other than Anchorage and Fairbanks. Another 19 are assigned to the military, two to the University of Alaska Fairbanks, nine to other agencies and 88 are either on private or commercial properties or are unpermitted.

"The ombudsman is an impartial third party who can review both sides of the issue objectively and suggest solutions that might be acceptable to all of us," Frank Turpin, ARR chief executive officer and president, said in a news release.

"We're going to open up an ombudsman-initiated complaint and take a look at the fairness of the railroad policy regarding crossings," Fowler said. That will include examining policies of other railroads, he added.

The railroad is a state-owned corporation operated as a business.

2/2/89  
ADD. DAILY NEWS  
MARCH 2ND

# Towns fight rail crossing fees

By CHARLES WOHLFORTH  
Daily News reporter

WASILLA — The Alaska Railroad has made enemies here and in North Pole with fees it charges cities to cross the tracks.

North Pole Mayor Carleta Lewis said she will allow the railroad to cut her town in half before she agrees to take responsibility for the level crossings that separate a school, a refinery and other buildings from the rest of North Pole.

"We are at war with them," she said.

A railroad official said it has no intention of closing North Pole's crossings.

Wasilla Mayor John Stein said his city is spending about 20 percent of its annual road budget on three rail crossings. He is trying to organize other towns around the cause of getting rid of the fees.

Last year Wasilla paid the railroad \$18,000 to maintain the signals on the crossings. In addition to the \$200 each it pays annually for permits for the crossings, the city last month paid \$398 each

for inspections of each of the signals, said city deputy administrator Bob Harris.

The railroad has a full-time signal inspector in Wasilla. He inspects each signal each week and does maintenance work. The railroad bills the city — after adding a 175 percent overhead charge.

The city also has received the marked-up bills for having the inspector manually operate one of the crossing signals to protect railroad workers doing other work, Stein said.

The railroad and Alaska Department of Transportation decided recently that a signal was needed at a crossing in North Pole, and acquired state and federal funds to pay for putting it up. But when the city refused to pay the same maintenance fees as Wasilla, the project was shelved.

Currently, North Pole's city roads cross the railroad tracks without signals. Although they require relatively little maintenance, Lewis said, the city doesn't want to pay for them or be legally

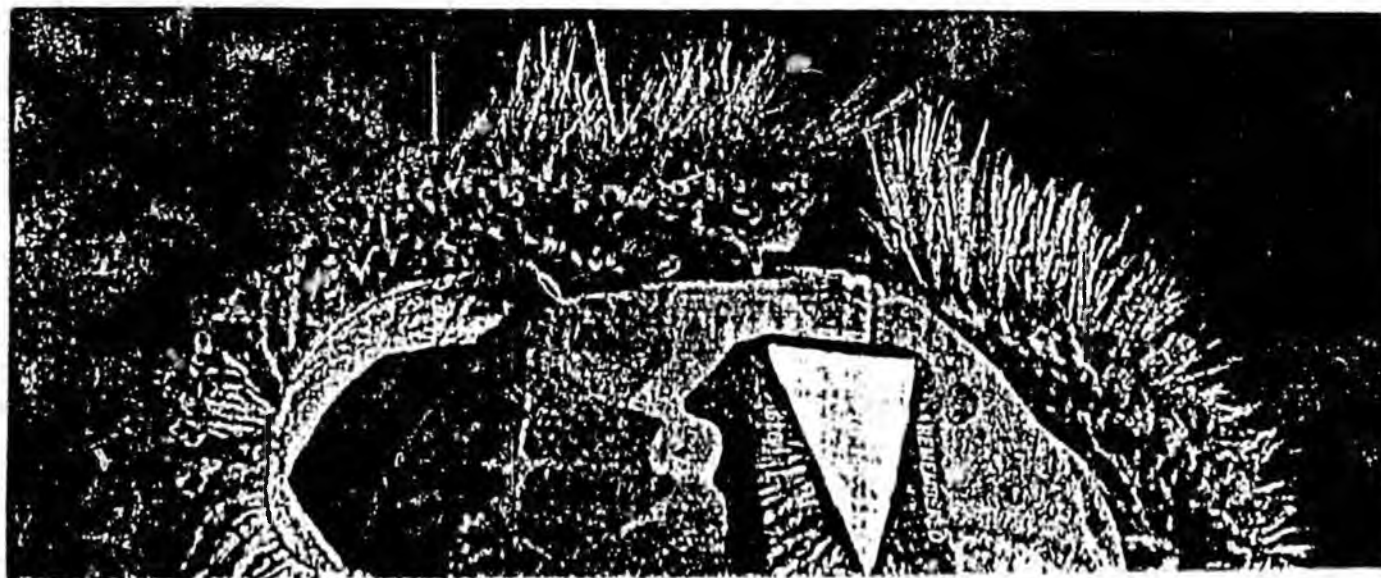
liable for them.

"We will not be responsible for all this that the railroad wants us to take responsibility for," she said. "Verbally, I've been told they'll shut us down and won't allow us to use the crossings anymore."

Danny Lommel, manager of the railroad's telecommunications and signaling division, said the railroad does not plan to close the crossings. Such a move would be bad public relations and, be-

Please see Page E-3, RAILROAD

## WHAT'S IN A NAME? TRY A LAWSUIT



## Fur Rondy files suit over pins

By MARILEE ENGE  
Daily News reporter

The organization that puts on the Fur Rendezvous has sued an Anchorage man for marketing a lapel button bearing the name of the winter carnival, which is registered under federal trademark laws.

Greater Anchorage, Inc., claims that Vern Nowell's pins are pirate products, illegally using the trademark name



ower  
ines uphill battle

ghter and a scrappy  
l just the man to take  
ne Defense Depart-  
the spokesman said.  
ater said the White  
s in full accord with  
Republican Leader  
le's plans to delay a  
on Tower.

hink everybody  
ave a chance to regis-  
r vote. And you never  
you might change  
at the last minute,"  
er said. But, when  
the White House could  
ie Democrat who had  
n over, he said: "Not

r, meanwhile, at-  
meeting this morning  
hite House with Bush,  
William Crowe, chair-  
the Joint Chiefs of  
rd acting Defense Se-  
William H. Taft IV.  
ater said the meeting  
Pentagon manage-  
ns and an ongoing  
of strategic issues, not  
ally with Tower's con-  
n battle.

developments came  
a backdrop of the Re-  
s' determination to  
lengthy and vigorous  
debate over Tower,  
e man at the center of  
m said he has no inten-  
iving up.

er surrender or re-  
the former Texas sen-  
J at his press club ap-  
e Wednesday, quoting  
mander of the Texas  
t the Alamo.

5/12/89

# Communities rail against higher crossing fees

By BILL KELDER  
Times Valley Bureau

WASILLA — Maybe it's a reflection of the state's economy and tight money, but city officials and others from Seward to Fairbanks are upset with the Alaska Railroad Corp.

Some, like Kenai Peninsula Borough Mayor Don Gilman, are only mildly concerned, while others, like North Pole Mayor Carleta Lewis are so angry they will deal with the railroad only through attorneys.

The uproar was sparked when the railroad announced it was increasing its crossing maintenance fees and asked local governments and private businesses assume sole insurance liability for the crossings.

Railroad officials say they are merely following both the law and the corporation's policies. They say the communities and individuals asked for easements across rail lines and therefore are responsible for covering the cost of maintenance.

But North Pole's Lewis sees it differently. "We never had to pay those costs when the railroad was owned by the federal government," she said. "We're a small city with a total budget of \$1.5 million, we can't afford these increases."

Lewis said she had signed a 20-year contract sent by the railroad but later was informed by the city attorney that she couldn't financially tie the hands of the city council on future expenses.

"We're fighting it, but the railroad people have been intransigent, they've been rude and arrogant," Lewis said.

She said the city had refused to pay increased maintenance fees for two crossings in her community and the railroad responded by closing the crossings, effectively shutting two city streets.

The railroad wants North Pole to pay \$3,000 a year for maintenance on one signal crossing, Lewis said.

"That's just for having their people check the crossing once a week," she said. "If any maintenance actually has to be done, they want to bill us extra for it, but they won't even provide us with a maintenance schedule or estimate of anticipated costs."

"How can this city budget for those expenses when we don't have any idea what

they will be?"

The city also asked if its crews could check and maintain the crossings, but the railroad refused, Lewis said.

She said the railroad was threatening to close other crossings if the city didn't pick up the maintenance tab and assume sole insurance liability for the crossings.

If the dispute is not worked out, it could pose safety and economic problems.

"We have another crossing here and if they close that, we won't have any way to get firetrucks or other emergency vehicles to North Pole High School or to the Mapco and Petrostar refineries on that road," Lewis said. "In my opinion, if they shut us off, they will be contributing to serious damage in this community."

"I don't see how they can build the crossings, maintain the crossings and then hold this city solely responsible for anything that goes wrong. It just isn't right," Lewis said.

The railroad's chief engineer, Oble Weeks, said things had changed since the state bought the railroad from the federal government.

"For one thing, there's more signalized crossings, which are more expensive to maintain. Another factor is that local governments have gotten more involved in requesting crossings across railroad easements," Weeks said.

Weeks and Vivian Hamilton, the railroad's director of corporate communications, said they were surprised to hear that officials have been calling the corporation's approach arrogant or rude.

"We're willing to sit down and work with everyone who got a notice," Hamilton said.

According to another railroad official, there are more than 80 crossings statewide and more than half are on state land. In those cases, the state Department of Transportation and Public Facilities pays for maintenance, said Dan Lommel, telecommunications and signaling manager.

"There's some real problems here with the railroad's new policy," said Robert Weaver, Fairbanks City's right-of-way agent. "We have taken exception to their new policies and are negotiating."

"If our negotiations fail, I expect them to

try to twist our arms to force us to comply," he said. Weaver said the arm-twisting probably would consist of threats to close crossings in Fairbanks as the railroad has done in North Pole.

"With a railroad yard right in the middle of the city and lots of crossings, we're talking about millions of dollars in potential increases and liabilities," Weaver said. "We take exception to the fact that they claim no liability for the crossings they build and maintain."

"Potentially, we're talking about the entire health and welfare of this city."

At Healy, Usibelli Coal Mine Inc. officials also are having problems with the new policy, according to company controller Richard Hundrup. The mine ships coal via rail north to Fairbanks.

"Our position is that the railroad has historically picked up maintenance costs and we shouldn't have to pay," he said.

Hundrup said the railroad was upping Usibelli's maintenance fees for one crossing from \$20 a year to \$400 a year.

"That's not a big problem for us, other than the fact that we feel it's their responsibility, not ours," Hundrup said. "But there are some people in this area who live along the Railbelt. They aren't a business, they're just people who live here and the railroad is telling some of them who have traditionally paid maintenance fees of \$50 to \$150 a year that they (now) will have to pay \$650 a year or the railroad will close the crossing near their property. For some of those folks, the crossing is the only way to get to their property," Hundrup said.

Hundrup said the 20-year contract the railroad sent Usibelli would require the mine to assume all liability payments and to indemnify the railroad corporation on each of the company's insurance policies.

"We believe they have some liability for the crossings and consider the contract onerous. We have at least a dozen insurance policies and to do what they're asking would cost quite a bit," Hundrup said.

Kenai Peninsula Borough Mayor Don Gilman said his borough wasn't having too many problems with the new fees because it didn't have many crossings.

up festival, according to  
unk. McShea. The suit claims  
ince Nowell is unfairly compet-  
Fur ing, creating confusion with  
ules Rondy goods and trading on  
said the "fame and goodwill" of  
how Fur Rendezvous.

"If he would do that, any-  
well one would do that and we'd  
Fur have all kind of sub-par  
t a products all over the place.  
in a We lose the money we would  
vell gain by selling memberships  
fu- for \$100," said McShea. "If  
try we want to keep our rights,  
we have to police it."

## es in question

a state lawsuit would be  
"virtually certain if, as the  
administration proposes, the  
state's share of ANWR re-  
ceipts is zero."

The report also ques-  
tioned the administration's  
assumption that it would re-  
ceive \$1 billion next year  
from money placed in es-  
crow pending the outcome of  
a state lawsuit over proceeds  
from offshore oil develop-  
ment near the arctic refuge.

The state maintains that  
the lands — and thus the  
revenues — belong to the  
state. The matter is before a  
special master appointed by  
the Supreme Court.

The report said there is  
"no firm basis" for assum-  
ing that the Supreme Court  
will decide the case next  
year, let alone that the deci-  
sion will be in the federal  
government's favor.

ATU workers, city and union officials  
said.

The injunction extends his Feb. 17  
temporary restraining order on the lay-  
offs. However, the judge refused to grant  
the union's request that the city be  
required to rehire the 10 ATU employees  
laid off before Feb. 17.

The order will stand until an arbitrator  
issues a ruling in the labor dispute  
between the city and the IBEW. Arbitra-  
tor Howell Lankford, of Milwaukie, Ore.,  
is scheduled to begin hearing the case  
March 10, city and union officials said.

The ruling "freezes us in our tracks,"

time convincing the pink administration  
that employees have legal rights that are  
enforceable," she said.

In his decision, Gonzalez noted the  
employees and their families faced the  
loss of income and medical insurance. "In  
weighing the harm that will be suffered  
by the employees targeted for layoff ...  
against the harm that will be imposed  
upon the Municipality of Anchorage ...  
the hardships tip decidedly toward the  
employees," he wrote.

The labor dispute reaches back to  
November and December, when the city's  
plans to lay off 33 ATU employees be-  
came known.

istration.

The delegates had  
stuck on the Alaska si  
the Bering Sea for two  
days after a week of  
talks, cultural excha  
and folk and rock r  
performances. The Aer  
jet assigned to pick the  
was first stuck in Anad  
high winds and limited  
bility Monday.

Tuesday, the plane r  
it to Anchorage, left  
the visitors, then came  
after finding the Sibe  
town fogged in again.

## RAILROAD: Towns go to battle over rail crossing fees

Continued from Page E-1

sides, the railroad already  
has a signed document from  
North Pole taking responsi-  
bility for them, he said.

Stein met with railroad  
President Frank Turpin  
Monday, and Wednesday a  
team of railroad officials  
came to Wasilla to look at a  
crossing without a signal  
they are considering closing.  
The railroad has agreed to  
give the city standardized,  
predictable billings, but will  
not take over any of the  
costs, said spokeswoman  
Vivian Hamilton.

She said the Alaska Rail-  
road is like railroads in 17  
other states in not accepting  
any of the costs of crossings.

"Hey, we were here  
first," she said. "We'd rather  
not have any crossings."

Hamilton said the rail-  
road pays for maintenance

on signals at crossings the  
railroad built across high-  
way rights-of-way. At all the  
other crossings, the railroad  
was there first — it was  
built in 1914 — and the road  
crossed its right-of-way.

She said the weekly in-  
spections are based on indus-  
try standards and the 175  
percent overhead charge is  
set by Department of Trans-  
portation auditors who use a  
federal formula.

But the overhead charge  
has risen steadily since the  
state bought the railroad  
from the federal government  
in 1985. In that year, it was  
93 percent.

Lommel said the increas-  
ing overhead is due to the  
railroad's need to replace  
equipment that previously  
the federal government pro-  
vided.

But Lewis thinks differ-  
ently.

"They're making a profit,  
and I guess they're making  
it off people like us," she  
said.

Harris, the deputy city  
administrator, has become a  
railroad crossing activist,  
and is coordinating with oth-  
er towns and giving them  
railroad crossing informa-  
tion. He said he recently  
advised the city of Houston  
to turn down an offered  
crossing signal. Fairbanks  
refused to sign its permits  
the way they were written,  
he and Lewis said.

But Wasilla has more in-  
terest in the issue than any  
other town. Other than An-  
chorage, which has 14 cross-  
ings, Wasilla is the only lo-  
cal government in the state  
that owns a crossing with a  
signal.

The Department of Trans-  
portation pays for crossings  
on state roads, including

those inside towns. It  
the bill for 47 of the  
road's 74 crossings with  
nals, Hamilton said.

Stein said Wasilla's c  
are unfair.

"The railroad is more  
burden to this commu-  
than a direct benefit,"  
said. "It's a great ben-  
statewide, but all we hav-  
do with it is get across  
... Here, they roar thro-  
town at 50 miles per h  
and that's all we see  
them."

He said good public pe  
would place more of the  
of the railroad on its u-

But from the railro  
point of view, the cross  
aren't a cost of the rail-  
— they are a cost of pe-  
who want to cross  
tracks.

"They're not to pro-  
the trains, they're to pro-  
the public," Lommel sai



WINTER SALE



Official Business

# Alaska State Legislature

P.O. BOX V  
State Capitol  
Juneau, Alaska 9981

December 2, 1987

James Campbell  
Chairman  
Alaska Railroad Board of Directors  
P.O. Box 107500  
Anchorage, AK 99501

Dear Mr. Campbell:

On July 13, 1987 the Alaska Railroad Corporation, (ARRC), sent out a letter to crossing permit holders regarding their responsibility to maintain adequate site distances on their crossings. This letter was signed by Larry Houle.

We have seen a crossing permit contract that does not mention the requirement of the permit holder to keep sight distances clear of obstruction, such as brush and trees. Therefore, the permit holder did not know they would be responsible for brush cutting near the crossing. We have also reviewed the "Alaska Policy on Railroad/Highway Crossings" which was adopted by the ARRC Board of Directors on November 20, 1986. The only reference to sight triangles in this policy is under the new crossing section, it does not mention existing crossings.

We have been informed that ARRC will be sending out new contracts that includes sight triangle responsibilities for permit holders. In essence ARRC has unilaterally decided that this responsibility will be held by the permit holder without any input from the permit holder. Likewise, ARRC also makes decisions involving maintenance, upgrading and the closing of railroad crossings with minimal or no input from railbelt communities. Many railbelt communities feel they are continually given "take it or leave it" proposals by ARRC.

We strongly believe ARRC should make every effort to have better communication with railbelt communities and involve them in decisions which directly effect them. ARRC has taken a step in this direction by forming a Community Briefing Council. It is our hope that this council not only disseminates information to the communities for ARRC, but will also provide railbelt community input to the ARRC Board of Directors.

We would greatly appreciate the Board taking the time to discuss better communications with railbelt communities.

  
Senator Jack Coghill

Sincerely,  
  
Representative Mike Miller

SEN COGILL & REP MILLER - A R R 12/2/87

PER. MILLE MILLER

P.O. BOX 5709  
NORTH POLE, ALASKA  
99705



TOP OF THE WORLD  
PHONE 907 486 2201  
AT YOUR SERVICE

December 14, 1987

Honorable Juanita Helms  
Mayor  
Fairbanks North Star Borough  
P.O. Box 1267  
Fairbanks, Alaska 99707

Dear Juanita:

I am writing to you as a member of the Alaska Railroad Community Briefing Council, so that the City of North Pole's concerns can be formally considered by the Council. I believe that there are several communities that have or will have the problems North Pole is experiencing.

The Alaska Railroad has North Pole "Between a rock and a hard place." The City of North Pole has within its boundaries several street crossings of the Nielson Spur Line. The Alaska Railroad has required the City to execute a Contract with them and pay an annual fee in order to keep them open.

~~The Railroad is stating that the City of North Pole must bear the cost of maintaining these crossings while the railroad keeps the right to decide what work is to be done and to contract it out at our expense, without our approval. It is virtually impossible to budget for these costs since the community has no control over the decision making process, or indeed any input into it. This situation is made even more offensive by the Railroad's broad interpretation of the Contract. They now insist that brush removal along sight distances which they establish is included in the Contract. However, before we commence with our brush cutting we are to notify the Railroad so they can send out their Flagmen (at \$45.00 per hour?). As you can see, the costs are escalating, and we do not have a choice in the matter, as the Railroad can close our crossings if we do not comply!~~

Mayor Lewis to Mayor Helms 12/14/87

Mayor Helms,  
ARR  
12/14/87

The City received a letter from DOT a few days ago advising us that they are going to install lights and a gate at one of our crossings. We have been told that we will be responsible for all maintenance costs, and electricity. The annual inspection costs for the railroad representatives to check out this one facility are supposed to be in the neighborhood of \$3,000.00.

Juanita, as you know, Revenue Sharing and other sources of municipal revenue have been declining and will most likely continue to decline in the coming years. Communities are having enough economic problems providing basic services without adding expenses at this time. These unknown costs are a real factor in our budget. Meanwhile, the Alaska Railroad is making a profit, and I can see why! The communities through which the Railroad passes are being forced to shoulder the Railroad's financial responsibilities.

In all fairness, there should be a common ground where we can work out a compromise. We will pay our fair share, but we would also like to have input and a choice in the issue. Perhaps the yearly fee can be adjusted to cover the City's cost, or the Railroad could be responsible for some portion of them. Shared, the burden would be less damaging economically and more tolerable philosophically.

I am requesting a 10 year maintenance cost projection. From Obbie Weeks in an effort to get a handle on the budgetary impact of Railroad on our community, but the fact remains that we may not be able to afford the Alaska Railroad in our town.

Sincerely,



Carleta Lewis,  
Mayor

# ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 5, 1988

JAN - 8 1988

Senator John B. "Jack" Coghill  
Representative Mike Miller  
Alaska State Legislature  
P.O. Box V (MS-3100)  
Juneau, Alaska 99811

Gentlemen:

Thank you for your recent letter regarding Alaska Railroad correspondence pertaining to the maintenance of crossings and sight distances. First, I wish to apologize for not being able to respond sooner.

You are correct that the old permits issued prior to the transfer of the Railroad to the State are vague when it comes to required maintenance. Without knowing the specific permit that your letter refers to it is hard for me to address language that may be in that contract. However, typical Road Crossing Permits require the permittee to be responsible for operation and maintenance of crossings including the costs. Additionally, the permittee is required to comply with the Standard Specifications for Work on Railroad Property and any revisions to those standards.

The goal of any transportation agency, which includes providers of roads and related railroad crossings, is to provide for the safe, efficient, and economical movement of people, goods, and services. In order to accomplish the SAFE portion of this goal, it is necessary for permittees to periodically inspect and maintain their crossings according to established standards. I think that we all understand that standards for safety change over time.

Given the vagueness of the language in the permits, the introduction of concepts such as sight triangles is an attempt to better communicate with our permittees by providing quantifiable guidelines. The ARRC first notified permittees of sight triangle clearances in a letter dated August 12, 1986 which more fully explained the concept. The letter sent on July 13, 1987 was intended to be a reminder of the need to keep adequate sight distances cleared and quite frankly an effort towards better communications.


ARR TO SEN. COGHILL & REP. MILLER 1/5/88

As you noted, the Alaska Policy on Railroad/Highway Crossings is not specific with regard to existing crossings and sight triangle maintenance. However, it was the understanding of the ARRC Engineering staff who participated in the development of the policy that the sight triangle requirements were to apply as a guideline for existing as well as new crossings. Therefore, our engineering staff is preparing an amendment to the policy to make the language specific. That language should come before the board for approval soon.

Even though it is the ARRC's position that the Corporation does have the unilateral right to establish maintenance standards and requirements for road crossings that will insure safety, I believe as you have suggested that we should get public input on this as well as other subjects and that the recently established Community Briefing Council can provide a forum for this.

Additionally, one of the basic concepts of the Crossing Policy is that community input is needed regarding the upgrading or closing of crossings. I have been informed that at least twelve crossings were looked at in 1987 by diagnostic teams. At each of these reviews the local governments and boroughs have been represented.

Sincerely,

  
James O. Campbell Chairman  
Board of Directors

cc: ARRC Board of Directors  
F. G. Turpin, President and CEO

Thanks for you Christmas  
card. See you in June  
JOC

# ★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907 452-4761

May 4, 1988

Francis C. (Obie) Weeks  
Chief Engineer  
Alaska Railroad Corporation  
P.O. Box 7-2111  
Anchorage, AK 99510-7069

Dear Mr. Weeks:

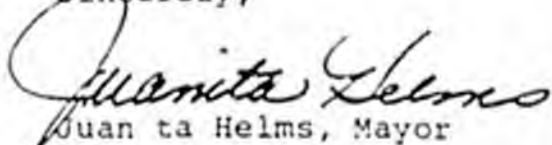
We appreciated the opportunity to participate in the workshop last week on proposed changes to the Alaska Policy on Railroad/Highway Crossings. Since revisions are being entertained at this time, it seems appropriate to address several ongoing concerns.

In September of 1986 the Borough reviewed the draft Alaska Policy on Railroad/Highway Crossings. The comments we made at that time are included as Attachment 1. A review of the policy that the railroad subsequently adopted shows that none of our comments were addressed. The organization of the policy was changed, but the working of the body of the policy remains nearly identical to the previous version.

The comments contained in the previous letter are still of concern to the Borough. Attachment 2 details some of the prior issues and raises new concerns that have surfaced in subsequent months.

We hope that these comments will be considered in making changes to the Alaska Policy on Railroad/Highway Crossings.

Sincerely,

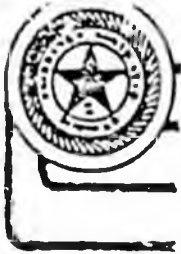


Juanita Helms, Mayor  
Fairbanks North Star Borough

Attachments

JH/TB/bjs

MAYOR HELMS TO A.R.R. 5/4/88



**Fairbanks  
North  
Star  
Borough**

ATTACHMENT 1

**COPY**

Mayor: Juanita Helms

September 19, 1986

Mr. John Simpson, Director  
Standards and Technical Services  
Alaska Dept. of Transportation and  
Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801

Dear Mr. Simpson:

The Fairbanks North Star Borough has reviewed the Draft Executive Summary describing Alaska Railroad Crossing (ARRC) Policy. We have the following comments:

Section 2.2. Current permits make the road agency responsible for construction and maintenance costs associated with crossings, and makes the road agency responsible for all claims concerning the crossing. Concerning this policy; 1) who actually does the construction and maintenance of the crossing?, and 2) if it is the Railroad, how do they bill the road agency?

Page 2. When the APV was applied to the state's crossings, the Task Force found that the crossings could be upgraded with available state and federal funds. Were local crossings considered?

Section 2.3.5. The program "Operation Lifesaver" is not familiar to all readers and therefore, a short description should be included within this section of text.

Section 2.4.1. The railroad's policy of not permitting new crossings without the concurrence of the diagnostic team is concerning. While the Borough recognizes the need for maintaining safe lines, we are concerned that the diagnostic team consists of ARRC and ADOT/PF officials with the local agency being "invited to attend". Currently, much of the land use planning in

Mr. John Simpson  
September 19, 1986  
Page 3

realities in our Borough which the ARRC and Task Force must recognize and deal with accordingly before such a policy can be implemented.

Thank you for the opportunity to review and comment on this matter.

Sincerely,

Juanita Helms, Mayor  
Fairbanks North Star Borough

JH:pe

## ATTACHMENT 2

### GENERAL COMMENTS

#### Authority

The policy makes no reference to the source of authority by which the ARR and DOT&PF developed the "Alaska Policy on Railroad/Highway Crossings".

#### Procedures

There is no reference to a policy of appeal rights nor is there any specified avenue for relief from the administrative decisions of the task force.

#### Liability

*this has sunset*

Although the railroad would physically do all of the maintenance of crossings, the policy implies that liabilities due to improper maintenance are the responsibility of the permittee. Expecting the permittee to incur a liability for something that they have no control over, is unreasonable.

#### Costs

Permittees are supposed to agree to pay all construction and maintenance costs for crossings, yet there are no cost figures included with the permit. This is essentially asking the permittee to sign a blank check, and it makes it impossible to budget for the expense.

In locations where a road right-of-way supercedes the railroad right-of-way, all crossing expenses should be the responsibility of the railroad.

#### Jurisdiction

The policy does nothing to address how a government entity such as FNSB, with no road powers, can comply with the recommendations. In areas outside of the cities of North Pole and Fairbanks, that are not in service areas, we have no road authority. This power can only be designated by a vote of residents in the area. Until this occurs, we could not expend money for a crossing improvement.

#### Makeup of Diagnostic Team

The only required members of the diagnostic team are ARRC and DOT&PF. Policy 4.3.2 states,

Diagnostic teams should include as a minimum representative of the ARRC and the DOT&PF Region. Where appropriate representatives of the following should be informed and invited to participate in any on-site evaluation leading to an improvement decision:

- a. The FNSB;
- b. The Agency maintaining the road, if not DOT&PF;
- c. The Borough;

This wording provides nothing to ensure that the permitting agency will have any say in the recommendations of the diagnostic team. Policy 4.5.4. requires diagnostic team evaluation before any new crossing is approved. This could result in all future crossing locations being determined by the ARR and DOT&PF. As the land use regulatory agency for the Borough, we find this unacceptable.

So far the ARR and DOT&PF have been very cooperative in having the Borough participate in this process. However, we request that the permitting agency be made a regular member of the diagnostic team.

SPECIFIC COMMENTS

4.5.4.6 This policy states that the dedicated road right-of-way for public crossings must include dedicated clear sight triangles for maximum design highway and train speeds. In some cases this would require right-of-way acquisition. Would the permittee be responsible for this process and the associated costs?

New crossings

4.6 The heading for 4.6 should be changed to accurately reflect the content of the recommendations "Public vs. Private Crossing Criteria". We recommend deleting 4.6.1.1 with regard to the number of parcels as defining the reclassification of "truly 'private' crossings" since three or more parcel owners may indeed wish to have a restricted crossing.

ARR to Review by host

4.6.1 With regard to 4.6.1(3), we strongly urge the insertion of the word "public" and recommend the sentence to read: "The roadway is designated as a public road by the governmental authority responsible for planning and/or zoning..."

Special education buses in the F&SB presently use private roads to transport students. In some instances, regular school buses are also allowed to travel on private easements. This does not make them public roads, according to F&SB definition.

3  
4.7.1(4) It seems unreasonable that the permittee should be required to post a sign stating "ARRC Property - Proceed at Your Own Risk". This should be the ARR's responsibility.

R.R. is responsible

Sight Triangle  
Train Speed / Traffic Speed  
P.L.O.  
private land owner

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

August 18, 1988

The Honorable Carleta Lewis  
Mayor, City of North Pole  
Post Office Box 55109  
North Pole, AK 99705

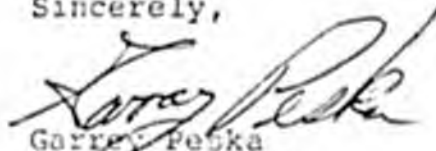
Dear Mayor Lewis:

On August 16, the Governor and I met with Mr. Frank Chapados who, as you know, is a member of the Alaska Railroad Board of Directors.

I told Mr. Chapados that the Railroad appears headed for a confrontation with the City of North Pole and with the Fairbanks North Star Borough over the decision to require municipal maintenance of crossing areas.

I recommend that you contact Mr. Chapados in his role as acting Board Chairman and express your views on this matter. Mr. Chapados expressed a willingness to ask the Board to review the crossing maintenance policy.

Sincerely,

  
Garrey Peska  
Chief of Staff

cc: Governor Cowper  
Mayor Helms  
Comm. Tony Smith  
Comm. Mark Hickey  
Frank Chapados



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Dear Mayor Lewis

I have asked that Public Safety contact you regarding the problem with your city vehicles. I would expect that Gary Horvick the Deputy Commissioner would be in touch shortly. Also I have talked with Mark Hickey Commissioner of DOT/AF to talk about the Railroad Crossing Problem. We have to sit down and have a more in depth conversation. I'll keep you informed.

Thank you for meeting with me. I look forward to seeing you again soon.

Sincerely  
Bob Evans

# Alaska State Legislature

Representative Mike W. Miller  
P.O. Box 55094  
North Pole, Alaska 99705



While in Juneau  
Pouch V  
Juneau, Alaska 99811  
(907) 465-4976

## House of Representatives

September 13, 1988

Mr. George Sullivan, Chairman  
Alaska Railroad Board  
of Directors  
P.O. Box 107500  
Anchorage, Alaska 99510

Dear George:

I understand the Alaska Railroad Board of Directors will meet this Thursday, September 15th, to discuss amendments to the Railroad Crossing Policy. I would like to request that you take a few moments of the Board's time to discuss a deadlock between the City of North Pole and the Railroad regarding improvements to the existing crossing at Eighth Avenue in North Pole.

The Department of Transportation and the Alaska Railroad have determined the crossing at Eighth Avenue should be upgraded to include warning lights and gates. Since federal funds are available for improvements of this nature, the project was made bid-ready but has subsequently been shelved due to questions of responsibility and liability.

The City of North Pole did not request or play a role in designing the crossing upgrade yet they are being pressured to assume the ongoing inspection, maintenance and liability expense associated with it. The yearly inspection fee alone is estimated to be in the neighborhood of \$3000 which does not include the expense of the yearly permit fee, electrical hookup, maintenance or liability. The Railroad would determine what yearly maintenance was needed, when it would be done and simply bill North Pole for reimbursement of their cost. This scenario is unacceptable for small municipalities and the City has therefore refused to sign the Automatic Crossing Signal Construction Agreement.

The circumstances of this particular crossing epitomize the feeling of frustration that many of the smaller railbelt municipalities are experiencing with regard to the railroad crossing issue. This issue has continued, unresolved, for at least two years and I feel the Board of Directors should take


REP MILLER TO A R R. BOARD 9/13/88

George Sullivan  
Page 2  
9/13/88

decisive action to reach an acceptable agreement with the municipal leaders. I believe the City of North Pole would be receptive to discussion of a flat yearly fee for individual crossings that they could budget for.

George, I look forward to hearing the Board's thoughts on this issue.

Sincerely,

  
Mike Miller  
Representative  
District 18

cc: Mr. Frank Turpin

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

September 26, 1988

The Honorable Carleta Lewis  
Mayor  
City of North Pole  
P. O. Box 55109  
North Pole, AK 99705

Dear Carleta,

George Sullivan asked that I answer your letter of September 12, 1988, in which you requested that your protest to the Alaska Railroad Crossing Policy be officially entered into the record.

Judging from the objections expressed in your letter, I believe you have confused the crossing policy with the contract the Alaska Railroad has with the City of North Pole that permits your road crossings. The Alaska Policy on Railroad/Highway Crossings does not state that governmental entities bear the responsibility and liability for the crossings. The maintenance and liability responsibilities are set by the contract between the Alaska Railroad Corporation (ARRC) and the owner of the road (Permittee). In the case of the City of North Pole, this is Contract No. 5719. None of your comments indicated any problem with the Alaska Policy on Railroad/Highway Crossings, and the Board of Directors accordingly approved the policy as presented. However, considerable time was spent discussing your questions about maintenance.

There are five types of crossing maintenance:

1. Ongoing routine maintenance for signals. This is inspection of the signal once per week for deteriorated wiring, burned out lights, corrosion, or other indications of potential malfunction, plus lubrication of any moving parts. We follow industry standards recommended by the Association of American Railroads for this inspection plus some additional precautions dictated by the extreme Alaska weather. Technicians performing this very important work must be trained in electronic circuitry and possess detailed knowledge of Alaska Railroad signal equipment. Training and qualification for these technicians requires a minimum of four years of classroom and on-the-job experience. The average cost today to the railroad for this inspection, including labor, vehicle, travel time and normal maintenance parts, is \$62, or about \$3200 per crossing per year. We would be happy to bill the City a fixed annual fee for this service if it would help you with your budgeting.

MR. TURPIN TO MAYOR LEWIS 9/26/88

2. Trouble calls. Frequently, calls are made to the railroad to report an inoperative signal. Although many of these are false alarms and no malfunction is found, they all must be investigated immediately, and when necessary, repaired, whether it be after hours, a holiday, etc. As you can see, it is very difficult to estimate the frequency or cost of these repairs, but the entire railroad averages about \$10 per week or \$500 per year per crossing for these types of repairs. Again, we would be happy to bill you our average cost as a fixed annual fee.
3. Sight triangle maintenance. Sight triangle requirements are set by Appendix A of the revised crossing policy. This requires removal of any obstructions or control of brush in the sight triangle to afford the motorist a clear view of the track. The cost of this maintenance varies considerably with the location, but in every case it is much more cost effective for the Permittee to perform this work at the time it is performing routine road maintenance. When work is within 20 feet of the track centerline, the railroad requires a flagman to protect workers from train movements. We provide this service at no cost to the Permittee.
4. Periodic major repairs, such as replacing the crossing. This work is frequently initiated by the Permittee, but in any event, it is a joint decision. In most cases it can be projected at least two years in advance to allow time for budgeting.
5. Vandalism and accident damage. If local authorities are able to apprehend the party responsible for either vandalism or accident damage, the cost can usually be collected from them. Otherwise, this becomes the responsibility of the Permittee, which in the case of a municipality is also the party responsible for controlling vandalism and vehicles.

By signing its crossing permit (Contract No. 5719), the City of North Pole has accepted responsibility for all maintenance. Section 5 reads as follows: "During the term of this permit, the Permittee shall maintain the facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations."

Your contract also is very clear and specific on crossing liability. As stated in Section 7, "Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, use and existence of the facility located on or over the permit area. This provision shall not be interpreted to mean that the Permittee shall assume liability for the negligence of railroad employees while acting within the scope of their employment." Since you have agreed to assume liability on the present crossing, I should think your liability risk would be considerably less with crossing signals. This may even be reflected in lower insurance premiums.

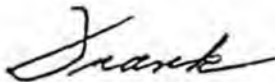
Regarding automatic crossing signals, Section 12 of your permit reads "If automatic crossing signal devices are required by either party, such signals shall be furnished, installed and maintained by Railroad at the expense of the Permittee."

Mayor Carleta Lewis  
September 26, 1988  
Page 3

Unfortunately, the signalization of the 8th Avenue crossing was being decided at the same time the Alaska Policy on Railroad/Highway Crossings was being developed. Consequently, the City of North Pole was not involved in the decision to proceed. To conform with the Policy, we believe a Diagnostic Team evaluation should be conducted. Obie Weeks will be in Fairbanks on Monday, October 17, 1988, and will be available to conduct the Diagnostic Team evaluation that afternoon. The Diagnostic Team members will include you, City of North Pole; Obie Weeks, ARRC; Ron Tanner, DOT/PF - Northern Region; and Todd Boyce, FNSB Transportation. Other participants to be included are Martin Gutoski, FNSB Platting; Bob Shefchik, FNSB School District; and Captain Shover, Alaska State Troopers. Correspondence will be mailed this week to the team members and other participants detailing the exact time and location.

I hope I have been able to clarify some of the confusion between our crossing policy and your contract to permit the crossing. I am very anxious to have full participation by the affected community in selecting crossings for signalizing. The Diagnostic Team meeting on October 17, 1988, should meet that need.

Sincerely,



F. G. Turpin  
President and Chief Executive Officer

cc: Steve Cowper, Governor, State of Alaska  
George Sullivan, Chairman of the Board, ARRC  
Juanita Holms, Mayor, Fairbanks North Star Borough  
Harry Gieseler, Mayor, City of Seward  
Obie Weeks, Chief Engineer, ARRC

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

September 28, 1988

Representative Mike W. Miller  
P. O. Box 55094  
North Pole, Alaska 99705

Dear Mike,

Thank you for the copy of your letter to ARRC Board Chairman George Sullivan. Your letter was discussed at the board meeting on September 15, 1988, and George has asked me to comment on some of the points you raised.

The Department of Transportation and Public Facilities, by letter dated February 11, 1988, offered to have a Diagnostic Team review of the 8th Avenue crossing and include the City of North Pole in the decision-making process. The City refused their offer. A copy of this correspondence is attached.

Nevertheless, we have again offered to convene a Diagnostic Team to review the 8th Avenue crossing in my letter to Mayor Lewis of September 27, 1988. A copy of this letter is attached for your information.

Your comment about small communities being frustrated with the railroad attitude on road crossings is disturbing but, I suspect, very true. Two things have happened since the State purchased the railroad. One, in an attempt to reduce crossing accidents, we have been much more demanding that brush and other obstructions in the sight triangle be removed. Second, with the help of DOT&PF, we have been successful in obtaining more Federal funding for upgrading crossings with signalization. Both of these steps have contributed to a significant reduction in accidents for which we and the municipalities are both very thankful, but both have also contributed to much higher maintenance costs. Communities, eager to gain a crossing as a convenience to a subdivision or whatever, are quick to agree to provide all maintenance when they obtain the permit. Later, as budgets have grown tighter, they look on the maintenance costs as something the railroad should be paying even though their citizens benefit from the crossing and they have signed a contract with the railroad to permit the crossing which clearly states that they pay for all maintenance.

I hope this letter and my letter to Mayor Lewis will help clear some of the confusion on maintenance charges and liability for the 8th Avenue crossing. Please do not hesitate to give me a call if you would like to discuss any of these points.

Regards,

F. G. Turpin  
President & CEO

Attachments (2)

cc: Senator John B. Coghill

MR. TURPIN TO REP. MILLER 9/28/88

P.O. BOX 55109  
NORTH POLE, ALASKA  
99705



TOP OF THE WORLD  
PHONE: 907-488-2281  
AT YOUR SERVICE

September 12, 1988

STATE OF ALASKA  
Alaska Railroad Corporation  
PO Box 7-2111  
Anchorage, Alaska 99510-7019

ATTN: George Sullivan, Chairman

RE: Railroad Crossing Policy

Dear Mr. Sullivan and Alaska Railroad Boardmembers:

The City of North Pole protests the Alaska Railroad Crossing Policy as written and desires that this objection be officially entered into the record. The Railroad is stating that municipalities and other governmental entities must bear the cost of maintaining these crossings while the railroad retains the right to decide what work is to be done and to contract it at our expense. Therefore, it is impossible to budget for these costs since the community has no control or input into the decision making process.

The City of North Pole does not question the need for safety at these crossings. However, the municipality cannot accept responsibility for two reasons: availability of funds and potential liability. As you are aware, most governmental agencies are suffering severe cutbacks in funding. Secondly, the city insurance broker is extremely hesitant to accept crossing maintenance and the accompanying liability problem.

Regarding this issue of safety, federal and state dollars were appropriated for crossing signalization at 8th Avenue in North Pole. The state D.O.T. and the Alaska Railroad have "shelved" this project because the City will not accept the accompanying crossing maintenance agreement. It appears that the


MAYOR LEWIS TO GEORGE SULLIVAN 9/12/88

Page 2, Alaska Railroad Crossing Policy

issue of safety is not as important as coercing the City of North Pole to accept an unworkable crossing policy arrangement. At the present time it appears the project will not be constructed. Voluminous correspondence to Railroad officials has thus far failed to rectify the situation.

It is my sincere wish that the City and the Railroad can come to some sort of workable agreement regarding this problem. The City of North Pole is more than willing to work with the Alaska Railroad towards that end.

Sincerely

A handwritten signature in cursive script, appearing to read 'Carleta Lewis', with a long horizontal flourish extending to the right.

Carleta Lewis, Mayor  
The City of North Pole

cc.

The Honorable Governor Steve Cowper  
The Honorable Mayor Juanita Helms, Fairbanks North Star Borough  
The Honorable Mayor Harry E. Gieseler, City of Seward

Effect of amendments. — The 1987 amendment inserted "rotor" in paragraph (3).

## \*Chapter 40. Alaska Railroad Corporation.

### Article

1. Establishment and Organization (§§ 42.40.010 — 42.40.060)
2. Management (§§ 42.40.100 — 42.40.120)
3. Administrative Provisions (§§ 42.40.150 — 42.40.230)
4. Powers and Duties (§§ 42.40.250 — 42.40.310)
5. Corporation Property (§§ 42.40.350 — 42.40.450)
6. Financial Provisions (§§ 42.40.500 — 42.40.540)
7. Bonds (§§ 42.40.600 — 42.40.700)
8. Personnel and Labor Relations (§§ 42.40.705 — 42.40.890)
9. General Provisions (§§ 42.40.900 — 42.40.990)

Cross references. — For legislative findings and purpose in enacting this chapter, see § 1, ch. 153, SLA 1984 in the Temporary and Special Acts; for special reports required, see § 3, ch. 153, SLA 1984 in the Temporary and Special Acts.

Legislative history reports. — For legislative letter of intent relating to ch. 153, SLA 1984 (SCS CSHB 512 (Fir.) am S), see 1984 Senate Journal, p. 3221.

### Article 1. Establishment and Organization.

#### Section

10. Establishment of the corporation
20. Board of directors
30. Term of office

#### Section

40. Vacancies
50. Compensation and expenses
60. Board officers

Sec. 42.40.010. Establishment of the corporation. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the state. The continued operation of the Alaska Railroad by the corporation as provided in this chapter is considered an essential government function of the state. (§ 2 ch 153 SLA 1984)

Sec. 42.40.020. Board of directors. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the commissioner of transportation and public facilities, and five members appointed by the governor. The five appointed members must be registered voters in the state except as provided in (1) and (2) of this subsection. Except for the commissioners and the member appointed under (5) of this section, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

**Sec. 42.40.300. Use of corporation assets.** The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, another asset, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.310. Indemnification.** (a) The corporation may defend and indemnify a current or former member of the board, employee, or agent of the corporation against all costs, expenses, judgments, and liabilities, including attorney's fees, incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the corporation, if the person acted in good faith on behalf of the corporation and within the scope of official duties or powers.

(b) The corporation may purchase insurance to protect and hold personally harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with, the corporation and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding. The purchase of insurance is discretionary with the board and insurance is not considered to be compensation to the insured person. (§ 2 ch 153 SLA 1984)

#### Article 5. Corporation Property.

Section	Section
350. Land	400. Vacation of easements
365. Prohibition	410. Federal land
360. Request for land	420. Public use of railroad land
370. Conveyance of land	430. Acquisition of government property
380. Use of state land	435. Exchange of land
385. Eminent domain	440. Use of pesticides and herbicides
390. Land use rules	450. Adverse possession

\* **Sec. 42.40.350. Land.** (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, unless

the corporation does not own or control sufficient land to allow a corridor of that width. Railroad utility corridors may be surveyed by the metes and bounds method. The corporation may not convey its entire interest in land within a utility corridor except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, 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.

(c) 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 rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.355. Prohibition.** Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

**Sec. 42.40.360. Request for land.** (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

### Article 3. Effect of Statutes.

Statutes become law and take effect

**Sec. 01.10.070. Time statutes become law and take effect.**

(a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution.

(d) An Act which specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time on the date specified.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice has no effect upon the date the bill becomes law nor upon the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;