



OFFICE OF THE OMBUDSMAN
STATE OF ALASKA

SPECIAL REPORT

THE ALASKA RAILROAD CORPORATION

NOVEMBER 16, 1989

DUNCAN C. FOWLER
OMBUDSMAN

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State of Alaska
ombudsman

Duncan C. Fowler

November 16, 1989

Frank Turpin, President and CEO
Alaska Railroad Corporation
Post Office Box 107500
Anchorage, Alaska 99510

RE: Ombudsman Complaint A89-0480
(Finding of Record and Closure)

Dear Mr. Turpin:

The final report of my investigation of the Alaska Railroad's (ARRC) railroad/highway crossing permit process is enclosed for your review and information. This report describes the allegations, investigative activities, final findings and recommendations, as well as the ARRC's response. Because of the interest in this issue, a copy has been sent to each of the railbelt municipalities, the Governor and members of the Alaska Legislature.

For your convenience, the following brief outline states the principle issues investigated as well as my final findings and recommendations. Our basis for the findings and your responses are included in the report.

FINDINGS

Allegation 1: The ARRC in the issuance of crossing permits unreasonably established overhead charges for maintenance. *Finding:* partially justified.

Allegation 2a: The ARRC continued a policy of requiring municipalities and other entities to accept terms of a standard crossing permit relating to permit duration, fees and contract changes. *Finding:* unsupported.

Allegation 2b: The ARRC acted unreasonably in requiring municipalities and other entities to accept complete responsibility for the maintenance of crossings. *Finding:* justified.

Allegation 2c: The ARRC unreasonably continued a policy of requiring municipalities and other entities to assume general liability conditions in the permit. *Finding:* unsupported.

Allegation 3: The ARRC unreasonably indicated its intent to close needed crossings if municipalities or other entities do not accept terms of a standard crossing permit. *Finding:* unsupported.

Allegation 4: The ARRC unreasonably indicated its intent not to construct needed crossings if municipalities and other entities do not accept terms of a standard crossing permit. *Finding:* justified.

Reply to:

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Overall, these complaints are partially justified.

RECOMMENDATIONS

Recommendation 1. For the immediate future it is recommended that the ARRC's President and CEO, Frank Turpin, take a more direct and personal role in defusing crises and assuring municipal leaders they have access and an ear in the chief executive's office.

Recommendation 2. It is recommended the ARRC eliminate the present method of calculating administrative overhead. In its place, it is recommended the ARRC charge only for that portion of supervisory services and employee benefits directly related to signal maintenance.

Recommendation 3. It is recommended the ARRC work with the Lieutenant Governor's office to voluntarily publish regulations in the Alaska Administrative Code establishing the diagnostic team process and providing for diagnostic team reviews of crossing changes.

Recommendation 4. It is recommended the ARRC develop a formal appeals process for railroad decisions, using the Board of the ARRC as the appellate body. This appellate process may be used to resolve specific crossing disputes including ARRC's overhead rate for all municipal crossings and the allocation of maintenance costs for future crossings.

As part of this appeals process, it is specifically recommended that a municipality may request the Board to appoint an independent hearing officer to conduct hearings and recommend proposed findings and recommendations.

It is further suggested an aggrieved municipality will select the name of the hearing officer from a list provided by the Board.

Recommendation 5. It is recommended the ARRC in cooperation with railbelt municipalities develop a criteria for the apportionment of rail-highway crossing costs. The purpose of this apportionment shall be to divide costs between the ARRC and the affected municipalities in an equitable manner based upon the benefits to be derived by each party from the crossing improvement. In the calculation of apportionment, the following factors may be considered:

- (1) Municipal services provided the railroad;
- (2) ARRC services provided to the municipality.

Recommendation 6. It is recommended the ARRC continue the Community Briefing Council and expand membership to include representatives from all local governments in the railbelt.

* * * * *

The findings and recommendations cited above are the findings of record in this case. With the inclusion of your agency's response in the special report and the transmission of this letter to you, I have close this ombudsman-initiated investigation.

You have agreed to personally assist municipalities in resolving problems as well as assure municipal leaders they have access and an ear in your office. You have also agreed to ask the ARRC Board to review my recommendation requesting

the ARRC voluntarily publish its public Board Rules in the Alaska Administrative Code.

The ARRC has agreed to restructure the present method of calculating administrative overhead for municipal crossings, with the exact changes to be made after negotiations with the municipalities at a meeting in the near future.

The ARRC has agreed to develop a formal appeals process for railroad decisions, using the ARRC Board as the appellate body. As part of this appeals process, a municipality may request the Board to appoint an independent hearing officer to conduct hearings and recommend proposed findings and recommendations. An aggrieved municipality will also be able to select the name of the hearing officer from a list provided by the Board.

The ARRC has agreed in cooperation with the municipalities to consider applying a criteria for the apportionment of rail-highway crossing costs. The purpose of this apportionment will be to divide costs between the ARRC and the affected municipalities in an equitable manner based upon the benefits derived by each party. And while the railroad believes only tangible benefits should be considered in this criteria, the ARRC has stated its willingness to discuss the definition of benefits with the municipalities.

The ARRC has also agreed to continue the Community Briefing Council and expand membership to include representatives from all local governments in the railbelt.

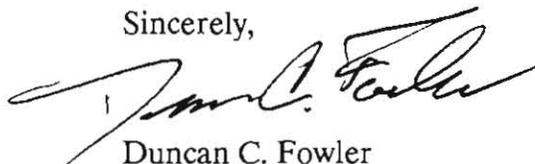
Because the ARRC has agreed to implement most of my recommendations, while specific changes to the overhead rate and apportionment of maintenance costs have not yet been determined, I find the disposition of this case to be partially rectified.

I request that you notify me of the specific ways in which these accepted recommendations will be implemented. I would also like to know the Board's response to my recommendation seeking the publishing of public Board Rules in the Alaska Administrative Code.

I want to express my thanks to you and your staff for your cooperation and candor during the course of this investigation, as well as your willingness to work for solutions to these crossing issues. Likewise, Assistant Ombudsman Kevin Harun asked me to extend a special thanks to you as well as Larry Wood, Obie Weeks, Phyllis Johnson, Jack Vossen, John O'Meara, Bill Hupprich, Jim Blasingame and Donna Rulien.

I am confident when an equitable process is soon established to resolve these matters, there will be long-term benefits for the ARRC, the municipalities and our state as a whole. Please feel free to contact me at 465-4970 if you have any questions concerning my final report.

Sincerely,



Duncan C. Fowler
Ombudsman



**SPECIAL REPORT
THE ALASKA RAILROAD'S
RAIL/HIGHWAY CROSSING PERMIT PROCESS**

On April 19, 1989, in accordance with AS 24.55.140, I gave notice to the Alaska Railroad Corporation (ARRC) of my intent to investigate the ARRC's railroad/highway crossing permit process.

Initially, ARRC officials had approached the ombudsman's office to help resolve railroad crossing cost and liability issues with several local governments. After reviewing similar complaints received in the past, along with the issues the railroad presented, the Office of the Ombudsman decided to initiate an investigation.

An "ombudsman-initiated" investigation differs from a routine ombudsman investigation in that there is no individual complainant. The ombudsman's office initiates this process in accordance with AS 24.55.120 when an important public interest problem may require resolution. Because there is no complainant, the ombudsman frames all allegations, as well as the scope of investigation.

ALLEGATIONS

The allegations outlined by the ombudsman were as follows:

The Alaska Railroad Corporation unreasonably:

- (1) established overhead charges for maintenance of crossings;
- (2) requires municipalities and other entities to accept terms of a standard crossing permit, as well as assume general liability;
- (3) indicated its intent to close needed crossings if municipalities and other entities do not accept terms of a standard crossing permit; and
- (4) indicated its intent not to construct needed crossings if municipalities and other entities do not accept terms of a standard crossing permit.

BACKGROUND

When the Alaska Railroad was transferred from federal to state ownership January 5, 1985, Alaska was at the end of a major growth period fueled by state spending. As a result of considerable community development throughout the railbelt, the need arose for additional rail/highway crossings. Increased traffic also required the upgrading of existing crossings which was accomplished by adding various protective devices such as automatic signals.

At a time when communities and the railroad were becoming aware of the need for new and improved crossings, the federal government increased the supply of construction funding to advance crossing safety. The need to prioritize how federal funds were spent, along with the demand for crossing improvements, spurred the state to develop a policy on when and where to install or upgrade crossings. Responding to this need, the President of the ARRC and the Commissioner of the Department of Transportation and Public Facilities (DOTPF), convened a Task Force on Rail/Highway Crossings in October 1985 comprised representatives of various agencies with input from community leaders. The task force met and established the Alaska Policy on Railroad/Highway Crossings which was later adopted by the ARRC Board and DOTPF. The policy:

- (1) developed an inventory of all crossings in the state and a catalogue system based on the type of protection required for each particular class of crossing;
- (2) established a priority system for crossings which should receive funds first; and
- (3) initiated the diagnostic team approach for evaluating crossing needs.

The diagnostic team was a concept developed to include representatives of the ARRC, DOTPF and affected local governments to provide for an inter-agency on-site evaluation of any major planned improvement for a new or existing crossing. This policy also spelled out specific criteria for new and existing public and private crossings. Notable highlights of the policy were:

- (1) new crossings only every two miles (with an exemption for difficult terrain, the policy recommended new crossings should not be allowed where there is another crossing within two miles);
- (2) private crossings should be brought under a permit or closed (the policy recommended either deeming private crossings "public" under certain conditions or requiring private parties to accept responsibility for the crossing by signing a permit with the ARRC. In the case of a private crossing which has not become public and where a private permittee has not lived up to the contract terms, the policy recommends the crossing be closed);
- (3) municipalities should take responsibility for the public hearing process for new crossings;
- (4) new crossing permits for public crossings will only be issued to DOTPF or a local government having road powers; and
- (5) PUB-4 crossings are defined as crossings "open to the public but the road is not maintained by a public authority" (the task force recommended that local

governments with road powers must decide whether the crossing need is balanced with its maintenance and liability costs).

Essentially, the Alaska Policy on Rail/Highway Crossings developed a process for planning new or improved crossings and encouraged local governments and other entities to take greater responsibility for crossings. It should be noted the policy also endeavored to solicit input from affected municipalities, though at the same time changes to the policy were set up to be coordinated by the ARRC's engineering department, DOTPF and the Federal Highway Administration (FHWA). *For more information on this policy see Appendix A.*

All crossings are required by permit to be maintained to industry standards or to federal, state or municipal laws or regulations. Because of an absence of such laws and regulations, the permittees are required to maintain crossings to ARRC standards.

In recent years, the costs charged to certain municipalities for maintenance have increased significantly primarily due to signalized crossings. These signals were required as a result of community growth and additional traffic. Signalized crossings contain automatic protective devices to alert road traffic to an approaching train by way of flashing lights and/or a gate which swings down. They operate in such a way that passing a point on the rail activates the signal either immediately or on a time-delayed basis using motion detectors. Because this signalization requires complex electrical circuitry, regular professional maintenance is required. Maintenance is critically important because when vehicle drivers approach a signalized crossing, they assume a certain level of protection. It is the ARRC's contention that a non-reliable signalized crossing is worse than no warning at all because of the public's complete reliance on the safety of these devices.

The ARRC provisions say signalized crossings must be inspected on a weekly basis, in addition to non-routine trouble calls resulting from malfunctions and vandalism. The railroad charges approximately \$66 per hour for maintenance work or \$3200 per year for each signalized crossing. While this may not appear exorbitant, for small communities or borough service areas with nominal budgets, these costs can consume a large percentage of total road maintenance funds. Also, many communities and service areas are completely dependent on state shared revenue for road maintenance funds. One example is the City of Wasilla, which paid approximately 21% of its 1988 state shared road monies for signalized crossings. These costs for signalized crossings are at the crux of the controversy between the ARRC and affected municipalities.

Most of the railbelt communities do not now have signalized crossings. Most do, however, have permits with the ARRC for unsignalized crossings ranging from simple road crossings with stop signs to unmarked utility crossings. While utility crossings rarely require maintenance, they may absorb municipal funds if work is required in the right of way. Unsignalized road crossings cost municipalities minimal amounts, though crossing surfaces need to be replaced, sight triangles (the visual paths approaching the crossing) must be cleared of brush, and the interface of the road and track require repair from time to time. While signalized crossings require a high degree of specialized labor, maintenance on unsignalized crossings are often performed by the permittees themselves. The railroad also charges an annual permit fee of a few hundred dollars per year, though these fees have recently been waived for municipalities.

For both signalized and unsignalized crossings, the municipalities are concerned that the ARRC charges an overhead rate on maintenance work performed to cover administrative costs. In 1988 the overhead rate was approximately 175%.

Recently, the ARRC has attempted to bring its myriad of crossing permits with municipalities and other entities under one standard form. This permit is referred to as a "standard permit." When the railroad negotiates a standard permit with a municipality covering numerous crossings, this contract is referred to as a "blanket permit." While many of the terms and conditions in the standard permit are substantially similar to old permits in effect between the ARRC and its permittees, some of the language in the new permits is different. Notably, the standard permit clarifies obligations and places greater responsibility on the permittee in the areas of liability, indemnification and maintenance. This new language is another major point of contention between many of the municipalities and the railroad.

The railroad's philosophy of who should be responsible for crossing maintenance and liability was summed up by ARRC President and CEO Frank Turpin. He said it all depends on which party was there first. "As for costs associated with signal maintenance, our basic premise is when anyone requests a permit to cross our lands we should not bear the expense."

Mr. Turpin said sometimes this means the ARRC pays crossing costs in areas where it decides it needs to cross a highway which was there first. Because the railroad was completed in 1923 and the bulk of Alaska's development has occurred since then, according to the railroad's perspective, municipalities and other entities should usually end up assuming crossing burdens. The municipalities on the other hand generally believe the Alaska Railroad has a responsibility to share in crossing costs because it is a state and public entity.

It should be noted the issue of who should pay capital costs for building or improving crossings has not appeared controversial. The federal government provides a pool of crossing safety funds which requires state or local matching monies, and together these funds pay most capital costs. The federal government does not provide funds for maintenance which means it's easier to find a way to construct crossings than to find an entity willing to maintain them. Federal construction funds cannot be released until some party assumes maintenance responsibility.

While the current crossing controversy began with the cities of North Pole and Wasilla challenging maintenance costs and terms of the standard permit, most all municipalities in the railbelt have expressed specific concerns regarding the crossing permit process. An ombudsman investigator interviewed all of the incorporated communities in the railbelt on crossing issues. *For more information on specific municipal concerns see Appendix B.*

The ARRC requires automatic signals be inspected by qualified workers on a weekly basis. This inspection is referred to as "routine maintenance" and includes a testing and servicing of gates and signals. Municipalities and other entities are billed one hour of labor per week for each signalized crossing which amounts to approximately \$59 per hour or \$236 monthly per crossing. This \$236 includes an overhead rate which is assessed to enable the ARRC to recover administrative costs. Additionally, routine maintenance includes a monthly vehicle charge of \$30 per

signalized crossing (\$7.79/hour which is derived by adding up all of the yearly vehicle expenses divided by the number of vehicle hours). The total routine maintenance costs are \$266 per month or \$3,192 per year per crossing.

In addition to regular inspections, the ARRC is often called out for "trouble calls" to inspect possible malfunctions. For safety reasons, malfunction reports must be responded to whether or not a malfunction actually exists. Non-routine maintenance is billed at the labor rate of \$56.76 per hour which includes the administrative overhead rate. Additionally, the following charges also are assessed: vehicle charges at \$7.79/hour; per diem charges at cost; third party assistance at cost; materials at cost plus a materials handling fee of 16.02%.

There is no way to predict weekly or monthly non-routine maintenance bills, however, the Office of the Ombudsman reviewed signal maintenance billings for each of the signalized permit holders and found that non-routine labor as a percent of total labor costs ranged from a high of 33.43% for the City of Wasilla to a low of 0% for the U. S. Army. (Note: these labor figures exclude vehicle costs.) See *Appendix C for more detailed information.*

INVESTIGATION AND FINDINGS

Allegation 1. Is the overhead rate charged municipalities and other entities reasonable? Should an overhead rate be assessed and is this rate calculated reasonably?

For both routine and non-routine labor, the ARRC charges a labor overhead rate which is determined by DOTPF auditors in accordance with FHWA criteria 23 CFR 1-645. The 1988 overhead rate in use at present was calculated at 175.24%. The justification of this rate is to recover administrative costs incurred by the ARRC but not reflected in the direct labor costs. For example, when the railroad sends an employee out to fix a signal there are additional hidden costs not accounted for in the employee's \$21/hour wage rate. These costs include health insurance premiums, pension contributions, sick leave, supervisors' salaries, building plant maintenance and utilities.

An ombudsman investigator interviewed DOTPF's Internal Auditors Stephen Wells and Lewis Hayes. They are responsible for verifying the accounting system used by the ARRC in billing for reimbursements. Controller John O'Meara and Accounts Receivable Supervisor Jack Vossen at the ARRC were interviewed to determine what factors were included in the overhead rate. Additionally, the DOTPF's annual audits of the railroad were reviewed.

The railroad calculates an overhead rate for signal maintenance (which is in the ARRC's engineering division) based on an accounting methodology whereby:

- (1) the ARRC's administrative overhead is determined for all non-operational departments;
- (2) non-allowable costs such as bad debts, interest payments, lobbying and marketing are subtracted out;
- (3) total allowable administrative overhead is multiplied by a percentage representing the engineering division's share of general administrative overhead;

(4) the internal overhead for the engineering division, an operational division, is added back in to the non-operational administrative overhead in step one to determine the total overhead associated with engineering; and

(5) total overhead associated with engineering is divided by the engineering division's direct labor costs to arrive at the overhead percentage (it is this final overhead percentage which is used by the ARRC for signal maintenance billings).

For more information regarding how this rate is calculated see Appendix D.

The ARRC believes this rate is calculated in accordance with generally accepted accounting practices as well as in compliance with the FHWA regulations. The FHWA rules also spell out criteria for determining the current materials handling overhead rate of 16%. The significance of these regulations is that utilities are required to exclude certain costs which the FHWA believes should solely be borne by the utility.

The railroad contends this method of calculating the overhead rate is acceptable because it follows federal guidelines and conservative because it excludes expenses which would be legitimately included by some private enterprises. In fact, the ARRC says if the FHWA's non-allowables were factored into the overhead rate, next year's rate would be 223% instead of 193%. When asked what a typical overhead rate would be for a comparable private enterprise, the ARRC's controller stated while the actual rate might be less, it might be effectively more because categories which the railroad bills under overhead would normally be billed as direct costs.

It should be noted the FHWA rules used to determine reimbursement for administrative costs relate to utility construction and not maintenance. However, the DOTPF and the ARRC have used this methodology to calculate the maintenance overhead. Because there are no federal, state or local rules pertaining to overhead charged for maintenance or signal crossing maintenance, the railroad's application of the FHWA regulations to signal crossing is discretionary.

Additionally, the FHWA regulations state, "Overhead and indirect construction costs not charged directly to work order may be allocated to the relocation provided the allocation is made on an equitable basis." It should be noted the language says, "may be allocated," which implies while such overhead payments are permissible, they are not mandatory.

The following table illustrates how the labor overhead rate has risen since 1985:

Past DOTPF-Approved Labor Overhead Rates

1985	93.00%
1986	146.09%
1987	160.00%
1988	175.24% (in use until June 30, 1990)
1989	193.06% (new rate begins July 1, 1990)

As these rates indicate, the approved overhead rate has more than doubled to 193.06% in the past five years. While a signal maintenance worker's salary averages approximately \$21/hour, municipalities and other entities are required to pay \$59/hour for labor when the overhead charge is included.

The administrative overhead rate is linked to growth in the railroad's overall budget. ARRC officials state when the railroad was in federal hands, many needed improvements were neglected. During the initial years of state ownership, the railroad has strived to make long term investments in both infrastructure and personnel. These investments have contributed to larger administrative costs and the dramatic rise in overhead rates. And, while some cost areas reflecting railroad expansion are excluded from overhead the corporation's growth is still reflected in the rate.

Many of the municipalities affected by the overhead rate do not believe a 193% rate is reasonable. One concern expressed was that this rate requires municipalities to shoulder the burden of abnormally high administrative salaries and bonuses paid by the ARRC.

It should be noted most communities are not affected by the rate because few have responsibility for signalized crossings. Nonetheless, the general perception transmitted through the municipal grapevine is that a 193% rate is unreasonable and, for small communities, these charges could represent a sizable percentage of their state shared revenue for road maintenance. As more signalized crossings go to the drawing boards of more railbelt communities the controversy is likely to continue unless the rate is modified.

The ombudsman's office surveyed some of Anchorage's local utilities to compare rates and learn how their administrative overhead was derived. It should be noted in many ways these utilities are not comparable with the railroad because they perform very different services. Likewise, the ARRC contends this comparison is not appropriate because local utilities have lower administrative costs but higher direct costs. Nonetheless, this review of local utilities is included to show there are other ways of calculating overhead and that some utilities do try to link overhead more directly to specific projects.

Enstar's Comptroller Tim Casey said Enstar's rate was simply a percentage of direct payroll incurred on a particular job. He said they take a percentage of direct gross wages which on average last year amounted to 59.27% for maintenance work and 69% for construction work. Mr. Casey further stated Enstar calculated administrative costs based on what it costs to provide administrative services for a particular job, rather than taking company-wide administrative costs and sharing it among each job performed.

Anchorage Water and Wastewater Utility's Finance Manager Diana Bennett stated their overhead is a percentage of direct allocated charges which varies depending upon whether or not the project is internally-financed. Ms. Bennett said the internally-financed rate was 20% of direct charges and the other rate used was 50% of direct charges.

Claudette Perry, chief accountant for Municipal Light and Power stated they arrive at a general and administrative overhead rate by dividing their operating expenses by capital expenditures to arrive at an 18-19% rate.

ATU's Director of Finance Jeff Sinc said comparing ATU with other utilities was difficult because ATU is highly regulated by both the Alaska Public Utilities Commission and the Federal Communications Commission. He said there is no flat overhead because it fluctuates from department to department and that there are some forty cost centers. However, he did mention departmental overhead was only spread out over the salary of those working for that particular department in the field, with 15% added on to recoup general and administrative overhead plus an amount to cover building floor space.

Analysis and Finding -- Allegation 1

While the calculation of the rate is in conformance with the law, the railroad does have discretion as to whether and how an overhead rate should be collected for signal maintenance.

The sheer size of the increase over the past five years does not appear reasonably linked to administrative support increases required for crossing maintenance. The current overhead formula attempts to capture a portion of administrative costs incurred by the Engineering Division and the corporation as a whole, rather than those administrative costs more directly associated with signal maintenance. The effect of this rate could pose an unreasonable impact on small communities and service areas which lack a broad tax base. Although the concept of recouping administrative costs from those responsible for maintenance is reasonable, the formula currently used is unreasonable. I find this allegation partially justified.

* * * * *

Allegation 2. Are the terms of the standard permit contract reasonable? Is it reasonable to require municipalities and other entities to assume responsibility for railroad/highway crossing maintenance and associated liability?

A standard permit is an agreement governing the use of the ARRC right of way by another entity. This permit is written by the railroad and signed by both the railroad and the other entity. The permit attempts to define all of the responsibilities, liabilities, terms, conditions and fees associated with this use. For simplification, when municipalities have numerous permits, the railroad attempts to bring all permits under one blanket permit.

Municipal concerns over the terms of the standard crossing permit have fallen into five areas: (1) permit duration; (2) permit fees; (3) permit changes; (4) maintenance costs; and (5) liability and indemnification provisions.

Permit Duration. The Office of the Ombudsman reviewed specific standard permit agreements and found the railroad was flexible in negotiating the terms of termination and renewal. The standard permit usually guarantees a permit length of twenty years for public entities with varying stipulations stating the railroad can terminate the contract "should the Permittee fail to comply with the terms and conditions of this permit," or "at any time on 180 days' written notice," or at any time, on written notice within some other time period such as 60 or 90 days. Some of the permits contain an option to renew and some do not. When asked why renewal and termination language did not appear standard, Bonnie Bailey, the ARRC's Leasing Specialist, stated these provisions were often tailored via negotiations to fit

municipal concerns. Alaska statutes limit the ability of the ARRC to convey its interests exclusively to other entities. AS 42.40.285 states:

Unless the legislature approves the action by law, the corporation may not (1) exchange, donate, sell, or otherwise convey its entire interest in land; . . .

This statute also prohibits the railroad from leasing its land for a period in excess of 35 years unless the legislature either approves the lease, or unless the corporation "reserves the right to terminate the lease if the land is needed for railroad purposes." The ARRC is therefore following the law by not conveying "its entire interest in the land," though it could potentially expand the permit duration to 35 years.

Permit Fees. According to the railroad, this issue been resolved. Up until recently, municipalities with rail/highway crossings were responsible not only for maintenance but also an annual permit fee. Some local governments felt they were being asked to pay twice for administrative costs -- once, as part of the administrative overhead for maintenance and again, through the annual permit fee. Since this investigation began, the ARRC has initiated a new policy of not charging public entities the annual permit fee for road crossings. The railroad also has established a sliding fee schedule for blanket permits.

Permit Changes. Some municipalities strongly objected to the following permit requirement under "Plans and Specifications":

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.

The municipalities perceived this provision to be an open-ended way to compel them to upgrade crossings and assume additional maintenance burdens without their consent. One suggestion made by the Kenai Peninsula Borough was that any proposed changes in the standard specifications which relate to crossing facilities should first be considered by a diagnostic team. The borough believed this would insure local input prior to the adoption of a change and "avoid any possibility of arbitrary change by ARRC."

The railroad's response to this concern was that public involvement would be taken into account before major changes to specifications in accordance with the "Alaska Policy on Railroad/Highway Crossings."

Maintenance Costs. The Office of the Ombudsman reviewed state laws pertaining to crossings in 27 states and interviewed representatives of industry and government at the state and national level. Additionally, administrators for two public railroads in Canada were contacted.

While no two states have the same crossing laws, many determine who is responsible for costs based on the type of maintenance. For example, it is not uncommon for states to require state or local governments to maintain stop signs and other passive warning devices, as well as the crossing road bed. On the other

hand, responsibilities such as the inspection and maintenance of automatic protective devices (flashing lights and gates) are in most states provided by the railroads. Another group of states requires the railroad to maintain everything within a certain distance of the track. And still other states apportion maintenance costs on a crossing by crossing shared basis to the railroads, local government and/or state. Overall, however, the states order railroads to perform maintenance of automatic signals on public crossings.

Nearly all states in the ombudsman's survey regulated railroads and crossings either through the states' departments of highways/transportation or states' public utilities commissions. Alaska law is unique in that there are very few state regulatory burdens placed on the railroad for crossings. Unlike nearly all other states, in Alaska there exists no independent regulatory agency to provide routine oversight of railroad crossing decisions and, unlike most other states, there exists no body of law prescribing detailed responsibilities for crossing maintenance and construction.

While a minority of states require local governments to bear all responsibility for crossing maintenance, the ARRC believes this policy has merit because they contend municipalities are the prime beneficiaries of crossing protective devices. The ARRC states the Interstate Commerce Commission concluded that highway users are the principle recipients of benefits flowing from special protection at crossings. The railroad also cited some comparable examples of maintenance responsibilities in other transportation fields:

. . . tug and barge companies do not maintain navigational lights on our water systems -- the Coast Guard does. Trucking companies do not maintain road and street lights -- public highway agencies do. Of all the traffic control devices in the nation -- airports, waterways, state highways, local streets -- highway/railroad grade crossing signals are the only traffic control devices not maintained by public funds in many states.

The ARRC also asserts ". . . the trend is toward recognizing that maintenance of traffic control devices is a local and state government responsibility."

For more information on other states' crossing laws see Appendix E.

An ombudsman investigator interviewed Robert Hest, Edmonton regional director of the Canadian National Railway, and William Stellar, maintenance of way supervisor of the Bridges and Buildings Division for British Columbia Rail. Both the Canadian National Railway (CNR) and B. C. Rail are publicly owned railroad corporations, CNR is owned by the federal government and B. C. Rail by the provincial government.

The CNR is regulated by the National Transportation Agency (NTA) which is analogous to the U. S. Interstate Commerce Commission, though the NTA has even broader powers. CNR's Mr. Hest stated the maintenance responsibility for the crossing surface depends on which entity was the junior or senior party to the crossing or improvement. If the railroad existed before the road and the crossing or improvement were requested by a town, the railroad would be the senior partner and the town, as the junior partner, would be responsible for the road surface

maintenance. Recently enacted federal regulations require automatic signal construction and maintenance costs to be shared in the following proportions: 80% paid for by the federal government through the NTA; 15% paid for by the local community and 5% paid for by the CNR. However, local communities are only required to pay where they are the "junior" partner to a crossing improvement.

Bill Stellar of B. C. Rail stated the process in British Columbia was different than that at the federal level. In British Columbia, a town requesting a crossing or improvement makes a formal request to the Provincial Ministry of Transport which then holds a hearing on the proposal. The ministry approves the request based on criteria similar to what has been established by the Alaska Policy on Rail/Highway Crossings. For example, a crossing is approved depending on factors such as the distance to the nearest crossing; the type approved depends on factors such as daily traffic flows. Nevertheless, once the ministry approves a crossing or improvement, the provincial government as owner of the railway picks up the maintenance costs. Only rarely, do the local communities pay for maintenance costs, and then it's usually for minor devices such as stop signs.

The ombudsman investigator also interviewed several railroad officials around the country including Steve Ditmeyer, chief engineer for research, communications and control systems for the Burlington Northern Railroad. Not only is Mr. Ditmeyer in a unique position working for a railroad serving twenty five states, he also has held the position of General Manager for the Alaska Railroad (1979-1980) when the railroad was a federal entity. Mr. Ditmeyer stated crossings were not a controversial issue during his tenure with the Alaska Railroad. His recollection was that under federal ownership there was some cost sharing between the federal and state governments and he did not recall municipalities paying significant amounts for maintenance.

Mr. Ditmeyer's assistant, Assistant Chief Engineer for Control Systems Bill Peterson said in most of Burlington Northern's states, municipalities have no responsibility for maintaining crossings, not even for new crossings. He mentioned some states, such as Wisconsin and Illinois, refund part of the maintenance costs to railroads but that this is not the norm. Mr. Peterson said even though Burlington Northern was there first in many cases and owns its right of way, "it's a different political atmosphere here . . . we are ordered by the states to put in crossings; we are ordered to do maintenance whether we like it or not." Both Mr. Ditmeyer and Mr. Peterson stated the maintenance responsibility was a great burden, however, they said they "accepted it as part of the cost of doing business."

John Schersinger, manager of rail/highway programs for the Association of American Railroads, the leading trade organization for the nation's railroads, discussed the maintenance issue and stated "ninety percent of the states require the railroads to exclusively maintain crossings." Mr. Schersinger stated crossing maintenance is a public responsibility and that, at a minimum, it should be a shared responsibility. He said railroads all over the country have had this maintenance problem primarily with small towns. Mr. Schersinger stated small towns often cannot afford maintenance costs and, "since you can't get blood out of a turnip, the railroads try to work agreements." However, he mentioned agreements are often difficult to come by because state laws are often not on the railroad's side.

Jerry Masters, director of engineering operations for Burlington Northern, was surprised to learn the Alaska Railroad passed on maintenance costs to the local communities. He said, "the way the Alaska Railroad does it is the way it should be

done (everywhere), but it's not." He stated they run into a problem in some states when they try to charge municipalities for maintenance and the communities turn around and start condemnation proceedings to gain control of the crossing. Mr. Masters said there are not very many new crossings going up, though existing crossings are often widened or improved, requiring increased maintenance which is usually passed on to the railroads.

The ombudsman's investigator discussed the issue with Bruce George, transportation specialist for crossing programs, and Bill Loftus, executive director, the Federal Railroad Administration. The Federal Railroad Administration (FRA) is part of the federal Department of Transportation and oversees the regulation of railroad safety. The FRA does not regulate rail/highway crossing devices but rather oversees train operation safety. Mr. George stated maintenance "sometimes comes down to who was there first," however it is usually by agreement. He emphasized states have leverage in bargaining because they can often resort to condemnation proceedings. Mr. Loftus, who served as head of policy for the FRA when it managed the Alaska Railroad, reiterated that no two states have the same crossing policy though it's usually either a railroad responsibility or a shared responsibility. He said the federal government is looking into taking a more active role on the issue and may some day regulate crossing policies.

Several state officials also were interviewed including Ray Callahan, rail/highway superintendent for Iowa's DOT; Paul Heitman, director of the Bureau of Roads and Harbors for Wisconsin; Ed Immel, rail planner, Oregon DOT and Robert Swanson, Railroad Administrator for Minnesota DOT.

Mr. Callahan stated while many of the roads in Iowa were developed after the rail lines were in place, the railroads were still considered an "attractive nuisance." He stated construction of crossings are usually shared as follows: State Surface Repair Fund 60%; local match 20% and railroad 20%. He said the railroads are always required to accept maintenance costs, including automatic signals. He stated it costs \$1700-1800 to maintain a crossing in Iowa. (Note: the ARRC's review of Iowa statutes contradicts Mr. Callahan. The ARRC states Iowa law provides that for crossings built after 1973, the state pays 75% of signal maintenance costs and the railroads pay 25%. One factor which may account for this discrepancy is that most of Iowa's development patterns may have been set and crossings in place before 1973.)

According to Mr. Heitman, Wisconsin can and does reimburse for both surface maintenance and signals from a fund established by the legislature. He said the state may reimburse "up to 50%" of maintenance costs, however, the state DOT is trying to eliminate the fund because they consider it a railroad subsidy and would rather put state funds elsewhere. He further stated the railroads are responsible for total maintenance to within four feet of the outer rails at a crossing. Mr. Heitman said there is a long tradition in Wisconsin of the railroads paying part of the costs of maintenance. In fact, in Wisconsin, railroads are required to pay 50% of the cost of fencing along railroads of adjacent property.

Mr. Immel stated Oregon requires the railroads to maintain all crossings even when a road crosses a rail line at a new location. Likewise, Robert Swan stated Minnesota places the onus of maintenance on the railroads, though sometimes state government contributes to the upkeep of automatic signals. Minnesota allows railroads to collect fees for private crossing maintenance, though these costs are usually minimal.

Liability and Indemnification. The main objections of municipalities are: (1) if the railroad is paid to perform maintenance work, it is unreasonable to hold municipalities responsible for liability arising from the consequences of improper or poor maintenance; and (2) it is unreasonable for the railroad to require municipalities to indemnify the railroad from its own negligent acts.

The liability insurance section of the standard permit requires that before a new crossing or improvement is made the 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.

This insurance provision specifically requires municipalities who hold crossing permits to carry not less than:

1. One million dollars (\$1,000,000) in general liability insurance to protect against bodily harm (including death) and property damage.
2. Five hundred thousand dollars (\$500,000) in automobile liability insurance for bodily harm (including death) and property damage.
3. One million dollars (\$1,000,000) per occurrence for bodily injury and one million dollars (\$1,000,000) per occurrence for property damage in railroad protective liability insurance naming the Alaska Railroad Corporation as insured.

The indemnification portion of the contract further states that the municipality or other entity shall assume complete responsibility for all claims resulting from the existence of the crossing and "indemnify and hold harmless ARRC" from any claims or damages resulting from the crossing as a result of any "act, omission, fault, negligence" of the permittee. This provision further states these indemnification provisions:

To the fullest extent permitted by law . . . shall apply regardless of any acts, omission, fault, negligence or strict liability of any employees or agents of ARRC.

The railroad's position is that it should not be held responsible for damages arising from a crossing or improvement which it did not initiate, and that municipalities or other entities should bear liability for those crossings or improvements they request. Alaska statutes have given the railroad a specific directive to require municipalities to indemnify the railroad before authorizing any public use of railroad land. AS 42.40.420 states:

Before authorizing a use under this section, the board shall require the municipality or state to execute an agreement in a form approved by the board to . . . hold

the corporation harmless from and indemnify the corporation for liability and claims arising from any use authorized under this section including (A) defending the corporation in a cause of action brought against the corporation as a result of the use; and (B) indemnifying the corporation for the amount of a judgement including prejudgment and postjudgment interest, rendered against the corporation, and for all costs and attorney's fees incurred by the corporation in settling or defending the claim. . . .

Analysis and Finding -- Allegation 2

Permit Duration. The ARRC has not acted unreasonably by setting a duration of twenty years on permits. The railroad has demonstrated a willingness to modify permit conditions to suit the desires of individual municipalities by including options to renew as well as requiring itself to give written notice of termination. Furthermore, the ARRC has not demonstrated any abuse or arbitrarily terminated permittees in compliance. One way the ARRC might address municipal concerns is to include an option to renew provision as standard permit language.

Permit Fees. The ARRC's sliding fee schedule for blanket permits as well as the new policy of not charging public entities the annual permit fees for road crossings, are both reasonable and address the concerns of municipalities.

Permit Changes. While the ARRC's requirement that permittees pay for needed changes does not in itself seem unreasonable, it might become unreasonable if such changes were costly and were required without municipal involvement. For this reason, the Kenai Borough's request to spell out the requirement for diagnostic team review, would better address these concerns.

Maintenance. Alaska is unique in having only one publicly owned railroad, serving a vast area. Alaska also is a developing state, which means additional road crossings across the rail line will be necessary for economic development and community expansion. Moreover, resource extractions and increased commerce could result in rising rail and highway traffic volumes, creating the need for more automatic protective devices at new or existing crossings. Higher maintenance costs will be the result of more crossings and automatic protective devices.

The ARRC's position on maintenance has been, when a new road crossing or improvement is made to the existing rail line, the cost of the crossing or improvement should reasonably be borne exclusively by the political authority responsible for the road. The railroad holds it has nothing to gain from such changes, and would be happy to pay if the railroad were initiating a crossing over an existing road. On the other hand, the position of many local governments, particularly smaller communities, is that the crossings and improvements are vital to their communities' safety and development, yet not affordable at the local level. Additionally, many of the local governments lack area wide road powers and do not believe service areas are an equitable method of paying for facilities used by a wider segment of the population.

If other states are an indication of what is reasonable, the current policy of requiring local governments to pay total maintenance costs associated with new or improved crossings is unreasonable. With very few exceptions, most states place the

burden of crossing maintenance squarely on the railroads. Those states which do not require railroads to completely assume maintenance usually stipulate the railroads must share in these costs. However, some states do provide crossing safety protection funds which are primarily used for construction and occasionally for maintenance.

The ARRC's enabling legislation gives some guidance as to how the railroad should be managed. The railroad was established not only as a corporation, but as a public corporation. However, the railroad has a special status in that its employees are not considered state employees and it "has a legal existence independent of and separate from the state." The ARRC board is directed to "generally manage the corporation on a self-sustaining basis." However, with the Governor's concurrence, the ARRC Board may apply to the legislature for an appropriation to pay for a particular service which is not self-sustaining. (AS 42.40.280) While the legislature intended for the railroad to pay its own way, it is also clear the railroad was to provide some public benefit. The door was left open for some non-sustaining services with appropriate oversight.

Placing of all crossing maintenance costs exclusively on municipalities could have an unreasonable impact on small communities and service areas. Many of these smaller jurisdictions are completely dependent on state-shared revenue for road maintenance, and lack the tax base to adequately provide both road maintenance and crossing maintenance. It does not seem logical that the state legislature provided needed funding for municipal road maintenance only to have the state railroad reclaim these funds for crossing maintenance.

Furthermore, the railroad's assertion that it does not derive any benefit from new or improved crossings over its existing line is not reasonable. Improved crossings can improve safety, which in turn can engender both tangible and intangible benefits to the railroad. Improved road access and resulting economic development can positively impact the railroad by increasing freight loads. On a more intangible level, the railroad may never know how it has benefited from accidents avoided because of crossing safety devices.

Additionally, many of the municipalities assert they provide service to the ARRC for which they are not compensated because they cannot tax the railroad. Road, fire, and emergency services are some of those benefits municipalities contend the ARRC receives at no cost. These communities also contend the railroad does not have to pay assessments for water and sewer lines which serve the railroad, though the ARRC does pay water and sewer user fees. Local governments believe their municipal contributions to the ARRC should be factored into the equation of crossing responsibilities.

Assuredly, there are also costs incurred by the railroad, and it does seem reasonable to share some of these maintenance costs with the municipalities taking into account the benefits derived by the municipal government and as their ability to pay.

One of the potential problems identified in the ombudsman's survey of other state crossing policies was the lack of any appeal process or independent regulatory agency with direct oversight of the railroad. While the diagnostic team approach developed by the Alaska Policy on Railroad/Highway Crossings is a positive step forward, there is a need for an entity, independent of the local governments and railroad, to apportion crossing costs and resolve other related issues. While the

legislature retains the most direct oversight of the railroad, it is not reasonable to expect the legislature to immerse itself in crossing policy on a regular basis.

Liability and Indemnification. The assumption of liability is another cost associated with crossings. In actuality, the courts ultimately apportion liability after an injury or property damage based upon various factors -- including the responsibilities of the entities involved with the crossing and sometimes irrespective of contract language attempting to spell out liabilities. In this light, it appears reasonable for both the railroad and municipalities to carry liability insurance for property damage and bodily injury. In fact, most municipalities are self-insured and carry such insurance or its equivalent under an umbrella policy. The railroad appears to have been flexible with the municipalities in accepting this self-insurance. The specific general and automobile liability insurance required in the standard permit appears reasonable and in conformance with what many municipalities require in their own contracts with other entities.

According to ARRC General Counsel Larry Wood, the railroad protective liability insurance, naming the ARRC as the insured, is only required during the construction of a crossing or improvement. If a municipality or entity initiates a new crossing or improvement, it appears reasonable for the railroad to require some protection during this construction phase.

The railroad has acted reasonably by including indemnification provisions in the standard permit as required by law.

I find the allegation that the ARRC acted unreasonably in requiring municipalities and other entities to accept standard permit language relating to the permit duration, fees and contract changes to be unsupported.

I find the allegation that the ARRC acted unreasonably in requiring municipalities and other entities to accept complete responsibility for maintenance of crossings to be justified.

I find the allegation that the ARRC acted unreasonably in requiring municipalities and other entities to assume general liability conditions in the permit to be unsupported.

Overall, I find allegation two partially justified.

* * * * *

Allegation 3 and 4. Did the ARRC unreasonably indicate it would close existing crossings or not build needed crossings unless municipalities and other entities accept terms of the standard permit?

These allegations stem from conflicts surrounding crossings in the City of North Pole, as well as issues raised by other municipalities and private entities concerning crossing access.

The North Pole controversies center around two issues: (1) the city's declaration that crossing agreement No. 5719, accepting city responsibility for several road and bike path crossings, was not valid because this contract was never ratified by the city council; and (2) the issue of who should accept maintenance responsibility for a signalized 8th Avenue crossing.

After North Pole declared contract No. 5719 null and void, Associate General Counsel for the ARRC Phyllis Johnson wrote the North Pole City Attorney Joseph Sheehan to explain the railroad's position that the contract, which had been signed by Mayor Lewis, was valid. In her letter of January 9, 1989, Ms. Johnson stated:

In summary, the contract between ARRC and the City of North Pole is valid. If the City wishes to terminate its ongoing responsibilities under the agreement, the elimination of the various facilities and participation in a mutual rescission of the agreement should be proposed for ARRC's consideration.

Here, while Ms. Johnson essentially states if North Pole doesn't want to live up to the agreement, they should propose mutually closing the crossings. At no point did the railroad state it would unilaterally take such an action.

North Pole, DOTPF and the railroad all agreed the crossing should be upgraded with automatic protective devices, though no party would agree who should accept maintenance costs. Without a guarantee of maintenance, the project could not be built, because of federal regulations and because the railroad stipulated it must be maintained if built. The question is, did the railroad unreasonably indicate it would not allow upgrading the crossing unless the city accepted the standard permit?

Analysis and Findings -- Allegations 3 and 4

The ombudsman's office could not find any indication of the railroad's intent to close existing North Pole crossings even after the city declared contract No. 5719 null and void. However, North Pole did view the ARRC's letter of response as a veiled threat. This letter essentially stated if the city wants to terminate the contract "the elimination of various facilities" should be mutually considered. Though it should be noted even after the city stopped paying its permit fee for the contract, the railroad did not take any action to close these crossings.

It is reasonable for the ARRC to require some entity to maintain automatic protective devices. However, because the ombudsman has found that part of the standard permit which requires municipalities to accept complete responsibility for maintenance in all cases to be unreasonable, it is also unreasonable for the railroad to impede construction of a needed crossing unless the City of North Pole unilaterally accepted the railroad's permit conditions. This is not to say the railroad should bear full responsibility for maintenance, but rather, the ARRC should have made some attempt to negotiate a settlement which would fairly apportion costs. Of course, in the absence of an independent regulatory body to mediate disputes, it is understandable why both the city and the railroad took unilateral positions on the permit.

The allegation also has been made by some of the boroughs and private developers that the railroad has unreasonably indicated it would close or not build crossings which serve private entities. In the case of existing private crossings, the ARRC has attempted to bring such crossings under permit, though there are no indications any crossings have been closed. In the case of new private crossings, the ARRC has in most cases attempted to have the public entity or its service areas accept terms of the standard permit or not grant them. Because some boroughs do

not believe their service areas are the appropriate vehicle for crossing maintenance, and because the ombudsman has found it unreasonable for municipalities to accept total responsibility for maintenance, the railroad should attempt to negotiate permit terms and conditions with either the municipality or the private entity.

I find the allegation the ARRC unreasonably indicated its intent to close needed crossings if municipalities and other entities do not accept terms of a standard crossing permit to be unsupported.

I find the allegation the ARRC unreasonably indicated its intent not to construct needed crossings if municipalities and other entities do not accept terms of a standard crossing permit to be justified.

* * * * *

RECOMMENDATIONS

Despite current crossing controversies, I found both the railroad and municipalities genuinely interested in resolving issues and improving their relationships. To the railroad's credit, the ARRC President and CEO Frank Turpin requested this independent review of crossing issues. The ARRC also has sought greater community involvement in railroad decisions by establishing the Community Briefing Council. The council is an ARRC advisory board comprised of several railbelt municipal officials, though it should be noted it does not include membership from North Pole or Wasilla.

In interviews with municipal leaders, the investigator found even in those communities with the greatest crossing controversies, that compromise seemed possible. While some of the legal positions taken by both sides have appeared firm, most municipal officials seemed willing to accept a shared responsibility for crossings. Municipal officials generally expressed satisfaction in dealing directly with Mr. Turpin, and felt problems sometimes grew out of proportion when Mr. Turpin was out of the discussion. In fact, most problems evolved when direct personal contact was abandoned and all parties, including the municipalities, resorted to formal letter writing and press skirmishes.

Recommendation 1. For the immediate future, it is recommended President Frank Turpin take a more direct and personal a role in defusing crises and assuring municipal leaders they have access to the chief executive. For example, it is probable much of the North Pole controversy could have been averted had a rapport been developed early on between Mr. Turpin and Mayor Lewis. North Pole has in the past felt ignored and overridden by a multitude of agencies. When the railroad and other state and federal agencies have gone to interior Alaska to gather input and ideas, they habitually have skipped North Pole. Such small things as having a meeting at the North Pole Chamber of Commerce or making a personal visit to city hall could make a difference in gaining municipal support. This does not mean agreement is always possible or desirable, but that there may be better ways to resolve disputes than through formal channels.

Recommendation 2. To rectify concerns that the overhead rate is unreasonable, it is recommended the ARRC eliminate the present method of calculating administrative overhead. In its place, it is recommended the ARRC charge only for that portion of supervisory services and employee benefits directly related to crossing maintenance.

Recommendation 3. The Alaska Policy on Railroad Crossings provides positive guidance as to how crossing issues should be decided, particularly through the diagnostic team process. This process insures all affected parties, including local governments, are represented before crossing decisions are made. It is recommended that the ARRC formally publish guidelines in the Alaska Administrative Code (AAC) establishing the diagnostic team process and providing for diagnostic team reviews of crossing changes.

The ARRC normally establishes administrative regulations through Board Rules, which is a process established by statute. While it is exempt from mandatory rule filings under the state Administrative Procedures Act, the ARRC may also voluntarily publish regulations in the administrative code. It is our understanding publication in the administrative code is relatively easy, and requires a review by the Lt. Governor for conformance to style but not content. (An example of such voluntary filings by the Alaska Housing Finance Corporation is referenced in the editors notes under 15 AAC 118, Article 2, page 370.)

Including such regulations in the AAC's would give municipalities and individuals ready access to crossing regulations. While interested parties may procure copies of the ARRC's board rules, the administrative code is conveniently located at most libraries. This visibility would clarify the process by which crossing are added or changed, as well as enhance the credibility of the Railroad's rule making authority through the issuance of regulations in the same publication as other state agencies.

Recommendation 4. It is recommended the ARRC develop a formal appeals process for railroad decisions, using the Board of the ARRC as the appellate body. This appellate process may be used to resolve specific crossing disputes including ARRC's overhead rate for all municipal crossings and the allocation of maintenance costs for future crossings.

As part of this appeals process, it is specifically recommended that a municipality may request the Board to appoint an independent hearing officer to conduct hearings and recommend proposed findings and recommendations.

It is further suggested an aggrieved municipality will select the name of the hearing officer from a list provided by the Board.

Recommendation 5. It is recommended the ARRC in cooperation with railbelt municipalities develop a criteria for the apportionment of rail/highway crossing costs. The purpose of this apportionment shall be to divide costs between the ARRC and the affected municipalities in an equitable manner based upon the benefits to be derived by each party from the crossing improvement. In the calculation of apportionment, the following factors may be considered:

- (1) Municipal services provided the railroad;
- (2) ARRC services provided to the municipality.

Recommendation 6. It is recommended the ARRC continue the Community Briefing Council and expand membership to include representatives from all local governments in the railbelt.

These recommendations are my final recommendations and reflect a few modifications from my preliminary recommendations to the ARRC. These modifications were made after the ARRC was given an opportunity to review recommendations and findings as required by AS 24.55.180.

Originally, in my preliminary report to the ARRC, I had recommended that the ARRC propose to the Legislature that the Alaska Public Utilities Commission (APUC) be given regulatory oversight of the ARRC in the area of railroad/highway crossings. My intent with this recommendation was to provide a mechanism for resolving disputes in the event involved parties could not reach an agreement on the apportionment of costs. Because I believe there needs to be some independent review of apportionment decisions, and because public utilities commissions are commonly used for such a purpose in other states, I proposed the APUC be given this oversight responsibility. The ARRC contended the use of the APUC would be costly, time-consuming and inefficient. The ARRC also pointed out that in states which use public utilities commissions to resolve such disputes, the railroads are predominantly privately-owned. Furthermore, the railroad believed its enabling legislation and charter already provided public oversight of railroad decisions through the public appointment of community and business leaders to its board of directors.

In consideration of the ARRC's comments, I proposed the idea of an independent hearing officer to conduct hearings and make recommendations for apportioning costs to the ARRC's board. While I am hopeful the hearing officer concept will be workable, I may at a later date come back and review the need for the APUC's oversight if this recommendation does not prove successful.

THE AGENCY'S RESPONSE:

The ARRC responded in writing to all of the ombudsman's findings which were either found justified or partially justified.

Allegation 1: The ARRC in the issuance of crossing permits unreasonably established overhead charges for maintenance. *Finding:* partially justified.

The railroad responded to this finding by stating that the majority of automatic protective devices are actually owned by the municipalities and that the ARRC "simply maintains such equipment at the request of the owners who are free to maintain these devices by themselves if they so choose."

The ARRC agreed the dramatic increase in the overhead rate since 1985 appears unreasonable but that the reason for the increase after 1985 was that the rate for 1985 and prior years was computed by the federal government. The railroad said the federal government had excluded many types of costs which are normally accounted for in the overhead rate such as insurance, legal fees, workers compensation, unemployment compensation and vehicle costs.

The railroad elaborated:

After the transfer of the railroad to the state in 1985, auditors from the state DOT/PF spent over three weeks reviewing ARRC's accounting procedures. These auditors computed the overhead rates used in 1986 and 1987. Since then, ARRC has developed the overhead

rate using the procedures established by state auditors and the rate is approved by the same auditors.

ARRC did, however, acknowledge that in addition to the change in rate computation from the federal system, other reasons for the increase were "corporate investments in infrastructure" and "innovations in accounting systems which help us to better capture and record the actual overhead costs of performing these services."

The ARRC strenuously objected to the ombudsman's inclusion of the survey which compares several local utility company overhead rates to the ARRC's, stating the comparison is "misleading and unfair." The ARRC added:

The draft (comparing local utilities to the ARRC) fails to distinguish between the different types of overhead rates used by the various companies. For example, ARRC's overhead rate is an overhead rate computed for the ARRC's engineering department. The other companies use a company-wide overhead rate which, while it may appear as a lower percentage of direct costs, actually results in the same or similar hourly rate. This occurs only because ARRC applies its rate only to direct labor while the other companies apply their overhead rate to direct labor plus benefits plus any applicable material, equipment, transportation or leasing costs. Given these differences, the only fair way to compare ARRC maintenance or service charges with those of other utilities is to compare the total charge for a comparable service.

The ARRC also stated their controller had contacted John Brown of DOTPF who is in charge of payments to the utilities for reimbursable construction or maintenance work performed at the request of DOTPF. He stated that DOTPF pays: ATU \$95/hour for comparable work performed by ARRC, while ARRC only charges \$59/hour; ML&P charges \$56-\$59/hour for comparable work; Anchorage Water and Wastewater charges a similar rate to ATU; and Enstar charges 128.67% for reimbursable work. The railroad stated Enstar "computes its total charge by adding 30% to the actual employee wage for benefits, 31% for transportation and loading and then multiplying the total by 128.67%!"

Allegation 2(b): The ARRC acted unreasonably in requiring municipalities and other entities to accept complete responsibility for maintenance. *Finding:* Justified.

The ARRC disagreed with this finding, though it did acknowledge if it could be shown the ARRC was directly and tangibly benefiting from a crossing or improvement, that it would be appropriate for the railroad to share in the costs of maintaining the crossing. While the railroad stated "it is generally true that several states have passed onto railroads some share, large or small, of crossing maintenance costs . . . it is also true that at least four states besides Alaska require the public entity that requested or initiated the crossing to bear all of the maintenance costs. These states are California, Kentucky, Texas and Louisiana." The railroad said that even though its position may be held by a minority of states, "Alaskans will enthusiastically adopt a minority view if the proposal makes sense and seems justified by all the circumstances."

The ARRC does not believe it should accept responsibility for crossing maintenance merely because municipalities cannot afford to pay for it. The railroad also stated it has a unique status in that it is required to be self-sustaining and yet at the same time is state owned. One solution proposed by the ARRC is for municipalities to "aggressively pursue state subsidies."

The ARRC quoted a review by the Interstate Commerce Commission which "concluded that highway users are the principal recipients of the special benefits flowing from special protection at rail/highway grade crossings." Likewise, the ARRC said "The only grade crossing protection device that benefits the railroads is grade separation . . . grade crossing protection is mandated by a sense of concern for the safety of the motoring public and not because of any benefit to the railroad."

With regard to any benefits the municipalities provide the railroad such as local fire and police protection, the ARRC stated "those benefits are far outweighed by the benefits ARRC provides to such communities in the form of commerce and jobs that ARRC attracts to each railbelt community, low or no cost municipal trails, parks and leases on railroad lands, and state-wide passenger runs operated at huge yearly deficits for the benefit of all Alaskans and their guests." Additionally, ARRC stated many of the decisions of other states who have required the railroads to in whole or part share the maintenance costs of crossings, have "been based on political convenience, not sound public policy."

The ARRC did leave open the possible allocation of crossing costs, but that any such apportionment "ought to be based upon an examination of the merits of each crossing project." ARRC stated it "should be expected to share in maintenance costs for such crossings only if: the railroad has initiated the request for the crossing; the crossing allows access to previously inaccessible ARRC property; and/or the proposed crossing allows access to a new rail customer." In addition, the railroad said intangible or speculative benefits should be left out of any apportionment criteria. Nonetheless, and very importantly, the ARRC agreed to set up a criteria for apportionment which would become the basis for appealing to the board. The ARRC also expressed a desire to review this criteria with the municipalities, rather than unilaterally defining benefits or any subsequent apportionment.

Allegation 4: The ARRC unreasonably indicated its intent not to construct needed crossings if municipalities and other entities do not accept terms of a standard crossing permit. *Finding:* Justified.

The ARRC acknowledged that it did not "adequately consider a recalculation of the overhead rate during its discussion with municipal leaders," and goes on to state, "Had this happened, perhaps negotiations would have been successful." However, the ARRC believed it did try to resolve crossing conflicts by waiving annual permit fees, changing its billing practices, and offering the cities an opportunity to provide for signal maintenance. Nonetheless, the railroad said, "In retrospect, these concessions have proved inadequate and ARRC will accept your advice to restructure its overhead costing."

Recommendation 1. For the immediate future it is recommended that the ARRC's President and CEO, Frank Turpin, take a more direct and personal role in defusing crises and assuring municipal leaders they have access and an ear in the chief executive's office.

The ARRC accepted this recommendation.

Recommendation 2. It is recommended the ARRC eliminate the present method of calculating administrative overhead. In its place, it is recommended the ARRC charge only for that portion of supervisory services and employee benefits directly related to signal maintenance.

The ARRC accepted this recommendation to eliminate the present method of calculating administrative overhead for municipal crossings and stated the exact nature of the restructuring will be negotiated with railbelt municipal leaders at a meeting to take place in the near future. The ARRC also stated it is their understanding that this meeting will also include a discussion of the extent to which indirect costs will be considered in the overhead rate.

Recommendation 3. It is recommended the ARRC voluntarily publish regulations in the Alaska Administrative Code establishing the diagnostic team process and providing for diagnostic team reviews of crossing changes.

The ARRC initially proposed as an alternative sending all municipalities and state libraries copies of the ARRC's Board Rules. The ARRC also suggested the possibility of having the state Department of Transportation and Public Facilities publish these crossing regulations in the Alaska Administrative Code. However, after ARRC discussed the merits of voluntarily publishing its Board Rules in the Alaska Administrative Code with the ombudsman, President and CEO Frank Turpin agreed to bring this recommendation to the ARRC Board for their review.

Recommendation 4. It is recommended the ARRC develop a formal appeals process for railroad decisions, using the Board of the ARRC as the appellate body. This appellate process may be used to resolve specific crossing disputes including ARRC's overhead rate for all municipal crossings and the allocation of maintenance costs for future crossings.

As part of this appeals process, it is specifically recommended that a municipality may request the Board to appoint an independent hearing officer to conduct hearings and recommend proposed findings and recommendations.

It is further suggested an aggrieved municipality will select the name of the hearing officer from a list provided by the Board.

The ARRC accepted this recommendation with the exception that "the board's review procedures should not apply to crossings which are currently subject to valid, legal contracts." The railroad added: "Reviewing existing crossing agreements will be time consuming and expensive. It will also lead to speculation, argument, and possible litigation with regard to facts and circumstances which existed when the maintenance responsibilities were agreed to by the various municipalities." Nonetheless, ARRC agreed to consider applying an apportionment criteria (to be worked out after discussions with the municipalities) and the hearing process to existing crossings but only after any existing permit expires in the future.

Recommendation 5. It is recommended the ARRC in cooperation with railbelt municipalities develop a criteria for the apportionment of rail/highway crossing costs. The purpose of this apportionment shall be to divide costs between the ARRC and the affected municipalities in an equitable manner based upon the

benefits to be derived by each party from the crossing improvement. In the calculation of apportionment, the following factors may be considered:

- (1) Municipal services provided the railroad;
- (2) ARRC services provided to the municipality.

The ARRC agreed apply a criteria based on tangible benefits received by the various parties to a crossing or improvement. The railroad stressed "we believe that intangible or speculative benefits should be disregarded." The ARRC also agreed to establish this criteria with input from and in cooperation with the municipalities.

Recommendation 6. It is recommended the ARRC continue the Community Briefing Council and expand membership to include representatives from all local governments in the railbelt.

The ARRC accepted this recommendation.

* * * * *

The findings and recommendations cited above will remain the findings and recommendations of record in this case.

Because the ARRC has agreed to implement most of these recommendations, while specific changes to the overhead rate and apportionment of maintenance costs have not yet been determined, I find the disposition of this case to be partially rectified.

KH:pjc

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

1.0 INTRODUCTION

The goal of any transportation agency is to provide for the safe, efficient, and economical movement of people, goods and services. It is a continuing challenge to seek the proper balance between safety, efficiency and economy to bring the greatest good to the most people within the constraints of available resources.

With the acquisition of the Alaska Railroad by the State, continued population growth, and decreasing financial resources, the need for a more uniform statewide program to provide safe railroad/highway grade crossings became apparent.

Responding to this need, the Commissioner of the Department of Transportation and Public Facilities (DOT&PF), and the President and Chief Executive Officer of the Alaska Railroad Corporation (ARRC), established a Task Force on Rail/Highway Crossings composed of representatives of their agencies and the Federal Highway Administration (FHWA).

At the Task Force's first meeting on October 29, 1985, the Commissioner outlined his concept of the three subtasks required to carry out his charge to the Task Force:

1. After referring to available technology and standards, determine the reasonable type of protection for each "class" of crossings.
2. Inventory all crossings in the State to determine the appropriate protection "classes".
3. Develop a reasonable structured priority system to implement improvements through a rational and systematic allocation of available resources.

Within these subtasks, the Task Force set out to accomplish this change and make the Alaska highway system and Alaska Railroad safer for the traveling public.

1.1 1988 Policy Revision

Early in 1988 it became apparent that this policy needed to be revised to include more information on sight triangles and how diagnostic teams function. A total of four work sessions were held (2 in Anchorage and 2 in Fairbanks). The procedures in new Section 5.1 were used in developing the revised policy.

2.0 DISCUSSION

Most crossings of the Alaska Railroad Corporation (ARRC) are under permit to the agency (State or local) which has the road authority. The terms of the permit make the road agency responsible for construction and maintenance costs associated with the permitted road crossing, and for claims resulting from the construction, maintenance and use of the road crossing.

The Task Force, with the assistance of the FHWA and the Federal Railroad Administration (FRA), reviewed the latest safety resource allocation techniques, including an accident prediction model developed through FHWA research. FHWA's research was aimed at establishing a national standard for planning crossing improvements.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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2.0 DISCUSSION - continued

The computed "DOT Accident Prediction Value" (APV) of a crossing is the product of a series of factors representing the various characteristics of the crossing, and is equivalent to the expected number of accidents per year at that crossing.

The State Inventory was completed and the APV's of all crossings were computed. A graph was made of the number of crossings exceeding the various values of APV, and this was compared to a similar graph developed by the FHWA/FRA for all crossings in the nation. On a percentage basis, the two graphs were very similar. The Task Force found that the crossings with the highest APV's are generally those that are already known to be in need of improvement, many of which are already programmed or in progress.

The FHWA resource allocation model develops threshold values of the APV to determine the optimum cost-effective safety improvement decisions at each crossing.

With the exception of grade separations, the biggest decision is whether or not to install active warning devices (train activated flashing lights or flashing lights and gates). The allocation model arrives at an APV of 0.1 as the cost-effective threshold value for considering going from passive devices only (signs, markings) to active protection. Rapidly decreasing safety benefits along with rapidly rising costs are associated with an APV less than a value near 0.1, both for the national inventory and the state distribution. When this criterion is applied to the State's crossings, the Task Force found that it resulted in a program that can be accomplished in a reasonable time within the available State and federal resources.

In addition, this technique meets the federal requirement of a rational prioritization scheme for using federal crossing safety improvement funds.

The Task Force noted that this prioritization system is only an indicator of the probable treatment required at a given crossing in order to concentrate efforts where they are most urgently needed. In other words, the final decision as to what major treatment is required at a crossing would be based on an on-site evaluation by a professional diagnostic team, and the APV criterion would not normally be blindly followed, especially for borderline cases. There will be instances in which an evaluation reveals that relatively low-cost improvements such as increased sight-distance in conjunction with better signing might change the accident potential to a level that would not require active devices which are expensive to install and maintain, thereby freeing funds to be applied where they would do more good.

It is also imperative that local jurisdictions be brought into the diagnostic process when they are affected by the engineering decision. Likewise, local jurisdictions, developers, and other State agencies that have the potential to create a rail/highway safety conflict must take this into account in their planning functions, and should be responsible for their fair share of any costs created by their actions.

Provision should be made to maintain the program through regular updating of the inventory and priority list, and periodic evaluation of the effectiveness of the improvements made.

The following subsections summarize the results of the Task Force investigations and deliberations.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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3.0 DEFINITIONS

- 3.1 The U.S. Department of Transportation (DOT)/Association of American Railroads (AAR) National Railroad-Highway Crossing Inventory Procedures Manual ("Procedures Manual") defines public and private crossings as follows:

"Public Crossing: A public crossing is a location where the tracks cross a road which is under the jurisdiction of and maintained by a public authority and which is open to public travel."

"Private Crossing: A private crossing is a location where a physical crossing is present but the road does not meet the conditions indicated above for a public crossing. Private crossings usually restrict public use by an agreement which the railroad has with the property owner, or by gates or similar barriers."

- 3.2 When the Task Force looked at the inventory of crossings on the Alaska Railroad, it became apparent that there are numerous crossings that are open to public travel but not "under the jurisdiction of and maintained by a public authority." The Procedures Manual also states "In some instances changes in land use have resulted in an expansion of crossing use to the extent that it has become a public crossing in fact, whether or not any public agency has accepted responsibility for maintenance or control of the use of the traveled way over the crossing. The railroad company and highway agency should make every effort to mutually resolve and agree on the appropriate classification (either public or private) of questionable crossings."
- 3.3 The Task Force recognized the problem of crossings that are open to public travel but are not under the jurisdiction of and maintained by a public authority. To be able to move forward and identify the magnitude of the problem, the Task Force developed and assigned the designation of "PUB-4" to this type of crossing.
- 3.4 The Task Force's definition is: "PUB-4. A crossing that is open to the public but the road is not maintained by a public authority." Open to the public means that (1) there is no restriction placed upon the use of the crossing; (2) if there is a gate, the gate is not being closed to restrict the use of the crossing; (3) there is more than one user regularly using the crossing; or (4) the roadway serves more than one piece of property on the opposite side of the tracks. One or more of these conditions may exist today on a truly "private" crossing. With the exception of serving more than one piece of property, most existing private crossings could be made to fit this definition.
- 3.4.1 While the problems are the most acute in the Fairbanks North Star Borough, other boroughs, cities and municipalities have PUB-4 crossings. These include the Matanuska-Susitna Borough, Kenai Peninsula Borough, Municipality of Anchorage, City of Houston, City of Nenana, City of North Pole, and City of Seward. To be eligible for federal funding, the road authority must be responsible for the maintenance and meet the standards for public crossings as defined by the DOT/AAR Railroad-Highway Crossing Inventory Procedures Manual.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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3.0 DEFINITIONS - continued

- 3.5 The roadway crossing at a PUB-4 crossing may have a designated street name, may be recognized as a public roadway and may be platted as such on either side of the railroad right-of-way.
- 3.6 The only known PUB-4 crossings outside of the boundaries of local government are the crossings at Cantwell (ARRC MP 319.6), at Ferry (ARRC MP 371.1), and North Nenana (ARRC MP 415.5). The first two crossings are at the end of State-maintained roads.
- 3.7 For the area outside of the organized boroughs (Broad Pass to Dunbar), the Task Force recognized the problem of no planning agency. To be able to properly plan the development in this area, all state and federal agencies having land in this area must work together.

3.8 Sight Triangles

3.8.1 A sight triangle for at-grade crossings is an area free of obstructions, which allows a motor vehicle operator approaching an at-grade crossing to safely observe a train approaching the crossing. The size of the sight triangle is based upon maximum train speeds and the posted highway speed. A table of sight triangle distances is shown in Appendix "A". There are two scenarios with regard to sight triangles:

- a. Case I involves a moving vehicle approaching the crossing at the posted speed limit and the train traveling at the maximum speed approved for that location.
- b. Case II involves a stopped vehicle departing from the crossing and the train traveling at the maximum speed approved for that location.

3.8.2 The table in Appendix "A" is based on the latest sight triangle calculations available and has been agreed to by the ARRC and DOT&PF. It will not be changed without concurrence of both parties.

3.9 New Crossing

- 3.9.1 A new crossing is a crossing that is being proposed where there is currently no crossing in existence.
- 3.9.2 Construction of a crossing at a new location that is replacing an existing crossing in the same vicinity will be seen as a major improvement project and not considered a new crossing.

3.10 Highway

For the purposes of this policy, the words "highway", "road", and "roadway" are synonymous.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

4.0 RECOMMENDATIONS

4.1 General Recommendations

- 4.1.1 All crossings should be brought up to the basic safety standards in the Alaska Traffic Manual.
- 4.1.2 New construction will adhere to the standards in the Alaska Traffic Manual, Association of American Railroads (AAR) Rail/Highway Grade Crossing Handbook, and other State standards for the installation of passive and active warning devices.
 - 4.1.2.1 Sight distances, track profile, drainage and train operation will all be factors considered in the design and improvement of crossings. The Railroad-Highway Grade Crossing Handbook, Federal Highway Administration Publication TS-86-215 (or revision) and current State of Alaska design standards thereof will be consulted in the design of crossings.
- 4.1.3 12-inch roundels for flashing lights, and RR crossbucks with high intensity reflective sheeting on both sides should be adopted as a standard in the State of Alaska.
- 4.1.4 DOT&PF and the ARRC will update the FRA National Rail/Highway Crossing Inventory annually or more frequently if significant changes are discovered, and use this data base to compute the crossing Accident Prediction Values.
- 4.1.5 "Operation Lifesaver" should be actively supported and participated in by the ARRC, DOT&PF, local governments and law enforcement agencies.
- 4.1.6 The ARRC and DOT&PF should arrange meetings with all local governmental planning and road agencies in the railbelt. These meetings would be used to discuss the results of the Task Force and set up procedures for implementing these recommendations.

4.2 Planning Recommendations

- 4.2.1 Local jurisdictions, state and federal agencies, and private enterprise should incorporate planning processes (a) aimed at minimizing the need for at-grade crossings and traffic at existing at-grade crossings; and (b) which will evaluate the effect on a crossing by changes in zoning, approval of new subdivisions and other elements of the planning process. Estimated future Accident Prevention Values based on the proposed activity and future highway and railroad traffic densities will be used in the evaluation of the crossings. New at-grade crossings are discouraged and no new crossings will be permitted without concurrence of the appropriate diagnostic team.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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4.0 RECOMMENDATIONS - continued

4.2 Planning Recommendations - continued

- 4.2.2 Agencies, authorities, jurisdictions, and/or private enterprise whose actions have an impact on the crossings should be required to participate in the funding of the construction and maintenance costs precipitated by those actions. For construction, this could include the matching funds (10%) if federal funding is available.
- 4.2.3 The ARRC and DOT&PF should arrange a meeting with the Bureau of Land Management (BLM), Department of Natural Resources (DNR), National Park Service (NPS), Community and Regional Affairs Department, and Division of Parks and Outdoor Recreation to review the planning processes for the area in the unorganized boroughs.

4.3 Diagnostic Team Recommendations

- 4.3.1 A professional diagnostic team should perform an on-site evaluation before any major improvement is planned for an existing crossing or a new crossing is approved.
- 4.3.2 Diagnostic teams should include as a minimum:
- a. Alaska Railroad Corporation
 - b. DOT&PF Region
 - c. Borough (Kenai Peninsula, Municipality of Anchorage, Matanuska-Susitna, or Fairbanks North Star as appropriate)
 - d. The city when within incorporated city limits
 - e. Proposed permittee of the crossing if not one of the above entities

Where appropriate, representatives of the following should be informed and invited to assist the diagnostic team:

- a. The FHWA;
 - b. DOT&PF Headquarters;
 - c. School District;
 - d. Municipality or other local agency; and
 - e. Law enforcement agency(ies);
- 4.3.3 The recommendation of the diagnostic team will be forwarded to the appropriate parties involved for action. The action at the crossing shall be in accordance with the permit and construction agreement with the ARRC.
- 4.3.4 The diagnostic teams should always consider the feasibility of eliminating crossings if this can be accomplished with safety benefits which outweigh the increased operational costs and inconvenience to users, and if it would not shift the safety problem to another area, or increase the area-wide hazard potential.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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4.0 RECOMMENDATIONS - continued

4.3 Diagnostic Team Recommendations - continued

- 4.3.5 Diagnostic teams may be initiated by request of any interested party. The request is to be forwarded to the ARRC Chief Engineer. The Chief Engineer will arrange for the notification of the team members and establish the location and time for the meeting.
- 4.3.6 Where there are majority and minority recommendations from the Diagnostic Team, it will be referred to a resolution committee. The committee will consist of the ARRC President and CEO, the DOT&PF Commissioner, and the chief administrator of the local jurisdiction. For crossings outside of a local jurisdiction, the Commissioner of Community and Regional Affairs will be the third person.

4.4 Existing Crossing Recommendations

- 4.4.1 The DOT Accident Prevention Value (APV) should be used as one factor in classifying and prioritizing crossings for improvements.
- 4.4.2 Diagnostic teams should consider an APV of 0.1 (one accident every 10 years) as an indicator of probable need to go from passive to active warning devices.
- 4.4.3 Diagnostic teams should evaluate crossings which have an APV greater than 0.1 to determine the feasibility of providing grade separations (overpass/underpass) or increasing the level of protection of the warning devices. Table VIII-1 Quantitative Procedures in the Alaska Traffic Manual will be used as part of the process for determining possible upgrades of the existing crossing. The current table is shown in Appendix "B." If the Alaska Traffic Manual is revised, Appendix B will automatically become the revised Table VIII-1.
- 4.4.4 Where possible, upgrades and improvements should be accomplished when there is another project affecting the roadway or railway in the area of the crossing.
- 4.4.5 Sight triangles for at-grade road crossings shall be maintained to the minimum required by Appendix A. As a minimum, all crossings shall have Case II sight triangles except for certain industrial tracks.

In industrial areas, where local roads cross industrial tracks, there are crossings where the Case II requirements cannot be met due to building construction next to the track and road. In these cases, the ARRC will issue instructions that the crossing must be flagged by ARRC personnel prior to entering the crossing.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
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4.0 RECOMMENDATIONS - continued

4.4 Existing Crossing Recommendations - continued

4.4.5 continued

Case I sight triangles are desirable at all crossings, however, they are difficult and often impractical to achieve, except possibly in flat, open terrain.

4.4.5.1 When Case I sight triangles cannot be provided at a public crossing, a diagnostic team shall review the crossing. The team could, in addition to closing the crossing, propose one of the following requirements:

- a. Active warning devices installed.
- b. A crossing with low highway volume and low highway speed may have an advisory speed posted that is consistent with the sight triangles that can be provided. In no case should the difference in the posted speed and the advisory speed be greater than 10 miles per hour.

Low highway speeds generally mean 40 mph or less. Low highway volume generally is in the range of less than 500 vehicles per day.

- c. Stop signs installed if the Alaska Traffic Manual requirements for stop signs can be met.

4.4.5.2 If the maximum authorized train speed or posted highway speed are increased, the sight triangle requirements will be recalculated. If the new sight triangles are impractical to achieve, the provisions of Section 4.4.5.1 will apply.

4.5 New Crossing Recommendations

4.5.1 New crossings must be part of a comprehensive community plan. For the area between Broad Pass and Dunbar (unorganized borough), DOT&PF or Community and Regional Affairs Department (or the appropriate State agency) will be required to develop the plan. The comprehensive community plan must address factors such as future growth in the area, existing local governmental agencies, land ownership, geographical restrictions, availability and/or restrictions of natural grade separation locations.

4.5.2 New at-grade crossings should not be allowed if there is another crossing within two miles of the proposed new location, nor if there is a reasonable alternative to a crossing such as a feeder road. Exception may possibly be made after the diagnostic team review. Factors to be considered would include terrain conditions which make alternative access impossible or economically unfeasible.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

4.0 RECOMMENDATIONS - continued

4.5 New Crossing Recommendations - continued

- 4.5.3 It will be the responsibility of the government authority having road jurisdiction in the area of the proposed crossing to hold the necessary public hearings to insure that the road will be located so as to efficiently connect into future road networks. It will also be that governmental authority's responsibility to handle all protests concerning crossing location.
- 4.5.4 A professional diagnostic team will perform an on-site evaluation before any new crossing is approved. Factors to be considered by the diagnostic team include:
- 4.5.4.1 Any new crossing will likely become a permanent crossing and possibly become a major roadway.
 - 4.5.4.2 The proximity of the proposed new crossing to existing crossing and/or other planned crossings.
 - 4.5.4.3 The effect the construction of the new crossing will have on the elimination of one or more existing crossings, making the transportation network safer and better able to serve the road needs of the area.
 - 4.5.4.4 The grade of approaches to all crossings should be level with top of rail ($\pm 1''$) for at least 100' to prevent long low trailers from hitting the crossing.
 - 4.5.4.5 Roadway approaches to the crossing should be at or nearly 90°. Short radius curves or skew angle approaches below 75° will not be permitted.
 - 4.5.4.6 For public crossings, the road must have a dedicated right-of-way on both sides of the Alaska Railroad track right-of-way. The dedicated road right-of-way must include dedicated clear sight triangles for maximum design highway and train speeds.
 - 4.5.4.7 For private crossings, the owner must own or secure road right-of-way and sight triangles for maximum design speeds. The private owner will be restricted from developing within the sight triangles.
 - 4.5.4.8 The dedicated sight triangles referenced in 4.5.4.6 and 4.5.4.7 are for Case I and Case II scenarios. If the Case I sight distances cannot be achieved, automatic crossing signals will be required.
 - 4.5.4.9 Sight triangles for at-grade road crossings shall be maintained to provide the sight distances required for both Case I and Case II scenarios.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

4.0 RECOMMENDATIONS - continued

4.5 New Crossing Recommendations - continued

- 4.5.5 The DOT Accident Prediction Values will be used as a factor in determining protection at new crossings. The new crossing will also be compared to existing crossings of similar geometric characteristics and rail and highway traffic densities. The comparison will also consider accident history and the effect of accidents on the DOT Accident Prediction Value.
- 4.5.6 The crossing permit issued by the ARRC for private crossings will be recorded as an encumbrance against the real property benefitted by the crossing including the restriction on sight triangles, with the obligations of the permit to remain appurtenant to the real property.
- 4.5.7 For public crossings, the ARRC will only issue the permit to the DOT&PF or government authority having road construction and maintenance jurisdiction at the location of the crossing.

4.6 Private Crossings Recommendations

- 4.6.1 Existing truly "private" crossings and new private crossings will be deemed public when any of following occur:
- 4.6.1.1 The crossing serves two or more parcels of property, unless all parcels are owned or leased by the same permittee;
- 4.6.1.2 The use of the crossing cannot be or is not controlled by the permittee of the crossing;
- 4.6.1.3 The roadway is designated by plat as a public roadway by the governmental authority responsible for planning and/or zoning; or
- 4.6.1.4 If school buses or mass transit vehicles use the crossing unless the school district notifies the ARRC in writing that it will operate across the private crossing and has permission of the permittee.
- 4.6.2 Some existing private crossings currently serve more than one parcel of property. The crossing may remain as a private crossing as long as there is not further subdivision of the property.
- 4.6.2.1 Private crossings may serve property owned or leased by more than one person or entity provided the following conditions are met:
- a. The roadway is not open to public travel, and
 - b. The permit for the crossing has been executed by all owners/lessees of all property which can gain access from the crossing or a legally formed association of property owners.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

4.0 RECOMMENDATIONS - continued

4.6 Private Crossings Recommendations - continued

- 4.6.3 If the permittee no longer complies with the conditions of the "Private Crossing Permit" and the crossing has not become a public crossing, the ARRC will notify the permittee of the deficiencies. If the permittee fails to correct the deficiencies, the crossing will be removed at the permittee's expense.
- 4.6.4 If the crossing's use has become public, the ARRC will work with appropriate public authority to permit the crossing as a public crossing. A diagnostic team shall review the crossing prior to the issuance of the public crossing permit. The diagnostic team will recommend improvements to the crossing required to bring it into conformance with current design standards.
- 4.6.5 If the public authority refuses to accept the responsibility for the public crossing, the permittee of the crossing shall take appropriate action (if possible) to make the crossing "private". If the permittee fails to correct the deficiencies, the ARRC will remove the crossing at the permittee's expense.
- 4.6.6 Where Case I sight triangles are impractical to achieve at a private crossing, stop signs shall be posted at the crossing and Case II sight triangles will be maintained.

4.7 PUB-4 Crossings Recommendations

- 4.7.1 ARRC and DOT&PF should involve the local governments and use diagnostic teams to address the problems of these crossings. The local public authority with road powers must make decisions on the continuing need for the crossing balanced with the cost and liability of maintaining the crossings.
- 4.7.1.1 Diagnostic teams should be formed as soon as possible with each governmental agency which has PUB-4 crossings within its boundaries.
- 4.7.2 The use of ARRC right-of-way to eliminate a crossing will be reviewed on a case by case basis. When development has occurred and natural physical obstructions such as lakes and rivers prevent alternate access, the ARRC may permit to the public authority a road on ARRC right-of-way to facilitate the removal of one or more crossings. The use of ARRC right-of-way should only be permitted after a diagnostic team review and coordination with the local planning and zoning agency.

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
Revised September 1988

4.0 RECOMMENDATIONS - continued

4.7 PUB-4 Crossings Recommendations - continued

4.7.3 Roadway signing at the PUB-4 crossing should be in accordance with the Alaska Traffic Manual and include as a minimum:

4.7.3.1 Stop sign on both sides of the track unless a diagnostic team determines that stop signs are not required;

4.7.3.2 Crossbuck on both sides of the track;

4.7.3.3 Railroad advance warning signs (W10 Series) according to the Alaska Traffic Manual; and

4.7.3.4 An "ARRC Property-Proceed at Your Own Risk" sign at the right-of-way line on both sides of the track.

5.0 CHANGES AND ADOPTION OF POLICY

5.1 Changes to Policy

5.1.1 This policy was developed by a process that included input from the local governmental bodies. Changes to the policy will be developed in accordance with the following subsections.

5.1.2 The proposed changes will be coordinated by the ARRC Engineering Department and DOT&PF Headquarters Engineering and Operations Standards Section. DOT&PF will coordinate with the Federal Highway Administration.

5.1.3 Work sessions on the proposed changes will be held in Anchorage and Fairbanks. All government agencies concerned with crossings will be notified of the meeting and encouraged to attend.

5.1.4 After the work sessions, the changes will be reviewed by the ARRC and DOT&PF and all parties in attendance at the work sessions before being finalized.

5.2 Adoption and Implementation of Policy

5.2.1 Section 42.40.180 of the Alaska Railroad Corporation Act mandates that policies which affect the general public require adoption by the ARRC Board as a board rule once public notification has been made and a public hearing has been held on the Rule. In accordance with this procedure the proposed changes (see 5.1.4) will be submitted to the ARRC Board of Directors for approval in accordance with Board rules.

5.2.2 After adoption of the changes by the ARRC Board of Directors and concurrence by DOT&PF, the ARRC Policies and Procedures Manual relating to the Railroad Crossing Policy will be updated to incorporate the changes.

REVISED:
08-Jul-88

ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
APPENDIX A

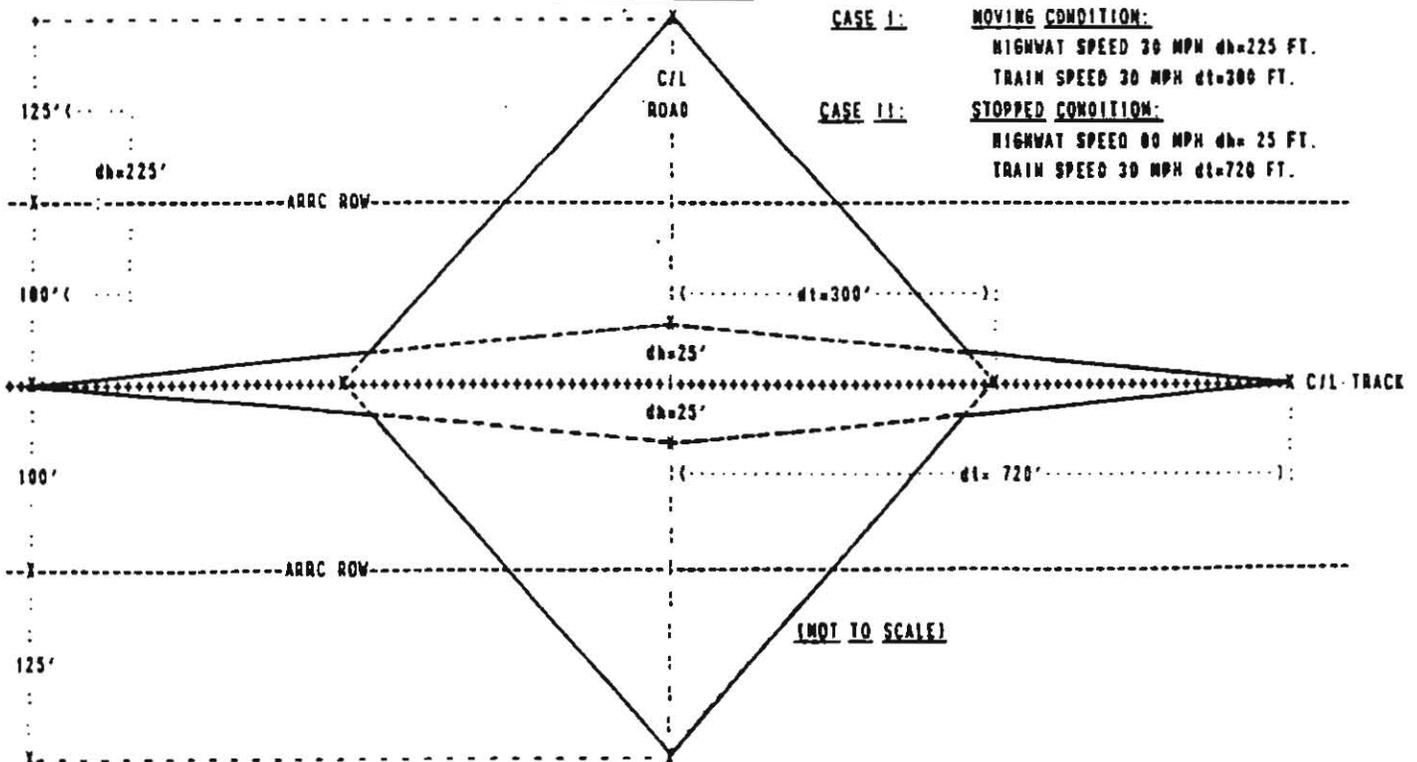
SIGHT TRIANGLE DISTANCE TABLE

TRAIN SPEED: (MPH)	ASSUMED VEHICLE SPEED (MPH)														
	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70
5	120	125	75	60	55	50	50	50	55	55	60	60	65	65	70
10	240	245	145	120	105	100	100	100	105	110	115	120	125	130	135
15	360	365	220	175	155	150	150	150	155	165	170	175	185	195	205
20	480	485	290	235	210	200	200	200	210	215	225	235	245	255	270
25	600	605	365	290	260	250	250	250	260	270	285	290	310	320	340
30	720	725	435	350	310	300	300	300	310	325	340	350	370	385	405
35	840	845	510	410	365	345	345	350	365	380	395	410	430	445	470
40	960	965	580	465	415	395	395	400	415	430	450	465	490	510	540
45	1080	1085	655	525	465	445	445	450	465	485	505	525	555	575	605
50	1200	1205	725	580	520	495	495	500	520	540	565	580	615	635	675
55	1320	1325	800	640	570	545	545	550	570	590	620	640	675	700	740
60	1440	1445	870	695	620	595	595	600	620	645	675	700	735	765	810

DISTANCE (d _b) ALONG HIGHWAY FROM CROSSING (FT.)															
25	45	70	100	135	175	225	275	340	410	490	565	660	750	865	

NOTE: ALL CALCULATED DISTANCES ROUNDED UP TO NEXT HIGHER 5-FOOT INCREMENT.
 ASSUMPTIONS: SIXTY-FIVE FOOT TRUCK CROSSING A SINGLE SET OF TRACKS AT 90°; FLAT TERRAIN. ADJUSTMENTS SHOULD BE MADE FOR: UNUSAL VEHICLE LENGTHS, ACCELERATION CAPABILITIES, MULTIPLE TRACKS, SKEWED CROSSINGS, AND GRADES.
 "d_b", WILL BE MEASURED FROM NEAREST RAIL. "d_t", WILL BE MEASURED FROM THE CENTERLINE OF HIGHWAY.

SAMPLE CALCULATION



ALASKA POLICY ON RAILROAD/HIGHWAY CROSSINGS
APPENDIX B

Changes in Level of Protection

Revised September 1, 1988

Existing traffic control device	Calculated Accident Prediction Value (APV)	Recommended Action for Improvement
Passive	0.08 to 0.12	* See note below. Flashing lights. Flashing lights or gates and flashing lights. Gates and flashing lights. Gates and flashing lights or grade separation. Grade separation.
	0.12 to 0.15	
	0.15 to 0.23	
	0.23 to 12.4	
	12.4 to 18.5	
	Greater than 18.5	
Flashing lights	0.12 to 0.18	* See note below. Gate and flashing lights. Gates and flashing lights or grade separation. Grade separation.
	0.18 to 3.7	
	3.7 to 5.6	
	Greater than 5.6	
Gates	1.32 to 1.98	* See note below. Grade separation.
	Greater than 1.98	

Reference Alaska Traffic Manual, Table VIII-1 Quantitative Procedure

* NOTE - When the calculated hazard index falls within this range the decision may be to do nothing, improve the existing traffic control system, install a different type of traffic control system, or make some other improvement at the crossing.

APPENDIX B: Specific Municipal Concerns**Railroad/Highway Crossing Issues in the Kenai Peninsula Borough (KPB)**

Most of the KPB's railroad/highway crossing issues involve undeveloped lands which require access across the Alaska Railroad to be developed. These undeveloped lands are primarily in the eastern part of the borough and are easier to deal with than already developed parcels because the borough is able to place construction requirements in plats for new subdivisions. The advantage of construction requirements is that the borough can insure needed crossings will be in place before lots are sold. Such construction requirements would be a departure from existing policy in that the borough does not ordinarily require any construction when approving plats.

The KPB does not have area-wide road powers, and for this reason any assumption of responsibility for crossings would have to be done via borough service areas. Philip Reeves, deputy borough attorney for the KPB, stated he believes the borough can potentially utilize the service area concept to resolve these crossing issues, however, the borough is very concerned about the terms of the standard crossing permit as currently proposed by the ARRC.

Mr. Reeves has recently proposed to the ARRC and the Office of the Ombudsman that the standard permit agreement be amended in the following ways:

Term Of Agreement: Proposes increasing to 99 years from the ARRC's currently proposed 20 years.

Permit Fee: Proposes waiving the permit fee because the borough would be bearing all the maintenance costs which include administrative overhead charges.

Plans and Specifications: the KPB seeks changes in the crossing schematics to clearly identify which portions of the facility will be maintained and constructed by each party. The KPB also wants any changes which occur in the plans and specifications to be reviewed by a diagnostic team, rather than unilaterally decided by the ARRC.

Insurance: the KPB proposes deleting the \$1,000,000 protective liability insurance for the railroad, raising the auto liability insurance from \$500,000 to \$1,000,000, and maintaining the ARRC's proposed general liability requirement of \$1,000,000 as is.

Indemnity: the KPB proposes an indemnity provision which apportions liability based upon responsibility rather than placing it solely on the borough.

Default on Payments: the KPB wants the default period extended from 5 days to 30 days.

Maintenance Costs: the KPB does not feel it has been given adequate information from the ARRC as to what

it can expect to pay for maintenance. The KPB is concerned about any open ended contract and, while Reeves acknowledges it may be difficult to pin the railroad down to a number cast in concrete, he feels the borough needs more certainty -- especially when considering that a service area's entire budget could be consumed by the crossing charges if these maintenance fees were too high.

The KPB's service areas do not tax themselves, though in some cases they are authorized to collect up to a mil. It has been borough policy to rely on state revenue sharing to fund service areas. The interest the borough receives on these state funds (prior to dispersal) is used to offset borough administrative costs and liability protection. Liability protection is assumed by the borough which is self-insured. If the amount required for maintaining the crossings was too high to be covered by state funds, it might be necessary for the borough to go back to a vote of the people to receive approval to collect funds. Reeves stated there might be a problem getting voter approval for a crossing which only serves a limited number of parcels.

It should be noted that maintenance costs, while important to the KPB, do not take on the same significance as in many other Alaskan municipalities because the KPB's crossing problems do not involve signalized crossings. Signalized crossings require much higher maintenance costs. Nonetheless, the KPB would like to have a better grasp of maintenance costs before signing any permits. The borough had been considering an ordinance providing for rail-highway crossings, however this ordinance has been put on hold until completion of the ombudsman's review.

Borough officials stated when they first began discussions with the ARRC (18 months ago) the railroad was unilateral in its approach. Since that time, communications have improved, though the borough still does not feel it has a good idea as to what these crossings will cost. Though one borough official acknowledged if he were in the ARRC's shoes he might have also written adherence provisions into the proposed agreement, he stated these adherence provisions were not in the interest of the KPB.

Railroad/Highway Crossing Issues in the City of Palmer

The City of Palmer has responsibility for four railroad/highway crossings, all of which are non-signalized. Because there are no automatic signals, Palmer's crossing maintenance costs are minimal. The city performs most of the maintenance work itself, including the clearing of site triangles. While there is currently not enough traffic to warrant signals, population growth and developments such as the proposed Wishbone Hill coal project might engender the need for signals in the future. At present there are no specific signalized projects on the drawing board.

The city does have permits with the ARRC for its highway and utility crossings which cost several hundred dollars a year in permit fees.* Palmer also maintains an insurance policy to cover liability issues arising from accidents at these crossings. However, the city's overall crossing costs are low when compared with other municipalities.

David Soulak, City Manager for Palmer, stated most of the city's concerns with the ARRC are with the new blanket permit to be used in place of the old agreements. Mr. Soulak is particularly concerned how these permit rules will affect utilities planning. Because Palmer is bisected by the rail line, the city is seeking to insure long-term adequate access for utility lines crossing the track. Mr. Soulak believes the new permit should be amended to expand the contract term beyond the proposed twenty years. He also stated the new permit does not provide for an automatic renewal, and that prior to the expiration date the city would be required to restore the crossing site to its original condition. Another concern of the city is the proposed liability requirements which Mr. Soulak believes are excessive. To date the City of Palmer has not signed the new permits with the ARRC.

Mr. Soulak stated he has expressed Palmer's concerns to the railroad but has not yet received a response. He said he personally can understand the reason for some sort of a blanket permit so the municipality doesn't have to renew permits every year. At the same time, Mr. Soulak maintained the city is not satisfied with the current terms of the new blanket permit.

One Palmer city official interviewed by the Ombudsman's Office stated he can "understand they're trying to run it like a business, but they should try to work more with the municipalities." This individual had hoped when the railroad became a state entity it would be more responsive than it was when under federal management. It appears there are several issues that need to be worked out between the ARRC and the city, the biggest issue being the contract language of the utility crossings.

* ARRC states it is attempting to bring all permits under one blanket permit which would reduce Palmer's fees.

Railroad/Highway Crossing Issues in the Fairbanks North Star Borough (FNSB)

The FNSB currently assumes responsibility for only one minor non-signalized crossing located on a spur serving the borough landfill.* Most crossings in the borough are the responsibility of DOTPF which pays the ARRC to perform maintenance.

An Ombudsman investigator interviewed Juanita Helms, FNSB Mayor, who expressed the following major concerns:

- (1) The FNSB is a second-class borough and does not have area-wide road powers. Mayor Helms stated the borough does not have the authority to assume area wide responsibility for any crossings (new or old.)
- (2) The political climate of the borough is such that it does not seem likely residents want to take on area-wide road powers, particularly to take over the maintenance of railroad crossings. (Efforts in recent years to expand borough powers have met with resistance, and several attempts to unify the city and borough have failed.)
- (3) In the FNSB, the service area concept is not a viable means to assume responsibility for railroad/highway

crossings. Mayor Helms points out while service areas could be used to take on this burden, the average size of a FNSB service area is small (sometimes serving only a particular subdivision.) While the Kenai and Matanuska-Susitna boroughs have larger, more regional service areas, the FNSB has a proliferation of neighborhood service areas. Proposals in the past to consolidate these small areas into larger areas have been opposed stiffly by area residents. Mayor Helms said if a service area serves only twenty residents crossings would be a huge cost for this small area to assume.

(4) The ARRC has tried to put pressure on the borough by telling subdividers in the borough they need to get the borough to form a service area to take responsibility for crossings.

(5) The borough has many parcels of land which are virtually "landlocked" without access across the railroad. The ARRC has impeded development by not allowing access unless a service area agrees to accept responsibility. Mayor Helms cited the case of a developer in Moose Creek who had to give up his subdivision plans because he was unable to get reasonable access across the rail line.

(6) The borough has never been given a firm estimate of what crossing maintenance will cost and figures which the borough has seen have shown each crossing requiring approximately \$3,000 per year. Mayor Helms stated this is a steep amount for a small service area.

(7) While the borough is self-insured, the borough currently has the service areas buy insurance. Mayor Helms is concerned about the borough's potential liability with crossings. Mayor Helms also stated she feels whoever does the maintenance should accept the liability. She does not feel it fair that the ARRC requires the municipal entity to contract to do the maintenance and then have the municipalities assume liability for this work.

Mayor Helms also discussed the concept of taxing the ARRC properties and felt while she was willing to look at it, it would involve a great deal of administrative effort on the part of the borough, not to mention the legal issues. She also reflected on the concept of revenue sharing by the state -- specifically for crossings and acknowledged this as a possible solution. She said she felt "the cheapest way is to have the railroad bear the costs."

Mayor Helms stated the relationship with the ARRC is fairly good but that she perceived the railroad was often more attentive to Anchorage concerns than Fairbanks concerns. She stated she did not necessarily mean this as a criticism but rather the result of the ARRC's administrative offices being located in Anchorage.

Mayor Helms said Mr. Turpin has been very accessible to her by phone and that the railroad has held hearings in Fairbanks on various issues. However, she said some of the ARRC's meetings which she's attended have just ratified or explained what the ARRC had already decided, rather than solicit public input.

Mayor Helms stated there are other issues which involve the ARRC which concern the borough:

- * The borough would like to see the railroad industrial area moved.
- * The borough would like to see greater accountability of hazardous substances being transported to or through the borough, so that local emergency planners and firefighters could be better prepared.
- * The borough is concerned about the tax implications of the ARRC giving long-term leases (for example, up to 99 years) to private interests. Lessors of property do not have to go through the borough's normal subdivision process. The borough's contention is that long-term leases are different and that the ARRC has used these leases to its advantage.

* ARRC states the FNSB also holds a permit for an unsignalized crossing at Lathrop Street.

Railroad/Highway Crossing Issues in the City of Wasilla

The City of Wasilla has signed permits assuming responsibility for four crossings, three of which (Hiealea, Glenwood and the Sewage Treatment Plant) are signalized and one of which (Snider) is unsignalized. In 1988, these crossings cost the city \$14,460 in maintenance costs, which represents approximately 12% of the city's \$130,000 road budget. The city also has several utility crossings of the ARRC's line for which they pay only an annual \$200 permit fee.

An ombudsman investigator interviewed Mayor John Stein, City Administrator Bob Harris and City Councilman Ken DeCamp. They expressed the following major concerns:

- (1) Cost of maintenance is too high. Most of the maintenance charges assessed are the result of required routine maintenance for the signalized crossings which costs the city \$9,000 per year. However, Wasilla, unlike many other entities responsible for crossings, pays an abnormally high amount for non-routine maintenance -- most of which is the result of vandalism. This non-routine maintenance cost the city \$4,365 in 1988, approximately one-third of the total maintenance costs.

While these amounts may not seem large, for a small city which has many non-paved roads as well as a heavy winter maintenance burden, city officials feel the rail crossings are a drain on their total road budget. The

city receives \$72,000 a year in state revenue sharing for road maintenance and of this 20% is given back to the state in payment for the signalized crossings.

Another concern is the 175% overhead charge which the ARRC tacks on to the maintenance bill. The city feels that not only is it paying premium union hourly rates, but that this overhead percentage is too high.

(2) The ARRC invoices for maintenance are hard to understand. Both the mayor and city administrator complained they cannot understand the monthly billings from the ARRC because routine and non-routine maintenance is often not broken out in the billing.* There also was concern about billings for "tamping," which the city surmises is a compacting around the rails and they do not understand why they should be charged for something which they believe to be completely rail-related.

(3) The city contends other entities are not paying their fair share. It was alleged that other communities (including the City of Houston, unincorporated areas of the Mat-Su Borough and North Pole) are not paying for similar crossings. One individual interviewed stated that the City of Houston is not paying for a crossing which goes across city streets.

(4) Lack of access across the railroad is impeding community development. The city is bisected by the rail line, and those interviewed all stated community development has tended to occur on one side (south) of the tracks because of a lack of access to the other side. According to the city, the ARRC has restricted the city from placing crossings at any distance less than one mile intervals. This has created what Mayor Stein called "a swath of no-man's land through the center of town." The mayor said the city is restricted to only three access points across the track, though he acknowledged a lake also was impeding access.

City Councilman DeCamp stated most of the problem is with the Snider subdivision which has no legal access other than across the tracks. Mr. DeCamp said the city ought to consider closing access across the rail and put in a new road giving access to the Knik Road. He also mentioned he felt the main problem relating to the ARRC was that the railroad goes through an area which is urbanizing. He stated when agreements were signed with the railroad years ago, the population of the area was much smaller. He said these agreements should be renegotiated.

(5) The city is prohibited from taxing the ARRC. City officials contend the ARRC uses city services such as roads and fire protection, yet the city is prohibited from recouping these costs because the ARRC is a tax-exempt agency. A sentiment frequently expressed and stated clearly by Mayor Stein was, "they (the ARRC) can act as if they are a public corporation when it's to their advantage and they can act like a private corporation when it's to their advantage."

Those interviewed felt the ARRC had been too heavy-handed with the city by using pressure tactics to force them to live up to the agreements. In a recent instance, the city applied for a permit to temporarily dump debris on the ARRC's right of way from a sewer line under construction. The city received a letter from the ARRC stating because of the city council's recent action deleting monies for road maintenance, the ARRC would refrain from entering into any new contracts with the city. The city was very disturbed by the tone of the railroad. One city official referred to the railroad's attitude as being "snotty." City officials said the only way it got the ARRC's cooperation was by making an end run to a local legislator who interceded on their behalf.

While the city had deleted \$15,000 from its budget for crossing maintenance, recent indications are that the city and the ARRC President Turpin are working on resolving the conflict. The city would like to see some kind of solution which requires more of a cost sharing between the city and the ARRC.

* ARRC states because of this complaint it has revised its billing method to make it more understandable.

Railroad/Highway Crossing Issues in the City of Whittier

Railroad/highway crossing issues do not significantly affect the City of Whittier. The city recently paved a road in town, but the road was exclusively on railroad property and no permit was required. In fact, the city has no crossing agreements with the ARRC.* Nonetheless, Whittier's destiny is integrally tied to its relationship with the railroad, primarily because the ARRC owns the largest percentage of land in the city.

An ombudsman investigator interviewed Mayor Georgia Buck who expressed the following concerns:

(1) Because the ARRC owns the greatest percentage of land in the city, their tax-exempt status has a great impact on the city tax base. Mayor Buck stated she would favor eliminating the tax exemption for the railroad.

(2) The city would like the ARRC to release some land for community development. Whittier is paying the ARRC \$500 a year to lease land for a campground. The city's contention is that the railroad doesn't need the land and won't release the land to the city or give them a long-term lease. Because the city did not own this campground, they lost out on a federal grant to

improve it. Mayor Buck also said the city would like to see the Shotgun gold claim developed but that this will only happen if there is better access.

(3) In the winter months the ARRC runs a train to Whittier only three times a week. Mayor Buck said this creates a hardship on community residents. Whittier has a population of approximately 700-800 people in the summer and 300 people in the winter.

Mayor Buck also expressed her desire to see a road to Whittier instead of the railroad.

* ARRC states the city does have two crossing permits with ARRC 1) which includes roads on both sides of the yard and 2) in front of the Sportman Inn.

Railroad/Highway Crossing Issues in the City of Nenana

The City of Nenana has responsibility for twelve unsignalized crossings, eight of which are inside and four of which are outside the city limits. The city has "extra-territorial powers" granted to it by the Department of Community and Regional Affairs (CRA) to manage crossings outside the city limits. The CRA reimburses the city for associated costs.

An ombudsman investigator interviewed City Administrator Steve Bainbridge, who has been involved with crossing issues for many years, including before the railroad became a state entity. Mr. Bainbridge stated the history of the current controversy goes back to 1981 when the city wanted to install a crossing at 10th Street. He said the railroad initially charged the city \$12,000 for this crossing, twice as much as a similar crossing installed near the city dump only two years earlier. While the railroad relented and agreed to cut the 10th Street costs in half, the city became attentive to reviewing railroad billings.

The next phase of the crossing controversy occurred in the early 1980's when the state attempted to dispose of the Two Mile agricultural parcels and found that access was required across the railroad. Mr. Bainbridge said the railroad was insistent on having a signalized crossing into the agricultural development, though the city felt such signals were unnecessary because of the low projected traffic volumes. The city also felt signals would be too expensive because of the lack of electricity in the area. Nenana sought the assistance of Senator Jack Coghill who helped initiate the "diagnostic team" approach for evaluating crossing needs. The diagnostic team for this crossing came up with a non-signalized design which included sight triangle changes and stop signs.

Two new crossings are on the drawing board for the Nenana area -- a crossing at 6th Street and a Parks Highway southern by-pass. The ARRC and city are looking at the possibility of relocating the tracks to eliminate numerous crossings as well as to straighten track in the area.

Other concerns are:

(1) Maintenance costs. The City of Nenana does not have the trained personnel to do the required weekly inspections for signalized crossings, so they would feel

compelled to have the ARRC do the maintenance if they had signalized crossings. The city is concerned that the ARRC charges high wage rates as well as a large overhead rate (the 1988 overhead rate was 175%.) Nenana does not now have the ARRC do much maintenance, though they may need railroad assistance if replanking is required.

(2) The city would like to see the ARRC enter into maintenance contracts for a budgeted amount "not to exceed" a certain dollar amount. This would assist the city in budgetary planning, especially if the city ever acquires signalized crossings.

(3) The ARRC uses city services but does not pay anything for it. Mr. Bainbridge said the ARRC has used city fire and emergency services. In one instance, the city responded to a rail car which tipped over requiring city assistance. Mr. Bainbridge stated he sent the railroad a bill for these services but they refused to pay.

(4) The city is concerned about hazardous substances and dangerous situations arising from the transporting of such substances near populated areas. Mr. Bainbridge described one such situation when a rail car turns into a "hot box," (which is when an axle sits in the wheel bearings and heats up) causing a potentially hazardous situation if the box is transporting flammable cargo.

(5) The city did not feel the railroad's liability requirements were excessive. Mr. Bainbridge said if an accident were to happen "everyone will probably get sued," and felt the city needed protection.

(6) Mr. Bainbridge did not feel pending bills in the legislature (which would require case-by-case legislative approval for the ARRC to relinquish crossing maintenance) to be the answer to the problem. He felt it would be cumbersome to have the legislature involved in day-to-day operations of the railroad.

(7) The city feels the diagnostic team approach is working well because it requires local input before decisions are made.

(8) As a potential solution, Mr. Bainbridge said he would "like to see more of a fifty-fifty cost sharing with the railroad." He said the railroad has made the argument they receive no benefit from the crossings, however, they do receive services from the municipalities.

Mr. Bainbridge said most of the problem in the city's relationship had been with the ARRC's engineering department, not Mr. Turpin. He stated, "Frank Turpin is a fair man who would ask you to lay out your case and resolve it . . . but he'll refer you to staff, and then you're right back where you started." He said many of the controversies could be averted if Mr. Turpin got directly involved in settling disputes. Mr. Bainbridge also expressed support for the community advisory board because it allows all the various communities to get together in one room as well as giving access to Mr. Turpin.

Railroad/Highway Crossing Issues in the City of Seward

While the City of Seward has no permits with the ARRC for highway crossings, it does maintain several utility crossing agreements. Most of the highway crossing permits are on state maintained roads and covered by DOTPF.

An ombudsman investigator interviewed City Manager Darryl Schaefermeyer who expressed the following concerns:

(1) Indemnification. The city is concerned about recent changes in utility agreements which requires them to provide additional indemnification for the ARRC. Mr. Schaefermeyer believes this indemnification necessitates too broad of an assumption of responsibility by the city.

(2) The most important issue to the city is the operation of the Port of Seward terminal which is owned by the ARRC but managed by North Star Terminals. Historically, operation of this terminal has been a source of controversy. The city believes the port could be more effectively marketed and that North Star Terminals has some built-in biases against Seward because they also manage terminals at the Ports of Valdez and Anchorage. Because economic development in Seward is closely tied to the port, the city would like to see more local control over port management. The city was pleased, however, when a Seward resident was recently appointed to the Alaska Railroad Board.

The relationship between Seward and the ARRC, though portrayed as one which has ebbed and flowed over the years, was currently described as positive but with room for changes. Mr. Schaefermeyer stated he would like to see some greater responsiveness to municipal concerns from the management at the ARRC. He said, "there needs to be an ethic at the very top that they want to be responsive."

Railroad/Highway Crossing Issues in the City of Fairbanks

An ombudsman investigator interviewed Deputy City Attorney Ron Smith and Right of Way Agents Bob Weaver and Pat Smith, all of whom have been

involved with crossing issues. Correspondence between the city and the ARRC also was reviewed.

Right of Way Agent Smith stated there were thirty crossings in the city of which six were permitted; the remaining twenty four had either expired or were now pending inclusion in a permit. Below are a listing of the city's concerns:

(1) Most of the controversy surrounding crossings has been with the new language in the utility permits. Mayor Jim Nordale (in his May 1, 1989, letter to Assistant Ombudsman Kevin Harun) stated the city's case:

"The City has repeatedly objected to the proposed blanket permits because of several policy statements contained therein which, in the opinion of the City, are contrary to both the interests of the City and the public. One such statement is the ARRC's road crossing policy which attempts to shift all liability and responsibility solely upon the permittee."

According to Deputy City Attorney Smith and Right of Way Agent Weaver, while final language is still being worked on and smaller issues still remain to be resolved, issues involving permits for utilities in the Railroad Industrial Area have been resolved. They said Mr. Turpin had met with city officials and the only remaining issue appears to be the highway crossings.

(2) The railroad benefits from highway crossings in the industrial area. Most rail-highway crossings are located in the railroad industrial area where there are numerous uncontrolled crossings serving various businesses. The city's contention is that many of these crossings serve the ARRC lease holders who make substantial rental payments to the ARRC, and according to Mayor Nordale, "(the crossings) in fact provide a substantial benefit to the ARRC at all locations and a measurable benefit at specific locations." Because of this perceived benefit to the ARRC, the city would like to see the ARRC and the city share maintenance costs.

(3) Mr. Weaver was concerned about what maintenance costs might be for the city down the road, particularly if the railroad requires signals at existing crossings and then bills the city for the upkeep. The city wants assurances they will not have such decisions and resulting costs forced upon them without city approval.

City officials interviewed stated overall their relationship with the ARRC was pretty good. The city viewed the ARRC staff as taking a very hard line in negotiating both the utility permits and the road crossing permit and it was only after Frank Turpin met personally with city officials that a compromise was reached

on most issues. Mr. Turpin told city officials that he desired to see this ombudsman's report before negotiating further on the road crossing permit issues. While the city and the ARRC have had differences in the past, they have usually been able to work them out. Ron Smith summarized the ARRC staff position as, "Don't worry about the language of the permit because regardless of what power it gives to the ARRC, the ARRC has always been very reasonable when enforcing prior permit terms. Ron Smith summarized the city viewpoint when he said he trusts the railroad, but does not want to give them a blank check, which is how he views the standard road crossing permit. He also mentioned the ARRC employees will come and go, and he wants to make sure the current agreement will not be strictly enforced in the future.

Railroad/Highway Crossing Issues in the Municipality of Anchorage

The Municipality of Anchorage has the largest crossing maintenance bill from the ARRC of any of the affected local governments, though these costs do not seem to have generated much controversy. An ombudsman investigator spoke with Henry Pratt, executive assistant to the mayor; Ed McMillan, director of Public Works; Frank Tecca, municipal traffic engineer; Ray Nelson, manager of real estate services and Bill Wilcox, superintendent of street maintenance, regarding the crossing issues. Mr. Pratt and Mr. McMillan were not aware of any major problems with the crossing permit process. Mr. Tecca and Mr. Wilcox both stated they were concerned about total maintenance costs, which amounted to approximately \$60,000 last year for fourteen signalized crossings under permit with the ARRC. The city also incurs some additional costs for minor maintenance work which it performs itself.

The only major area of contention appears to be the fate of the 100th Street and 104th Street crossings. In 1986 the railroad placed trenches in its 100th Street right of way causing a blockage of this crossing. Because access across the rail at 100th Street is listed on the city master plan, the municipality protested this closing and the railroad reopened it. However, the ARRC has given the city a choice of closing 100th Street or 104th Street. The city does not want to close 104th Street because Pepsi Cola Bottling was originally assured access via 104th when the plant was constructed. The city's position is they want both crossings open and feel the railroad is being unduly restrictive by not approving both crossings.

When asked about the administrative overhead rate for maintenance (1988 rate was 175%,) city officials did not appear happy paying such large amounts, though it was acknowledged the municipal overhead rate in the Street Maintenance division was approximately 200%. Mr. Wilcox, who has worked for private engineering consultants stated it was not uncommon in the private sector to have administrative overhead rates of between 200% and 300%.

The city did express a desire to change of the standard permit language to prohibit the ARRC from closing an existing crossing at any time.

Most felt the municipality's relationship with the railroad was positive and the ARRC was open to the municipality's ideas and suggestions. Economic development was one area where the ARRC received high marks, particularly in assisting the city in developing the Ship Creek basin for a port and tourist facilities. Those interviewed believed the diagnostic team approach was working well because it gave the city more input into decisions.

Railroad/Highway Crossing Issues in the Matanuska-Susitna Borough

An ombudsman investigator interviewed Mayor Dorothy Jones on these issues. Mayor Jones stated the borough currently has no permits with the ARRC, though the railroad would like them to take on this responsibility.* She said the borough did not want to take on the associated liability and maintenance costs.

Mayor Jones expressed the following specific concerns:

- (1) The Mat-Su Borough is a second class borough, and while service areas could potentially take on crossing maintenance, such responsibilities would pose an unreasonable burden. Mayor Jones noted that, by statute, the state was supposed to fund \$2,500/mile for the service areas, yet the actual amount has been much lower. Service areas currently have minimal resources to perform required street maintenance work.
- (2) The Mat-Su's service areas cover only populated areas, and the Mayor said she cannot see a small area paying for a crossing used by a wider segment of the population.
- (3) The borough's Public Works Department does not itself want to assume responsibility for crossing maintenance.
- (4) The borough does not want to assume liability for something for which they have not traditionally paid.

Mayor Jones stated the railroad has provided a number of community services throughout the borough. She cited as examples of this the many parcels of land which are leased by the ARRC throughout the borough at reduced rates, such as the Wasilla Depot and property leased to the Talkeetna Chamber of Commerce. Mayor Jones said, "Our working relationship with the railroad has been good. We don't find them to be the ogres some of the other municipalities have." On the issue of the borough taxing the ARRC, Mayor Jones stated she could "see both sides." While she can see the argument for taxing non-public railroad uses, Mayor Jones said she's not sure how much it would raise and also does not feel the borough can legally tax the state.

* ARRC states the borough has one minor unsignalized crossing at Garden Terrace Estates (Milepost 155.2.)

Railroad/Highway Crossing Issues in the City of North Pole

Because the City of North Pole and the surrounding area are bisected by the Alaska Railroad, highway crossing decisions profoundly affect community development and safety. Unlike some municipalities where growth has predominantly occurred on only one side of the tracks, in North Pole major developments exist on both sides.

Even though four crossings have been removed in recent years, there are nine crossings in the immediate city vicinity, most of which are maintained by the

DOTPF. The city does not currently assume responsibility for any signalized crossings.

The greatest crossing controversy in interior Alaska centers around who should be responsible for North Pole's 8th Avenue crossing, a heavily traveled junction which links two major schools and is relied upon for school bus transport. All interested parties, including the ARRC, the city, school district and the DOTPF, concur this crossing should be upgraded to a signalized one and, while construction money is available for signalization, the project is on hold because under federal regulations (which provide construction funding) the crossing cannot be upgraded until some entity accepts responsibility for future maintenance and liability. While Mayor Carleta Lewis had previously signed another the ARRC agreement accepting responsibility for the maintenance and liability of a road and bike trail crossing, upon closer inspection the city decided the contract was not valid because they did not originally understand the terms, and because the city council never ratified it.

The DOTPF still has federal money programmed to upgrade 8th Avenue. However, earlier this year the DOTPF stated the money may be reprogrammed to other crossing projects unless the city and the ARRC resolve the conflict and someone accepts responsibility. This issue requires an urgent resolution because unless it is settled soon, the project may miss another construction season and the DOTPF may attempt to divert the funds elsewhere. Meanwhile, the stalemate continues between the city and the ARRC.

An ombudsman investigator interviewed Mayor Carleta Lewis and City Manager John Fisher as well as reviewed correspondence between the ARRC and the city regarding these issues. The concerns of the city are as follows:

- (1) The ARRC's attitude toward the City of North Pole. The city perceives the ARRC's attitude as one of "take it or leave it." Mayor Lewis stated, "They (the ARRC) tell you to do it their way or they'll close it (the crossing) down."
- (2) Maintenance should be a shared responsibility. The city is first of all concerned that the ARRC's standard permit agreement is a "blank check" because there is no ceiling on what the ARRC can charge. North Pole is concerned about the potential for escalating maintenance costs, which are currently estimated at \$3200 per year per signalized crossing. While this may not seem like a large amount, the city has a relatively small road maintenance budget, many roads are in need of repair and maintenance, and state revenue sharing does not provide additional funds for rail crossings, so that any state funds used for crossings. The city would like to see the railroad share in some of these costs.
- (3) The ARRC benefits from community development and the crossings. While the city acknowledges it has benefited from community developments such as the Mapco Oil Refinery, the city also believes the railroad has benefited through increased freight revenue. They believe the crossing problem is not only the result of

increased community development, but also an increase in rail activity.

(4) The ARRC should share in the liability. North Pole believes the standard permit forces the community to accept complete responsibility for a crossing when this should be a shared responsibility.

The city does not believe the ARRC has attempted to respond to their concerns and negotiate in good faith. The railroad in response believes the city has attempted to abrogate an agreement which was signed by Mayor Lewis. For many months this battle has become a paper war played out in the newspapers and in the correspondence between the city's and railroad's attorneys. Mayor Lewis, when first contacted by the ombudsman's office, communicated her concern that she had never been personally contacted about these issues by Mr. Turpin. She stated she had to travel to Fairbanks to attend the ARRC meetings and that the ARRC did not come to North Pole to solicit community input. Since these concerns were originally discussed, Mayor Lewis has said Mr. Turpin contacted her directly, though the issue still remains unsettled. It should be noted that while the ARRC established a community review organization called the Alaska Railroad Briefing Council, Mayor Lewis was never invited to join or attend.

Last spring the city also sought the assistance of the legislature in helping solve the crossing controversy. Local legislators Senator Jack Coghill and Representative Mike Miller submitted identical bills which would require the ARRC not to use a standard permit agreement unless submitted to the legislature and not disapproved by the legislature within sixty days. While this legislation did not move this past year, it will come up again for consideration next year.

Railroad/Highway Crossing Issues in the City of Houston

There are two the ARRC crossings in the City of Houston, one a signalized crossing at the Parks Highway (permitted to DOTPF) and the other a non-signalized crossing at Cherri Lake Road. While the Cherri Lake Road crossing is across a city street, the city does not assume its responsibility because it was in place before Houston became a city. The city has an easement for this crossing from the Department of Interior dated June 15, 1962, but Houston was not incorporated until 1966.*

An ombudsman investigator interviewed City Clerk Linda Padie. Ms. Padie stated while the city is a second class city with only limited powers of road maintenance and fire protection, the city is not interested in assuming responsibility for the crossing. The city has no independent tax base and derives all of its revenue from state shared funds.

Ms. Padie stated the city really doesn't have much contact with the railroad. Recently after an accident at the Cherri Lake crossing, the ARRC made some contact with the city asking if they could permit this crossing to the city. So far, the city has declined to take on the permit.

* ARRC states it did have a permit with DNR for this crossing but when DNR gave the road to the city the responsibility for the crossing was not passed on to the city.

APPENDIX C: Signal Maintenance Billings

The Office of the Ombudsman reviewed signal maintenance billings for each of the signalized permit holders and arrived at the following dollar amounts and percentage of total maintenance costs for non-routine maintenance:

Permit Holder Name	Routine Labor Dollars Spent in 1988	Non-Routine Labor Dollars Spent in 1988	Non-Routine Per Cent of Total Labor Costs
City of Wasilla	\$8,690.64	\$4,365.91	33.43%
DOTPF	\$136,937.97	\$56,301.71	29.13%
Municipality of Anchorage	\$38,696.48	\$14,995.48	27.93%
National Park Service	\$2,896.88	\$1,779.67	38.06%
U.S. Air Force Elmendorf	\$8,690.64	\$1,429.49	14.12%
U.S. Air Force Clear	\$2,896.88	\$305.31	10.54%
U.S. Army	\$2,896.88	\$0.00	00.00%

APPENDIX D: How the Overhead Rate for the ARRC is Calculated

The railroad calculates an overhead rate for signal maintenance based on the following methodology:

(1) The engineering division's share of total operational labor costs is determined. This came to 30.85% in last year's audit. What this means is the engineering division's share of the railroad's total operational labor budget was 30%. The engineering division is one of three operational divisions at the ARRC.

(2) The railroad's total allowable administrative costs are calculated. These administrative costs include the following functions: executive, legal, personnel, procurement, accounting, data processing, real estate and corporate overhead. These administrative costs exclude the operational divisions' internal administrative costs as well as other costs which are not allowed by the FHWA (such as marketing, bad debts, interest payments and public relations).

(3) The engineering division's portion of total allowable administrative costs is found by multiplying the percent of operational labor costs (30% in step one) by the total allowable administrative costs (determined in step two). Note, however, that the engineering division's internal administrative costs were excluded in step two, so these must be added back in before the total overhead associated with engineering can be found.

(4) The total overhead associated with the engineering division is divided by engineering's direct labor costs to arrive at the overhead rate:

Total overhead associated with Engineering

Engineering Division's direct labor costs = Overhead %

APPENDIX E: A Review of Other States

An Ombudsman investigator reviewed state statutes in over thirty states for laws pertaining to rail/highway crossings. Additionally, several states with state owned railroads were contacted including Florida, Wisconsin, West Virginia and Texas. It should be noted the Alaska Railroad is unique among publicly owned railroads for several reasons: (1) while most state-owned lines cover small distances, the Alaska Railroad spans a large distance from interior to southcentral Alaska; (2) while most states with public railroads also have several private railroads, Alaska has no private railroads and only one public railroad; and (3) while states with publicly owned railroads frequently contract the management of these railroads to the private sector, the Alaska Railroad is both publicly owned and operated. The Ombudsman's investigation also found in these states with public railroads, there was little difference in how public and private railroads were treated.

ARKANSAS. Crossings are regulated by the Arkansas Commerce Commission and also the State Highway Commission. Arkansas requires warning boards to be placed and "constantly maintained" by the railroads. (Title 23-12-411) The Ombudsman's Office contacted Jon Waldrip, a rail/highway administrator for the Arkansas Highway and Transportation Department, who stated maintenance of crossing protective devices is the sole responsibility of the railroads.

ARIZONA. Railroads are regulated by the Arizona Public Utilities Commission (APUC) and the Arizona Corporation Commission. The APUC has the authority to require the installation of crossing protective devices and to apportion costs between the railroads and municipalities. If the parties involved in a crossing do not reach an apportionment agreement, the costs are apportioned 50% to the railroad and 50% to the public entity. (AS 40-337.01.)

The Arizona Corporation Commission has the duty "to prescribe standards of safety and safety devices" for railroad employees, and which includes the requirement that railroads install and maintain electric marker warning lights on the rear of all trains. (Title 40-841). * (Note: The ARRC reviewed this statute and states the Corporation Commission does not regulate crossing issues.)

CALIFORNIA. Railroads are regulated by the California Public Utilities Commission which may require the railroads to construct and maintain "appropriate safety or other devices" at crossings (Title 768), though it should be noted the railroads are not necessarily required to construct and maintain automatic protective devices. Automatic protective devices are specifically covered under statute PUC 1202.2. which directs the commission to apportion maintenance costs between the railroads and the public agencies affected in the same proportion as the cost of construction. PUC 1231.1 requires the maintenance share of a city or county to be paid to the railroads from a fund established by an annual state appropriation. (Note: The ARRC states that because most automatic protective devices are funded federally with non-railroad monies, "the public agencies are responsible for 100% of the maintenance costs for such signals," though the PUC does regulate how maintenance costs and administrative overhead are computed.)

COLORADO. The Public Utilities Commission of Colorado regulates rail/highway crossings and has the power to determine how crossing protection costs are apportioned between the railroad and public entity. In the apportionment of installation costs "consideration shall be given to the benefit, if any, which will

accrue from such signals or devices to the railroad corporation..." Regardless of the benefit apportionment, the railroads are required to pay at least 20% of the total installation costs unless the project is federally funded. However, the railroads pay 100% of maintenance costs for protective devices.

DELAWARE. Crossings are regulated by the Delaware Transportation Authority of the state DOT (Title 2.1804) which is "vested with the exclusive power to determine and prescribe by regulation or order, the points at which, and the manner in which, such crossings may be constructed, altered, relocated or abolished, and the manner and conditions, including protective devices, in or under which crossings shall be maintained, operated and protected to effectuate the prevention of accidents and the promotion of the safety of the public." (Note: the ARRC contacted John Anderson, Rail Administrator for the Delaware Department of Transportation who stated the allocation of crossing maintenance costs varies. On some crossings the state pays 100%, on others the railroads pay 100%, and on others the costs are shared 50-50.)

FLORIDA. The Florida Department of Transportation is responsible for crossings in accordance FS 335.141. This statute requires railroads to maintain crossings opened prior to July 1, 1972 unless the parties to a crossing agree to different terms. (Note: the ARRC stated that for crossings installed after 1972, the maintenance of automatic protective devices is shared between the railroad and public entities on a 50-50 basis. The Ombudsman's office contacted John Sweinhart, Traffic Safety Officer at the Florida Department of Transportation, who verified this cost sharing arrangement.)

GEORGIA. Crossings are regulated by the State Department of Transportation. Railroads have a duty to maintain crossings in such a way as to insure safety.

Protective devices can be installed by state, county or local government if they believe "it is reasonably necessary for the safety of the traveling public." For installation of a crossing and protective devices, public entities pay 100% of the construction if it's a new road crossing an existing railway; railroads pay 100% if it's a new railroad crossing an existing road. However, "the railroad or railroads shall maintain all protective devices at its or their own expense and nothing in this subsection shall be construed to impose any public liability on the department or any county or municipality" (GA Title 32-6-200).

IDAHO. Rail/highway crossing issues are overseen by both the Idaho Public Utilities Commission and the Idaho Transportation Department. In accordance with ID St. 62-304C, on projects which do not receive federal funds, the Idaho Transportation Department apportions "the entire cost of the installation, reconstruction or improvement of any signal or device as described in section 62-304A, Idaho Code, between the railroad company or companies and the Idaho transportation department or the local authority, in proportion to the respective benefits to be derived."

The railroad is required to perform the construction and maintenance of signals and devices and is reimbursed for those costs not to be borne by it. In dividing these costs among the parties involved, the Idaho Transportation Department may not apportion more than 10% of the costs to the railroad unless the crossing is a new crossing proposed by the railroad, in which case all costs are borne by the railroad. (ID St. 62-304C)

Idaho has also established a grade crossing protection fund to pay all or part of the cost of installing and maintaining automatic or other safety devices. (ID ST. 62-304A)

The Idaho Public Utilities Commission also regulates rail/highway crossings (ID St. 62-302) when the Department of Transportation cannot reach an agreement with a railroad on the apportionment of costs, or when either a railroad or the department files a written complaint to the commission. The PUC is mandated to take "into consideration the necessity for such alteration or elimination and the cost thereof, the location of any crossing and the manner in which it shall be constructed, reconstructed and maintained . . . and shall make such order in relation thereto as shall be equitable, and shall determine what portion of the cost shall be paid by any party to the controversy. . ." (Title 62-304).

ILLINOIS. The Illinois Commerce Commission "may protect the public safety through insurance and safety standards" (95 1/2-18C-1202) and is given specific regulatory authority over crossings under 95 1/2-P18C-7401. No new at-grade crossings are permitted without the permission of the commission. The commission may apportion costs of installation and maintenance between the railroad and public entity and use the Grade Crossing Protection Fund for this purpose. (Note: the ARRC states this Grade Crossing Protection Fund receives 12 Million dollars per year from the Motor Fuel Tax Fund.)

INDIANA. Crossings are regulated by the State Department of Transportation which may order the installation of automatic protective devices. This power is "exclusive, and supersedes the power of any other state or local governmental agency." (IND St. 8-6-7.7-2)

"Whenever any (existing) grade crossing not protected by automatic warning signals is ordered so protected, the department shall prescribe the division of the cost of such equipment, its installation, and operation and maintenance between the railroad involved and the public, giving due regard to the net benefits received by the parties, and the causes creating the need for signals at the crossing." (Title 8-6-7.7-4 (b)).

Local governments or the railroads may also petition the department to install automatic protective devices (8-6-7.7-5).

Whenever a new road crosses a railroad, the public entity under whose jurisdiction the crossing lies shall bear and pay the entire construction cost for the crossing and warning devices, but the railroad shall bear the entire cost of maintaining the crossing and crossing warning devices. (IND St. 8-12-6-1)

IOWA. The Ombudsman's Office did not review statutes for the state of Iowa, however, the ARRC stated the laws appear to be different than the policy stated by Mr. Callahan, Iowa DOT, in the body of this report. The ARRC states the law reads that for crossings after 1973, under IO St. 327G.15., the state pays 75% of maintenance costs with the railroad paying 25%.

KANSAS. The secretary of the state DOT may compel railroads to construct, reconstruct and maintain crossing improvements. The expenses may be divided between the railroad and the Secretary of Transportation, "in a fair and equitable proportion to be determined by the Secretary of Transportation." However, the state may not pay more than 50% for large crossing projects,

"otherwise, grade crossing projects shall be constructed and maintained at the expense of the railroad company." Kansas law also states, "when the Secretary of Transportation deems it advisable, said railroad company may be required by order of the Secretary to install and maintain suitable safety devices or warning signals at dangerous or obscure crossings to indicate the approach of trains" (Title 68-414).

KENTUCKY. The cost for crossing construction is divided between the railroad and the public entity "in the same ratio as the net benefit received by such railroad from the project bears to the net benefit accruing to the public using the highway. . ." However, in no case shall the benefit to the railroad be deemed more than 10% of the total benefit of the project. This statute also provides that the governmental unit which does the construction is entirely responsible for the maintenance of "installations for the protection of grade crossings." (KRS 277.065)

LOUISIANA. Crossings are regulated by both the Louisiana Public Service Commission and the State Department of Transportation and Development. Louisiana law states that when an existing highway is crossed by a railroad, the railroad must pay for construction and maintenance. However, when a new highway crosses an existing railroad, the agency responsible for the road must pay for construction and maintenance (LRS 48:382). The Department of Transportation may make payments to railroads for flashing light signals on state highways for "not more than one-half the cost of maintenance of such flashing light signals during the fiscal year for which the funds are appropriated" (LRS 48:387).

MAINE. Crossings are regulated by both the Maine Department of Transportation and the Maine Public Utilities Commission. Municipalities may install new crossings if the state DOT permits after appropriate hearings and notice. The DOT may apportion costs but "the expense of operating and maintaining any protective device shall be borne by the corporation operating the railroad" (ME St. 23.2902). This law also provides for the apportionment of other maintenance between local governments and the railroad by the state DOT, with the option that parties may appeal decisions to Superior Court.

(Note: the ARRC also adds that in addition to ME St. 23.2902, another statute ME St. 23.2930 provides that the Maine Department of Transportation may reimburse railroads for up to 50% of the annual cost of maintaining crossing protection devices, with a maximum payment of \$1500 per crossing. Also, railroads in Maine are allowed to apply for financial assistance from the state in the form of grants, loans, subsidies and tax exemptions, etc for the purpose of maintaining railroad crossings. Thus, railroads do not bear all costs associated with railroad crossing maintenance.)

MARYLAND. Crossings are regulated by the Maryland Department of Transportation. Railroads are required to maintain crossings to a distance of two feet from the outermost rails. If county commissioners decide there is a need for flagmen or automatic protective devices, they may order the railroad to install and maintain them (Article 23.227). (Note: the ARRC states this statute is an old statute which applies to railroad crossings outside the corporate limits of cities and that this statute required a railroad to place a flagman or an electric bell at such crossings.)

The ARRC also notes a more current and relevant Maryland statute is MD St. 8-642 which requires the railroads to pay 25% of crossing maintenance costs with the state paying the remaining 75%.

MICHIGAN. The Michigan Public Utilities Commission regulates crossings. The full cost of constructing a new road or rail over an existing road or rail is required to be paid by the party initiating the crossing. Plans must be approved by the railroad and the local highway authority. If there is no agreement, the Michigan Public Utilities Commission is authorized to settle disputes. The PUC may direct, "the full cost of maintaining and repairing existing crossing shall be borne by the respective parties responsible for the work herein provided." The PUC may also order the installation of flashing light protective devices, with construction costs apportioned on a shared basis. However, maintenance costs are the responsibility of the railroad with the exception that highway authorities may be required to pay \$10 a month per crossing (Title 469.1).

MINNESOTA. Crossings are regulated by the Minnesota Public Service Commission. Under MN St. 219.40 the railroad may be required to install safety devices at a crossing and apportion the costs between the railroad and public entity "on terms and conditions as may seem just and equitable." The statute also permits costs associated with safety devices to be apportioned by the parties themselves by agreement or divided "on the basis of benefit to the users of each."

MISSISSIPPI. Crossings are regulated generally by the Mississippi State Highway Commission and the State Public Service Commission. Statute 21-37-9 states, "The governing authorities of municipalities shall have the power to regulate the crossings of railways, and to provide precautions and prescribe rules regulating the same." This statute also gives these authorities "the power and authority to make any other and further provisions, rules and regulations to prevent accidents at crossings. . ." (Note: the ARRC contacted Newt McCormick of the Mississippi Department of Highways who stated while this statute is still on the books it is not enforced by local communities because it is believed to be unconstitutional.)

MISSOURI. Crossings are regulated by the Missouri Public Service Commission and the Missouri Division of Transportation. Under MO St. 386.310, the PSC has the power after a hearing to require a railroad, "to maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such a manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block and other systems of signaling. . ."

Construction and maintenance of crossings is specifically covered under MO St. 389.610 which provides that the maintenance of railroad crossing signal devices shall be divided between the railroad and the public entity by agreement. If an agreement cannot be reached the division shall apportion the cost among the parties based upon the benefits accruing to each. In determining these benefits the division shall consider all relevant factors including train speed, volume and type; vehicular speed volume and type; and advantages to the public and railroad resulting from the elimination of delays and the reduction of hazards at a crossing.

MONTANA. Crossings are regulated by the Montana Public Service Commission. In unincorporated areas, it is the "duty of the railroad company owning or operating such railroad to construct and thereafter maintain in proper condition a good and safe crossing" (69-14-602). In towns and cities, the local county may order the construction and maintenance of a crossing "where the public

convenience and necessity requires a railroad crossing." However, the railroad may appeal to the PSC (69-14-603).

The county governments may also petition the PSC to have automatic signaling devices and the PSC may order the railroads to install and maintain them. (Note: the ARRC adds that in Montana the state contributes to the repair or replacement of damaged crossing signal devices.)

NEBRASKA. Crossings are regulated by both the Nebraska Public Service Commission and the Nebraska Department of Roads. The commission may direct railroads to install and maintain crossing protective devices including gates and alarms (75-412). Private crossing access is guaranteed to a person who owns land on both sides of the railroad right of way. Charges for this access may be billed to the landowner, however, for charges over \$700 the landowner shall bear only one-half the expense (75-413.) If a town or county wants an improvement they may reach an agreement with the railroad or go to the PSC. The commission may then hold hearings and apportion costs (75-414 through 75-415).

(Note: the ARRC cites two other statutes 74-1311 and 74-1319 which direct the Department of Roads to determine when railroad crossing safety measures are needed and to apportion costs. A grade crossing fund is also established and crossings in existence after 1979 are maintained this fund. It appears that crossings established before 1979 fall under the PSC's jurisdiction with the railroads paying maintenance costs, while crossings established after 1979 fall under the Department of Roads with the public sector picking up the maintenance costs.)

NEVADA. For new crossings the entire cost "shall be apportioned to and borne by the governmental unit or units affected if a governmental unit initiates the proceeding, or by the railroad or railroads if the proceeding is initiated by the railroad." For automatic signals 87% of the installation costs shall be borne by the local government and 13% apportioned by the railroad. The maintenance for these protective crossings is split 50% to the governmental units and 50% to the railroad (704.305).

(Note: the ARRC adds that NS 704.305 also provides that governmental units and the railroads may negotiate agreements apportioning costs differently than the above formula. The ARRC also cited an agreement between the Southern Pacific Transportation Co. and the City of Reno under which the city agreed to reimburse the railroad for 100% of the installation and maintenance costs for flashing signals.)

NEW JERSEY. Crossings are regulated by the commissioner of the state Department of Transportation. Most recent statutes indicate the state pays 95% of installation costs of automatic protective devices with the railroad paying 5%. However, the railroads are responsible for 100% of maintenance costs. (NJ St. 48:12-49.1)

NORTH DAKOTA. The North Dakota Public Service Commission regulates crossings. Railroads are responsible for maintaining crossings at their own expense where rail lines intersect public roads (24-09-04). However, for automatic signals the costs is apportioned based on the "benefit derived respectively by highway users and the railroad from the installation of such crossing protective device." The cost attributable to highway users may be paid from the state highway fund with a cap of \$100,000 every two years (24-09-08.01).

OHIO. Crossings are regulated by the Ohio Public Utilities Commission. The cost of constructing signalized crossings may be apportioned after a public hearing. The commission may consider the following factors in the apportionment of costs: (1) volume of train traffic; (2) volume of vehicular traffic; (3) train speed and type; (4) limitations of view and the causes thereof; (5) savings, if any, which will inure to the railroad as a result of the installation; (6) benefits to the public; and (7) the future costs of maintenance. "The commission may accept the railroad's agreement to maintain such installation as being its share of the cost for such protection." The railroads must maintain crossings (OH St. 4907.47) unless the parties agree to a different division of costs.

(Note: the ARRC emphasizes that only when the parties cannot agree to a division of costs is the matter taken to the PUC under the statute cited.)

OKLAHOMA. Crossings are regulated by the Oklahoma Corporation Commission. OK St. Title 17.86 provides the commission has the authority to apportion costs for protective devices between the public entity and the railroad. The railroad is not to bear more than 25% nor less than 10% of the total installation costs, however, once the devices are installed, the railroad is responsible for 100% of the maintenance costs.

OREGON. The Oregon Public Utilities Commission must approve all new at-grade crossings. The commission can require installation and maintenance of protective devices and apportion the costs for installing protective devices as follows: (1) 75% from the state Grade Crossing Account; (2) 5% from the public road authority; and (3) 20% from the railroad (763.271).

WASHINGTON. Crossings are regulated by the Washington State Utilities and Transportation Commission. The commission may act either on its own or by petition of the state, the railroad, or the local government. For crossing signal warning devices, if federal funds are used, the railroad whose road is crossed by the highway shall pay the total maintenance costs, unless the device was installed at the direction of the commission. If the device was installed at the direction of the commission, it will be funded 25% from the state's Grade Crossing Protection Fund and 75% by the railroad. If the protective devices are ordered by the railroad, local governments may be required to pay a percentage of installation costs but not maintenance.