



ALASKA RAILROAD CORPORATION

BOARD RULE NO. 15

Adopted Sept. 14, 1989

Subject: Public Entity Lease Policy

Purpose: Setting out guidelines to the State of Alaska and its political subdivisions for the leasing of Railroad property.



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RULE NO. 15

PUBLIC ENTITY LEASE POLICY

Purpose

The Board of Directors of the ARRC hereby finds that public necessity requires a policy statement on guidelines and principles upon which the Alaska Railroad Corporation will lease property to the State of Alaska and its political subdivisions.

Finding

The Board of Directors of the Alaska Railroad Corporation hereby adopts the attached policy with any revisions noted at its May 17-18, 1989 and June 29, 1989 Board meetings, and shall constitute the guidelines and principles which will be applied in leases the Corporation determines to enter into with the State of Alaska and its political subdivisions.

ALASKA RAILROAD CORPORATION PUBLIC ENTITY LEASE POLICY

1. PURPOSE; APPLICATION

The purpose of this policy statement is to set forth guidelines and principles upon which the Alaska Railroad Corporation ("ARRC") will lease property to the State of Alaska and its political subdivisions. This Policy is intended to give the State and its political subdivisions information about the ARRC's policy with respect to its land program. The Policy does not create or assume a right to use of ARRC land by any public entity, but rather states the terms which shall be included in any agreement between the parties. Until their renewal, extension, assignment or termination, existing leases will not be governed by this policy.

As a public corporation established pursuant to AS 42.40, the ARRC is self-sustaining and operates without subsidy. It was the legislative intent to enhance and preserve railroad assets so as not to compromise the corporation's value in the event of a sale to the private sector. However, in recognition of the Corporation's position as a participating member within each host community, the ARRC may lease its lands to the State and its political subdivisions at less than fair market value as authorized by AS 42.40.350(d). Specific requests will be negotiated on a case by case basis, consistent with this policy statement. ARRC reserves the right to maintain compatibility with its master land use plans and guidelines in responding to specific requests. Agreements which promote the public welfare, operational safety, human health and the environment are to be encouraged.

This Policy shall control leases to eligible entities of ARRC's right-of-way and non-right-of-way lands, including any agreements for surface uses within the right-of-way which are substantially parallel to the tracks and exclude other surface uses. It does not apply to crossings of the right-of-way by roads or utilities, which will continue to be governed by permits. No annual administrative fee will be charged under public road crossing permits. In order to qualify for treatment under this Policy, an eligible entity must consult with ARRC in its initial planning process to avoid unnecessary conflicts with ARRC property usage and operations.

2. RESPONSIBILITY

Board of Directors - Approval of individual agreements issued under this Policy and any exceptions to the guidelines set herein, consistent with ARRC's Approval Authority Guide.

President and CEO - Interpretation of this Policy.

Vice President, Real Estate & Project Planning - Administration of this Policy.

Director, Real Estate- Implementation of this Policy.

General Counsel - Review to insure compliance with this policy statement and applicable laws and regulations.

3. REFERENCES

ARRC Board Rule No. 11 (ARRC Long Term Lease Policy)
ARRC Standard Long Term Lease Form
Alaska Statutes 42.40
ARRC Guidelines for High Public Interest Lands
ARRC Board Rule No. 13 (Alaska Policy on
Railroad/Highway Crossings)

4. DEFINITIONS

A. Public Entity. "Public Entity" as used in this Policy shall mean the following:

(i) The State of Alaska or any of its agencies, departments or divisions established by the Alaska Constitution or Alaska Statutes.

(ii) Political subdivisions of the State of Alaska, which shall be defined as home rule municipalities or general law municipalities (first, second and third class boroughs and first and second class cities) organized under Title 29 of the Alaska Statutes.

The following are specifically not included within the definition of Public Entity for purposes of this Policy: the United States government or its agencies or departments; non-profit corporations; school districts; tax-exempt organizations; state or federal public corporations, commissions, or boards; and the University of Alaska. Such entities are not foreclosed from negotiating agreements with ARRC outside of this Policy, consistent, however, with ARRC's statutory requirements (including specifically AS 42.40.350(d)), and the Approval Authority Guide.

B. Intended Property Use. The intent of this section is to define the categories of use of the subject property intended by the Public Entity.

(i) Public Amenity Use. A use of the property for a public purpose that produces no revenues other than nominal use fees. Use should be non-exclusive and available to the public at large. Examples of such uses include parks, greenbelts, sites of historic significance, pedestrian paths and trails.

(ii) Public Service Use. A non-revenue-generating use of the property that is required for the public safety, welfare and benefit that can stimulate economic development, or enhance tax revenues. Typical examples of Public Service Use include but are not limited to: highways, roads, airstrips, community centers, police and fire stations, certain recreational facilities, well sites, pump stations, scientific research or early warning sites, flood control sites, and qualifying communication sites.

(iii) Commercial Use. An activity that could be performed in either the public or private sector, and as to which a reasonably prudent businessperson would expect the revenues derived from the activity to cover the operating costs of the activity. To determine whether an activity meets this standard, ARRC may refer to factors considered under federal income tax regulations or other reasonably appropriate sources. Such uses can include ports, harbors, airport commercial development, parking lots, utility sub-stations, and concessions.

C. Property Type. The intent of this section is to establish the different categories of real property owned by ARRC, based on ARRC's use and the property's location.

(i) Operating Property. Property which is used in railroad freight, dock, and passenger operations or which is reasonably anticipated for such use.

(ii) Right-of-Way. The Right-of-Way corridor is the long narrow strip of property rights whose existence can be justified best by use for transportation, communication and/or transmission purposes in contrast to other possible uses. This property may include surface, subsurface or air rights or any combination of these rights. At the outset, Right-of-Way includes the 200-foot (less in certain locations) railroad utility corridor acquired from the federal government in full fee or as an exclusive use easement; it may be expanded to include other property acquired by ARRC for similar uses, either in fee or as a lesser estate such as a right of way easement.

(iii) Leased Land. Those parcels of land encumbered by a revenue-generating lease agreement or permit between a third party and ARRC at the time of request by the Public Entity.

(iv) Non-Operating Property. All other real property.

5. PERCENTAGE RENT FOR QUALIFYING PUBLIC ENTITY

The following chart will be consulted to calculate the percentage of fair market value rent for which a parcel of land will be made available to a Public Entity. Factors under the chart include both the use intended by the Public Entity and the type of property to arrive at a reasonable rate of return for ARRC.

Type of Property	Public Amenity & Public Service	Commercial
ROW	50%	100%
Operating		
Non-Operating	NF	100%
Leased Land	100%	100%

Notes:

NF = Nominal fee to cover administrative costs.

All rents based upon above percentages, to be applied to fair market value rent as determined under paragraph 6.

In the event a parcel falls within more than one of the above property types, the category providing the greater return to ARRC shall be applied, but only if more than 25% of the parcel falls within that category.

6. DETERMINATION OF FAIR MARKET VALUE RENT

The fair market value rent to which the formula set forth in Paragraph 5 shall apply will be determined as follows:

A. Appraisal of Fair Market Value of Fee Simple Interest. ARRC will select an appraiser from a list of qualified appraisers compiled by ARRC and kept available for public inspection at its Real Estate office. The appraiser will determine, as of the date of the beginning of the applicable period, the fair market value of the fee simple interest in the property being leased, unencumbered by the Public Entity's lease, including improvements owned by ARRC and excluding improvements owned by the Public Entity. In appropriate cases the appraiser will be instructed to value the total original parcel, the sub-parcel being appropriated for the Public Entity's use, and the effect of such appropriation on the remaining ARRC property. Use of the income approach is specifically recognized as valid in valuing the total parcel.

B. Rent Credits. It is also understood that certain uses intended by a Public Entity may enhance adjoining ARRC property. In appropriate cases the appraiser will be instructed to determine the value of such enhancement and ARRC shall grant rental credits to the Public Entity in an amount not to exceed the value of the enhancement. However, the credit shall not reduce rent to an amount less than zero.

ARRC may also grant rent credits in recognition of permanent non-depreciable improvements (such as gravel fill) made to the property, to be negotiated on a case-by-case basis prior to installation. Such improvements become the property of ARRC immediately upon installation. In no event will the credit reduce rent to less than zero.

C. Rental Rate. The "rental rate" used for rent revision will remain fixed during the term of the agreement and the same rate will be employed in connection with all revisions. The rental rate will be the one in use by ARRC for commercial leases at the time the agreement is executed.

D. Fair Market Value Rent. The fair market value rent shall be the product derived from multiplying the fair market value of the property by ARRC's current rental rate.

E. Rent Revision. The rent will be revised at a minimum every five (5) years or as otherwise negotiated. The new rent established by the rent revision procedure for a particular period will not be less than the prior period's rent. A percentage rate establishing a maximum increase in rent (rent cap) to apply at the time of each revision will be predetermined and incorporated in the agreement.

7. AGREEMENT BETWEEN ARRC AND PUBLIC ENTITY

A. Contract Terms. The Public Entity will execute an appropriate agreement (lease or permit) with ARRC for its land use, which shall include at a minimum the following:

(i) as to Right-of-Way, appropriate restrictions and conditions on the Public Entity's use reducing the risk of safety hazard or interference with other uses of the right-of-way;

(ii) a hold harmless and indemnity for liability arising from the Public Entity's use of ARRC land;

(iii) as to land made available at less than full fair market value, an agreement by the Public Entity to stop its use of the land if such use interferes with

ARRC's expansion or replacement of railroad facilities or railroad operations, or if it creates a safety hazard in the opinion of ARRC;

(iv) as to land made available at less than full fair market value, a provision allowing termination by either party on 90 days notice, except where such a provision will prevent the Public Entity from obtaining federal funds;

(v) a provision regarding compensation for the use by the Public Entity, calculated in accordance with Paragraph 5 of this Policy;

(vi) a provision placing the responsibility for compliance with land use planning and platting regulations on the Public Entity, if required by either good practice or local ordinance; and

(vii) as to land made available at less than full fair market value, a provision that compensation may increase to full fair market value in the event the character of the land's use changes to a commercial nature, whether due to the Public Entity's actions or to changes external to the premises.

B. Permit or Lease. In appropriate instances (primarily involving Right-of-Way which must remain available for uses other than the Public Entity's), ARRC will offer the Public Entity a permit rather than a lease, which will nevertheless provide for compensation to ARRC under Paragraph 5 of this Policy. In situations involving projects with federal funding, neither ARRC's standard lease nor permit may be appropriate. In such cases, the parties will negotiate an agreement in good faith and subject to ARRC Board approval.

C. Payment Terms. When requested by the Public Entity or deemed desirable by ARRC, the parties may negotiate payment of compensation (including nominal fees) for the entire term in a lump sum rather than annually, or may mutually agree to such payments at 5-year intervals. Payment for the entire term may be discounted to present value using the published Federal Reserve discount rate then in effect. Payments for a 5-year interval will not be discounted to present value.

ARRC and a Public Entity may negotiate the exchange of an interest in lands as a method of paying compensation under this Policy, subject to AS 42.40.285(1). In such event, a qualified appraiser shall determine the fair market value of both parcels (or the interests therein) proposed for exchange under the criteria set forth above. The parties may also negotiate payment of in-kind consideration (for example, services or materials) by the Public Entity, subject to Board approval.

8. TAXATION AND ASSESSMENTS

The Public Entity will be required to pay all real property taxes and assessments of every description for which the leased property or ARRC are or become liable. In the event a tax is levied by the Public Entity against ARRC, whether on the rentals under a lease, or on the property's fee value, or on ARRC's interest in the subject property, or otherwise, the Public Entity shall pay ARRC full fair market value rent commencing as of the date the property or ARRC is made subject to such tax.

9. OWNERSHIP OF IMPROVEMENTS; TERMINATION

Subsurface improvements (except utility service connections and underground storage tanks) become the property of ARRC upon installation. Any personal property or improvements owned by the Public Entity remaining on the property upon termination must be removed at the Public Entity's expense. ARRC may, at its discretion and upon request, allow a Public Entity to leave some or all of its improvements on the property upon termination.

Adopted 09/14/89

Editor's note: Please address all questions to Lessor's representative at the outset of negotiations:

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