

HISTORY: ALASKA RAILROAD EASEMENT

IT IS A PROBLEM OF STATEWIDE CONCERN

A BRIEF HISTORY:

Easement Act of 1898: provided for a 200 ft. wide easement in Alaska for anyone willing to build a railroad. No takers.

Alaska Railroad Act of March 12, 1914: 200 ft. wide easement, 100ft each side of centerline for “railroad, telephone, telegraph”. RR was owned by the Fed. Govt.

Pre –statehood this easement is found in patents issued by the Dept. of the Interior to homesteaders along the line.

Post statehood the RR continued to be owned and operated by the Fed. Govt. 45 USC 1201-1214.

The 1982 ARRTA transferred the rights of the Fed Govt to the State.

1 Transfer of existing real property under Sec. 2003.

2 Allowed for the State to acquire future easements of several varieties. Sec. 2008.

3 left the 1914 easements as they were: Sec. 1212.

4 Reversion to adjacent property owners: Sec. 1209 repealed in 2003. Corrected as to the Eilson Spur in the last session.

In 2006 AK RR solicits and acquires from Dept of the Interior patents converting 1914 -conveyed and sec. 2003 -transferred easements into 2008 easements. This changes a simple easement for certain uses into virtual ownership.

THE TWO BASIC ISSUES

ONGOING USE

RIGHT OF REVERSION

Railroad Issues

The purpose of this flyer is to give you a small amount of information regarding the issues with the railroad. This document is not intended to provide any legal advice or legal assistance to you.

There are 2 general issues going on with the railroad's new policy:

The 1st is **the use of the involved property by the railroad and competing uses by adjacent landowners.**

The situation can vary along the railroad property depending on the circumstances. For example, as far as the railroad yard downtown goes, the railroad may own the property outright. The railroad's ownership rights along its track might be various depending upon the locality involved. The railroad was deeded a "right-of-way" for "railroad telephone and telegraph" in some areas. This is not outright ownership. The usage follows the language of the right-of-way document. A right-of-way is simply a type of easement.

It is my understanding that a right-of-way confers upon the owner of that right-of-way the right to use that right-of-way for the purposes stated in the right-of-way document which created it. Typically, the property owner of the property adjoining the right-of-way or the owner of the property over which the right-of-way traverses has a right of reasonable use of the right-of-way conveyed, which uses are not unreasonably inconsistent with the right-of-way holders use. In a dispute between the right-of-way holder and others, the question of whether or not the uses are reasonable and not inconsistent becomes a fact issue during litigation, on occasion. That is an issue on a case-to-case basis where there are many users along a right-of-way, and different uses under consideration.

The owner is not required to apply for or pay for a permit to use the property, as the railroad is now attempting to require. Likewise, the right to use the right-of-way in a manner not inconsistent with the right-of-way holder's use is not subject to being terminated unless the creating document calls for that.

The 2nd issue **involves what is technically called “reversion”**. This commonly occurs where an easement or right-of-way is abandoned. Although there may be exceptions, the right-of-way which is the “dominant estate” commonly “reverts” back to the servient estate that it crosses if the ROW is abandoned. A thorough explanation of this as related to the railroads on a national basis is contained in a website of the National Association of Reversionary Property Owners (NARPO): links: home.earthlink.net/~dick156/row.htm. and prfamerica.org/speeches/3rd/RailsToTrailsMovement.html. This website and information deals with the reversion right as impacted by the “Rails to Trails Act” which was an attempt to circumvent the reversion right.

This issue is very complicated on a national basis and is further complicated locally by statutes having to do with the creation of the Alaska Railroad, the creation of their rights-of-way for track, the 1982 Alaska Railroad Transfer Act which transferred the Alaska Railroad from the federal government to the state of Alaska, some other federal statutes having to do with the reversion right, and a state statute that was passed in the last session of the legislature having to do with the Eielson Spur line.

I will not attempt to analyze all of this here but only point all this out to indicate that the matter is not simple. The attempt by the railroad to fit all of this into one new policy of the railroad may infringe on our rights which you and others have to reversionary rights.

At this juncture I simply recommend that we get organized, perhaps combining to acquire legal resources and other assistance. This assistance could also involve marshaling political assets.

I hope that this has been helpful and will advance the discussion.

ROADMAP TO THE PRESENT CONFUSION

A. PRE -1982 RIGHT OF WAY: ALL WERE GRANTED UNDER THE 1914 RR ACT AND ARE FOR "RAILROAD, TELEPHONE AND TELEGRAPH".

B. 1982 TRANSFER ACT: 3 CATEGORIES OF TRANSFERS THERE:

1. SECTION 1203 TRANSFERS: "RAIL PROPERTIES" (see; sec.1202(10) for the definition): THIS CONVEYED THE RIGHT OF WAY OWNED BY THE USA THROUGH THE RR. ALL SUCH PRE-82 EASEMENTS WERE UNDER THE 1914 ACT.

2. SECTION 1208 TRANSFERS: THE FEDS AGREED TO MAKE FED LAND AVAILABLE FOR FUTURE RAIL LINES AFTER 1982. (These were to be in a form as close as possible to the language of the 1914 Act and 1202(6), depending on the circumstances. See: 1208(a).

3. SECTION 1208(b)(1)(D). APPLICABLE TO DENALI PARK: THIS IS AN "EXCLUSIVE USE" EASEMENT AS DEFINED BY 1202(6) (See cheat sheet for the restrictions) This is the only place in the Act where such a "restricted use" easement is conveyed. The key word here is "CONVEYED". Other than Denali Park all pre-82 easements were simply passed through to the State since that was what the Feds owned.

C. PATENT AA 55129-9: (issued in 2006) This patent is for lands in Anchorage. The same may have occurred in the Valley, Fairbanks, etc. Note that it is issued with the restricted use language of Denali Park because it uses the 1202(6) rather than the 1202(10) language.

THE RR WITH BLM HELP HAS CONVERTED 1914 EASEMENTS INTO A COMPLETELY DIFFERENT OWNERSHIP INTEREST BY CONFLATING 1914 EASEMENT LANGUAGE WITH DENALI PARK EXCLUSIVE USE LANGUAGE.

THE RR CLAIMS THAT IT HAS THE FIDUCIARY DUTY TO
MAXIMIZE RR PROPERTY OWNERSHIP AND THAT THE 2006
PATENT OPERATES AS AN INVERSE CONDEMNATION LEAVING
ALL PROPERTY OWNERS TO SUE FOR COMPENSATION

THE RR ACCOMPLISHED BOTH GOALS ON PAPER

BUT.....

(1) AS TO THE LAND GRAB CHANGE FROM 1914 TO AN
EXCLUSIVE USE EASEMENT SEE:

AS 42.40.285

“Unless the legislature approves the action by law, the corporation may not

....

(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with.....

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).”

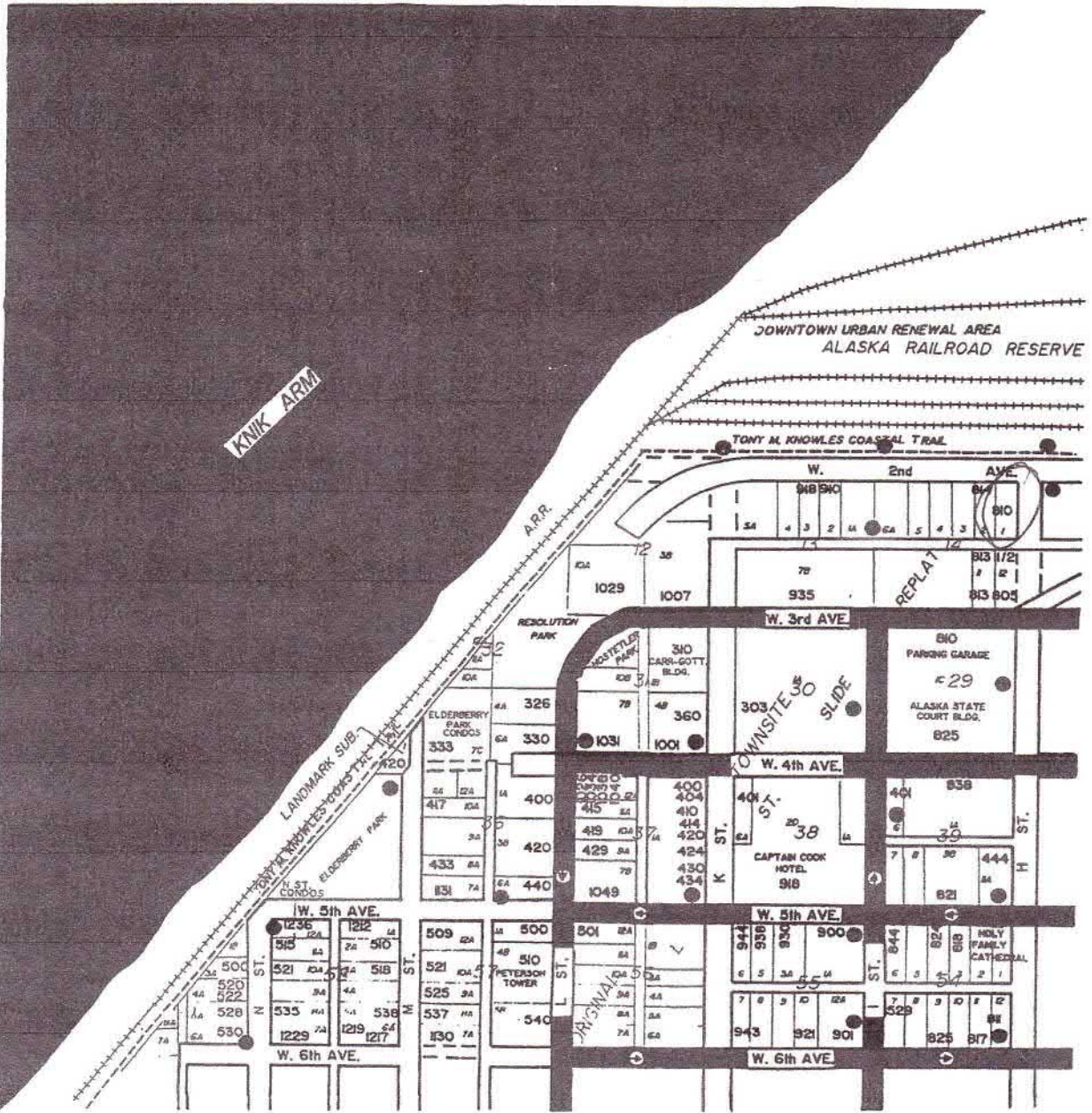
AA55129-29 IS IN A MUNICIPALITY AND MUST CARRY THE 1914 ACT AND 1202(10) LANGUAGE, NOT (6) AS IT DOES, AT LEAST NOT WITHOUT LEGISLATIVE APPROVAL. DID THE LEGISLATURE APPROVE? DID IT EVEN KNOW?

(2) AS TO CONDEMNATION CAUSED BY THE PATENT SEE: AS 42.40.385

(d) The exercise of the power of eminent domain requires the prior approval of the governor.

THE CONVEYANCE FOR DOWNTOWN EXAMPLE

The situation is identical along the line in Anchorage. The Oceanview area conveyance of 1949 is identical in form



GR. 1229

NE 1/4 SEC. 13, T13N R4W

62

COPYRIGHT 1997 JMR



SEE OVERVIEW MAP "F"

ANCHORAGE 09620

RECEIVED
U. S. LAND OFFICE
ANCHORAGE, ALASKA
DATE 9-19-40
HOUR 2 p m

THE UNITED STATES OF AMERICA,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, there has been deposited in the General Land Office of the United States evidence whereby it appears that Simon Hellenthal is entitled to a patent for the Lot one of Block thirteen in the Townsite of Anchorage, Alaska

According to the approved Plat of the Survey of said Townsite on file in the General Land Office, containing seven thousand square feet:

Now KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Simon Hellenthal the Tract of land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Simon Hellenthal and to his heirs and assigns forever; subject to any vested and accured water rights for mining agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts. But excepting, nevertheless, and reserving unto the United States, rights of way over, across and through said lands for canals and ditches constructed by its authority, all in the manner perscribed and directed by the Act of Congress approved August 30, 1890 (26 Statl, 391) And there is, also, reserved to the United States right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 305).

IN TESTIMONY WHEREOF, I, Franklin D. Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. GIVEN under my hand, at the City of Washington the Twenty-seventh day of August in the year of our Lord one thousand nine hundred and forty and the Independence of the United States the one hundred and Sixty-Fifth.

(SEAL) BY the President: BY the President Franklin D. Roosevelt

By Jeanne Kavanagh, Secretary

R. S. Clinton
Chief, Patents Division, General Land Office

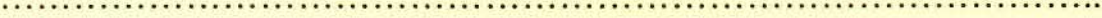
RECORDED: Patent Number 1109127

The foregoing instrument was filed for record at 11 o'clock A. M. November 27, 1940, at the request of Simon Hellenthal.

Phos Office
District Recorder

**DOWNTOWN
1940**

NEIGHBOR'S PROBLEM



SOON TO BE OURS



OFFICE OF THE GENERAL COUNSEL
TELEPHONE: (907) 265-2305
FACSIMILE: (907) 265-2443
EMAIL: behrenda@akrr.com

Via Regular U.S. Mail

July 24, 2012

Roy L. Longacre, Esq.
Longacre Law Offices, Ltd.
425 G Street, Suite 910
Anchorage, Alaska 99501

**Re: Peter and Rejani Slaiby
ARRC Transitional Residential Land Use Policy**

Dear Mr. Longacre:

This letter responds to yours of June 6, 2012, which was submitted electronically as a public comment regarding the proposed adoption by the Alaska Railroad Corporation ("ARRC") of the ARRC Transitional Residential Land Use Policy ("TRLUP"). Those public comments were submitted pending potential action on that proposed policy at the ARRC Board of Directors meeting on June 7, 2012.

As I believe you know from speaking to Karen Morrissey, ARRC's Real Estate Director, the ARRC Board decided at the June 7 meeting to return the proposed policy to the Board's Right-of-Way Committee for further consideration and possible revision. A letter was recently sent to adjoining property owners, including the Slaibys, informing them of that development. Any additional developments regarding the proposed policy will be communicated to adjoining property owners at a later date.

We wanted to respond separately to your letter in order to address your specific comments relating to the respective property rights of the Slaibys and ARRC. As we proceed to develop and revise the proposed policy, it is important that ARRC and its residential neighbors have a common understanding of those issues.

A. History of ARRC's Right-of-Way (ROW) and Its Property Interest in the ROW.

In order to understand the Slaibys' specific situation, it is necessary to understand the history and legal status of ARRC's ROW. ARRC obtained its ROW from the federal government as a result of the Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201 et seq. (ARTA) and the Alaska Railroad Corporation Act, AS 42.40 (ARCA). In ARTA, Congress provided that the State of Alaska would receive all of the United States' interest, but at a minimum an exclusive use easement, in the Alaska Railroad right-of-way. See 45 U.S.C. § 1203(b) (providing for the conveyance to the State of title to all lands within the Alaska Railroad right-of-way). In ARCA, the Alaska Legislature established ARRC and provided that the railroad lands to be conveyed under ARTA would be conveyed to ARRC. See AS 42.40.350.

Beginning in 1985, the federal government began the process of conveying the ROW to ARRC. The conveyance process included the initial step of interim conveyances by the federal government of much of the land in the ROW to ARRC, wherein ARRC received at least an exclusive use easement in its ROW. Since the initial conveyances, the federal government, through the Bureau of Land Management, has engaged in an incremental process of patenting the land in the ROW to ARRC. As a result of this conveyance process, ARRC holds an exclusive interest in the entire ARRC ROW. The nature of ARRC's interest in the ARRC ROW ranges from a fee simple interest for much of the ROW to, at a statutory minimum, an exclusive use easement.

Even the exclusive use easement, the minimum interest ARRC owns in its ROW, provides ARRC with exclusive rights of possession and use in the ROW. As provided in ARTA, 45 U.S.C. § 1202(6):

"[E]xclusive-use easement" means an easement which affords to the easement holder the following:

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

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

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

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

Under this statutory definition of an exclusive use easement, ARRC has - at a minimum - the exclusive right to use and possess the ARRC ROW for transportation, communication and transmission purposes. Moreover, ARRC has the right to fence the ARRC ROW and to exclude all other persons and entities from all or any of it.

ARRC's right to possess its ROW and to use it for railroad purposes is "exclusive." And ARRC not only has the right to exclude all other persons from the ARRC ROW, it exercises that right. It fences portions of the ROW in busy areas, places

prominent "No Trespassing" signs, cites unauthorized persons on the ROW as trespassers, and takes other measures to keep people off the ROW. Another clear reflection of ARRC's exercise of control of access to the ROW is the fact that ARRC requires agencies, entities and individuals wishing to cross, occupy or use any portion of the ROW to qualify for and obtain paid permits to do so.

B. ARRC's Interest in the ROW Adjacent to the Slaibys' Property.

The portion of the ARRC ROW adjacent to the Slaibys' property includes portions of Lots 13 and 14 in Block 3 of the Sunset Hills West Subdivision ("Lots 13 and 14") lying to the southwest of the "Take Line" shown on the plat of Potter Hill Relocation according to Plat 64-105. This land was acquired by the federal government in 1965, following the 1964 earthquake, which caused the bluff in the vicinity of what is now Jarvi Drive to slide. The federal Alaska Railroad determined that it needed to acquire additional property on the bluff side of the ROW to provide for a stable and secure right-of-way in that area. Accordingly, the federal government "took" additional land in the Potter Hill area for use in the ROW, receiving deeds conveying land in that area in exchange for payment of compensation.

One of those deeds conveyed to the federal government the portions of Lots 13 and 14 lying to the southwest of the "take line." A copy of that warranty deed is enclosed. The interest granted to the federal government in those lots was "[a] perpetual right-of-way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines" The deed stated that "the above-described premises are being acquired for the Alaska Railroad, Department of the Interior." A title report obtained by ARRC with respect to Lots 13 and 14 confirms that grant of a perpetual right-of-way and railroad easement constitute a special exception to the Slaibys' title to Lots 13 and 14. A CD containing a copy of that title report and the documents upon which it is based is enclosed for your convenience.

Pursuant to ARTA, the portions of Lots 13 and 14 southwest of the "take line" were included among the lands to be transferred to ARRC to be occupied and used as part of its ROW, just as that land had been used and occupied by the federal Alaska Railroad. The intent of the federal government is that this land will be finally conveyed to ARRC pursuant to ARTA, although that final conveyance has not yet occurred. Consequently, although ARRC has an exclusive right to occupy and use the land for its ROW, both to operate a railroad and for the other statutory purposes identified in ARCA, the federal government still owns this portion of the ARRC ROW. As Patrick Kelly, ARRC's former Land Services Manager, informed both Mr. Slaiby and Scott Jones of SAJJ Architecture in April 2012, and Rob Hahn, Mr. Kelly's successor, mentioned to you in an email of June 6, 2012, the U.S. Bureau of Land Management currently is reviewing Plat 64-105 for transfer of Lots 13 and 14 to the ARRC. Copies of those communications are enclosed.

The fact that the federal government still owns the portions of Lots 13 and 14 in the ARRC ROW does not affect ARRC's exclusive rights to occupy and use that land. Consistent with ARTA, ARRC has, at a minimum, an exclusive use easement in the land. Notably, the enclosed title report includes a special exception stating that title to Lots 13 and 14 is subject to the "rights of the Public and/or governmental agencies, in and to any portion of said land lying within the boundaries of the Alaska Railroad right-of-way." The rights of ARRC in the portions of Lots 13 and 14 lying to the southwest of the "Take Line" include the statutory grant of, at a minimum, an exclusive use easement under ARTA. Accordingly, as discussed above, ARRC has the right to exclude others from the land, including by means of fencing the boundary of the ROW. Relative to that right, ARRC also has the right to prohibit or to require a permit for any residential uses of or structures in that portion of the ROW. This portion of the ROW, therefore, is subject to the proposed TRLUP.

C. Responses to Individual Points in Your June 6 Letter.

1. Slaibys Do Not Have the Right to Occupy or Use the ARRC ROW Without ARRC's Permission.

Your June 6 letter characterizes the portion of Lots 13 and 14 falling within the ARRC ROW adjacent to the Slaibys' property (i.e., the portion of those lots lying to the southwest of the "Take Line") as "property owned by the Slaibys" in which ARRC has an easement for specific purposes. Apparently referring to the ARRC's tracks, your letter states that "the railroad runs through the extreme edge of [the Slaibys'] property." You also state that the Slaibys "are free to use the easement area of their property so long as it does not interfere with ARRC's utility corridor easement." With due respect, however, those statements inaccurately describe the Slaibys' rights with respect to the portions of Lots 13 and 14 within the ARRC ROW.

First, as detailed above, the current owner of the land in question is the federal government rather than the Slaibys. Moreover, ARRC has, at a minimum, an exclusive use easement in its ROW, including the portion of the ROW comprised of the portions of Lots 13 and 14 southwest of the "Take Line." An exclusive use easement gives ARRC the right to exclude anyone other than ARRC from the ROW, to fence the land if it chooses and to require any others to purchase permits before using or occupying the ROW.

ARRC's long-standing policy has been not to grant permits to third parties to occupy the ROW with respect to uses that are not related to the operation or use of the railroad or to other statutory purposes under ARTA and ARCA. But residential uses, some authorized but many unauthorized, have arisen in portions of the ROW. Those uses pose safety risks arising from railroad operations and the potential to interfere with other statutory uses of the ROW (i.e., transportation, transmission and communication). The ARRC Board is concerned with the problems raised by such existing residential

uses and the prevention of any new residential uses, but also recognizes that adjoining land owners have developed such uses and, in some cases, maintained them for relatively long periods. That situation, coupled with ARRC's need to control its ROW, gave rise to the proposed TRLUP and its system of residential use permits.

2. The Proposed Policy Would Not Constitute a Taking.

You assert that the proposed TRLUP would constitute a taking of the Slaibys' property interest. Given the nature of ARRC's interest in its ROW, however, that is not the case. Because ARRC possesses an exclusive use easement in the portions of Lots 13 and 14 that are in the ARRC ROW, which includes the right to exclude all others from the ROW, the proposed TRLUP would not constitute a taking. Since the Slaibys do not have the right to occupy or use any land in the ARRC ROW absent ARRC's permission to do so, requiring them to have and to pay for a permit to use the ROW for residential purposes would not deprive them of any property interest.

3. The Individual History of Lots 13 and 14 Do Not Affect the Nature of ARRC's Exclusive Use Easement in the ROW.

Your letter describes the Slaibys' property as unique with respect to the ownership of land on the bluff and the lack of a setback of their home from the ROW boundary. Although the conveyance histories of various properties along this section of the ARRC ROW vary, those histories do not change the fact that ARRC has, at a minimum, an exclusive use easement in all portions of its ROW. Whatever the underlying history of that portion of the ROW, therefore, ARRC's right to exclusive use and possession of the land in its ROW, including the relevant portions of Lots 13 and 14, remains the same.

4. Applying the Proposed Policy to the ROW Adjoining the Slaibys Would Not be Arbitrary and Capricious.

You also assert that the application of the proposed TRLUP to the area of the ROW near the Slaibys would be "arbitrary and capricious." We disagree. The TRLUP's permitting system would be a perfectly rational approach to addressing the railroad safety and operations issues raised by existing residential uses of the ARRC ROW and also would protect other statutory purposes of the ROW. In addition, under the proposed policy, all adjoining properties and property owners would be treated similarly, which is reasonable given that the exclusive nature of ARRC's interest in its ROW is consistent throughout its length.

5. Addressing the Slaibys' Security Concerns.

Your letter mentions the Slaibys' desire to protect themselves from "uninvited guests who access their property on the railroad's easement." If trespassers are seen using the ARRC ROW in the vicinity of the Slaibys' residence, or anywhere else in the

Roy L. Longacre, Esq.
July 24, 2012
Page 6

neighborhood, we ask that they be reported to ARRC's Security Department at 265-2245 or 1-877-RAILCOP (1-877-724-5267). The ARRC Security Department has jurisdiction over trespassers and other security threats on the ARRC ROW. ARRC is always ready to work with its neighbors to enhance safety and security in the ROW.

6. The Slaibys' Request to Purchase ARRC's Property Interest.

Your letter raises the issue of the Slaibys purchasing ARRC's interest in the portion of the property on the bluff. Given that the federal government owns the underlying interest in the property, any conversation regarding purchase of this portion of the ROW would more properly be had with the Bureau of Land Management. ARRC's Land Services Manager, Rob Hahn, has been working with BLM's Deputy State Director, Michael Schoder on matters relating to the ARRC ROW in the vicinity of Potter Hill. Mr. Schoder can be reached by telephone at 907-271-5481 or by email at mschoder@blm.gov. That said, ARRC would generally be opposed to any request by an adjoining landowner to purchase either ARRC's or the federal government's interest in the ARRC ROW. The land in question continues to be needed by ARRC in order to maintain and protect railroad safety and operations, as well as other statutory priority purposes.

I hope this letter has provided useful information regarding the proposed TRLUP and its application to the ROW in the vicinity of the Slaibys' property. As noted above, additional communications regarding developments on the proposed policy will be forthcoming soon.

Very truly yours,



Andy Behrend
Senior Attorney, Real Estate & Environmental

Enclosures

cc: William R. Hupprich, Vice President & General Counsel, ARRC (via email)
Wendy Lindscoog, Vice President, Corporate Affairs, ARRC (via email)
Karen Morrissey, Director, Real Estate, ARRC (via email)
Michael Schoder, Deputy State Director, BLM (via email and U.S. Mail)

PATENT AA-55129-9

DEALS WITH SURVEYS 9015 1ND 9016

ISSUED 2006 AND PURPORTS TO CONVEY AN UNRESTRICTED
EASEMENT PER THE DEFINITION USED IN SEC. 1202(6)

The United States of America

To all to whom these presents shall come, Greeting:

Patent

AA-55129-9

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 400 Seventh Street S.W., Washington D.C., 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201 et seq. (hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way), and other railroad lands (railroad parcels). A portion of the lands are under the Exclusive License issued on January 5, 1985, and recorded in the Anchorage Recording District Book 1212, Pages 297-352. Title to the remaining lands was vested by Interim Conveyance on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 260-277. This patent is hereby issued for the real property described below:

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

Lots 1 to 8, inclusive, U.S. Survey No. 9015, Alaska.

Containing 163.10 acres as shown on plat of survey officially filed December 14, 1994.

U. S. Survey No. 9016, Alaska.

Containing 74.45 acres as shown on plat of survey officially filed February 7, 1990.

Aggregating 237.55 acres.

Patent No 50-2006-0363

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA, does give, grant, and convey, unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

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

Reservations and Conditions:

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

any interest in the Seward/Anchorage highway transferred to the State of Alaska by the quit claim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70, 73 Stat. 141, as to Secs. 19, 20, 29, and 30, T. 12 N., R. 3 W., Seward Meridian.
2. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).
3. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

Definitions:

1. "Real property", as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.
2. All of the terms used in this instrument that are defined in Sec. 603(6) of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

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

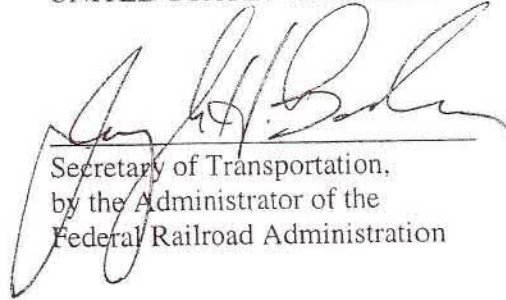
1. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
3. subjacent and lateral support of the lands subject to the easement; and
4. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.

b. "right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:

1. area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or
2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

IN WITNESS WHEREOF the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 9th day of August, 2006.

UNITED STATES OF AMERICA


Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: PK Gable

Title: Pres / CEO

Dated: 8/14/06

District of Columbia

Subscribed and sworn to before me, in my presence,

this 9th day of August, 2006

by Juelia Stubbs

Notary Public
My Commission Expires 3-14-08

Location Index for Recording Information:

Lots 1 to 8, inclusive, USS 9015 located in Secs. 6, 7, 18, 19, 20, 29, 30, 32, 33, and 34, T. 12 N., Rs. 3 and 4 W., SM; USS 9016 located in Secs. 23, 25, 26, and 36, T. 13 N., R. 4 W., SM.

Return Recorded Document to:

Alaska Railroad Corporation
Mr. James Blasingame
Vice President, Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500

Patent No 50-2006-0363

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Alaska Statute / Fed Statute Cheat Sheet

FEDERAL

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1914 Act:

Sec.49-3-2:

This states that the authority to construct the railroad also carries with it the power to construct and operate a telegraph and telephone line necessary and convenient in the construction and operation of the railroad.

Sec. 49-3-5: “reservations over right-of-way in patents”

“In all patents for lands taken up, entered, or located in Alaska after March 12, 1914 there is reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines to the extent of 100 feet on each side of the centerline of any such road and 25 feet on either side of the centerline of any such telegraph or telephone lines.”

1982 Transfer Act

45 USC 1201-1214

1201: purpose

1202: definitions: key ones are (6) and (10)

(6)(A) has the “exclusive use” language

(6)(B) has the “transportation, communication, transmission” language

(6)(C) subadjacent and lateral support

(6)(D) has the fence off provision and to prohibit others from using

(10) “rail properties” defined: “all right title and interest of the US”

1203: Transfer of real property including rail property This conveys the existing 1914 easements to the State

1208: Future transfers after transfer: Allows for future easements across fed lands

(b)(1)(B) transfers "rail properties" not subject to dispute. See.02(10)
(b)(1)(D) deals with the exclusive use easement in Denali Park

1209: Reversion after abandonment: (repealed 2003)

1212: Interaction with other laws: prior reservations not affected.

STATE:

.250

AS 42.40.250:

"In addition to the exercise of other powers authorized by law, the corporation may...

(10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);"

"Land" is defined in Sec. 980:

In this chapter unless the context otherwise requires,... **(8)** "land" means any interest in real property,

.285

Unless the legislature approves the action by law, the corporation may not

....

(5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with.....

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).

=====

.350:

(a) The corporation shall receive from the United States and, in its own name, take title to all rail property transferred under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982). All land that is transferred or acquired by the corporation is designated as follows:

(1) railroad rights-of-way are railroad utility corridors;

(2) land outside railroad utility corridors is rail land.

(b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, the corporation may lease, subject to AS [42.40.285](#) and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

.....

385: eminent domain:

(a) The corporation may exercise the power of eminent domain under AS [09.55.240](#) - [09.55.460](#) to acquire land for railroad transportation purposes consistent with this chapter..... (b) The corporation may file a declaration of taking in the manner provided for the state under AS [09.55.420](#) .

.....

(d) The exercise of the power of eminent domain requires the prior approval of the governor.

=====

400:

The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was acquired by the corporation under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws.

A SYNOPSIS OF SEC. 1203 THE MAIN TRANSFER SECTION

45 USC Sec. 1203 Cut Down to Size

Sec. 1203. Transfer authorization

(a) Authority of Secretary; time, manner, etc., of transfer

Subject to the provisions of this chapter, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. ...

(b) Simultaneous and interim transfers, conveyances, etc.

(1) On the date of transfer, the Secretary shall simultaneously:

(A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property; (this does not apply since it excludes interests in real property)

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights; (if there are no unresolved claims then an immediate transfer is provided-as far as I know this is us)

(C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights; (inapplicable since there are no disputes)

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the

railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

(THIS IS THE ONLY PLACE IN THE WHOLE OF THE STATUTES THAT MENTIONS EXCLUSIVE USE AND IT APPLIES TO DENALI PARK AND NO OTHER PLACE)

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of January 14, 1983.

(THIS IS THE SOURCE OF THE “EXCLUSIVE USE” AND “TRANSPORTATION, TRANSMISSION AND COMMUNICATIONS” LANGUAGE BUT THIS APPLIES ONLY TO SUBSECTION (D) WHICH APPLIES ONLY TO THE DENALI PARK CONVEYANCES.)

TRANSFER OF ALASKA RAILROAD TO STATE OF ALASKA

The State of Alaska accepted the certification requirements of the Alaska Railroad Transfer Act [this chapter] by 1984 SLA ch. 54, eff. May 19, 1984. Thereafter, by 1984 SLA ch. 153, eff. July 6, 1984, the Alaska Railroad Corporation was established to manage and operate the Alaska Railroad. The transfer of the Alaska Railroad to the State of Alaska was carried out on January 5, 1985.

(BELOW IS MORE OF THE “EXCLUSIVE USE” LANGUAGE BUT THIS IS APPLICABLE TO THE DENALI PARK EXCHANGE)

-MISC2-

DENALI NATIONAL PARK AND ALASKA RAILROAD CORPORATION EXCHANGE

Pub. L. 110-229, title III, Sec. 351, May 8, 2008, 122 Stat. 800, provided that:

"(a) Definitions. - In this section:

"(1) Corporation. - The term 'Corporation' means the Alaska Railroad Corporation owned by the State of Alaska.

"(2) Secretary. - The term 'Secretary' means the Secretary of the Interior.

"(b) Exchange. -

"(1) In general. -

"(A) Easement expanded. - The Secretary is authorized to grant to the Alaska Railroad Corporation an exclusive-use easement on land that is identified by the Secretary within Denali National Park for the purpose of providing a location to the Corporation for construction, maintenance, and on-going operation of track and associated support facilities for turning railroad trains around near Denali Park Station.

"(B) Easement relinquished. - In exchange for the easement granted in subparagraph (A), the Secretary shall require the relinquishment of certain portions of the Corporation's existing exclusive use easement within the boundary of Denali National Park.

"(2) Conditions of the exchange. -

"(A) Equal exchange. - The exchange of easements under this section shall be on an approximately equal-acre basis.

"(B) Total acres. - The easement granted under paragraph (1)(A) shall not exceed 25 acres.

"(C) Interests conveyed. - The easement conveyed to the Alaska Railroad Corporation by the Secretary under this section shall be under the same terms as the exclusive use easement granted to the Railroad in Denali National Park in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985-994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.). The easement relinquished by the Alaska Railroad Corporation to the United States under this section shall, with respect to the portion being exchanged, be the full title and interest received by the Alaska Railroad in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985-994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.).

"(D) Costs. - The Alaska Railroad shall pay all costs

associated with the exchange under this section, including the costs of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the costs of any surveys, and other reasonable costs.

"(E) Land to be part of wilderness. - The land underlying any easement relinquished to the United States under this section that is adjacent to designated wilderness is hereby designated as wilderness and added to the Denali Wilderness, the boundaries of which are modified accordingly, and shall be managed in accordance with applicable provisions of the Wilderness Act (78 Stat. 892) [16 U.S.C. 1131 et seq.] and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371) [see Tables for classification].

"(F) Other terms and conditions. - The Secretary shall require any additional terms and conditions under this section that the Secretary determines to be appropriate to protect the interests of the United States and of Denali National Park."

MAKING A LONG STORY SHORT THE "EXCLUSIVE USE" EASEMENT AND THE "TRANSPORTATION, TRANSMISSION, COMMUNICATIONS" LANGUAGE APPLIES ONLY TO DENALI PARK.

SIMPLE LEGISLATIVE PLAN

(1) AS TO ONGOING USE/EASEMENT TYPE:

(a): amend AS 42.40.285 to reflect that those rights to real property Act acquired by the RR under the Transfer Act of 1982, that is, easements granted pre-1982 under the 1914 Act remain unchanged by the Transfer Act and remain for the purposes stated in the Act of March 12, 1914. (See: sec. 1212.)

(b) if the railroad has sought or received a patent or other conveyance conveying any easement rights contrary to (a) they are null and void.

(c) if any patents or conveyance contrary to (a) have been granted to the Ak RR the RR is required to apply for a patent or conveyance in compliance.

(2) AS TO REVERSION:

Assuming the Eilson Spur solution is a good one, do the same as to the rest of the line for adjoining owners.

(3) AS TO LINES OUTSIDE OF MUNICIPALITIES:

THESE SHOULD BE IN A FORM EITHER PER THE 1914 ACT OR IN A FORM APPROVED IN ADVANCE BY THE LEGISLATURE

THE ARRTA DOES NOT CHANGE THE PRIOR TRANSFERS

(IT SAYS SO IN SEC.1212)

Does RRTA change the 1914 reservations for ROW ?

§1212. Applicability of other laws

(a) Actions subject to other laws

The provisions of chapter 5 of title 5 (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 303 of title 49, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this chapter, except to the extent that such laws may be applicable to granting of rights-of-way under section 1208 of this title.

(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Ceiling on Government contributions for Federal employees health benefits insurance premiums

Beginning on January 14, 1983, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5 shall not apply to the Alaska Railroad.

(d) Acreage entitlement of State or Native Corporation

Nothing in this chapter is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) Judgments involving interests, etc., of Native Corporations

With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this chapter, nothing contained in this chapter shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

(Pub. L. 97-468, title VI, §613, Jan. 14, 1983, 96 S

EXCERPTS APPLICABLE TO THE SITUATION:

Step 1:

§1212. Applicability of other laws

(a) Actions subject to other law...

(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.)

Step 2:

§1212. Applicability of other laws

(a) Actions subject to other laws.....

The enactment of this chapter, actions **taken** during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter.... Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.)

"Revocation" : "the recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the active revocation made it void.
...Black's Law Dictionary.

Step 2 shows that the reservations previously made remain as such despite transfer of RR real estate to the Sate, either originally, interim or final.