

## Alaskan Airpark is Being Railroaded

### Description

By **Bob Gastrock**

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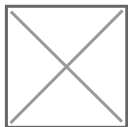
[AK12](#), Alaska's oldest residential air park, is in serious danger. The survival of Flying Crown Airpark in Anchorage, which has been in operation since the early 1950s, depends upon a healthy relationship with the Alaska Railroad and a 200-foot right-of-way (ROW).

But the [Alaska Railroad Corporation](#) (ARRC) has sued Flying Crown in a quiet title action. The airpark is now defending itself in court against a land grab by the Alaska Railroad Corporation. If it loses, it could set an unsettling precedent for all property owners along the railroad line, as well as hunters, hikers, and others who enjoy Alaska's recreational bounty.

In the balance is not only Flying Crown's future, but also public access for fishermen, hunters, hikers, and property owners throughout the state.

### What is a Quiet Title Action?

An action to quiet title is a lawsuit brought in a court having jurisdiction over property disputes, in order to establish a party's title to property. If successful, the action "quiets" any challenges or claims to the title.



FLYING CROWN AIRPARK IS RIGHT NEXT TO THE RAILROAD LINE.

### A Legal Precedent

If ARRC prevails in its lawsuit against Flying Crown Airpark, Alaska will be forever divided by an ARRC-controlled 200-foot swath of land. Even worse, its proposal for the "A2A" (Alaska to Alberta) rail extension includes a 500-foot-wide private ROW, further dividing Alaska's open spaces. The negative consequences for many thousands of traditional recreational users of the Alaska outdoors will be profound.

When the federal government divested itself of rail belt lands via Homestead patent conveyances in the 1940s and 1950s, the new Homesteads underlying the ROW were simply burdened with an easement for the operation of railroad, telegraph, and telephone. The new Homesteaders and their heirs and successors, including the Flying Crown Airpark, owned the dirt under the tracks, and used their land without impeding or interfering with railroad operations.

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In 1983, Congress passed the Alaska Railroad Transfer Act (ARTA) to transfer All Right, Title, and Interest held by the federal government to the State of Alaska. That should have included the simple surface easement as reserved for the federal government in homestead patents.

Inexplicably, ARTA provisions were improperly applied, ostensibly transferring (by new patents) an exclusive use ROW easement, which is tantamount to fee simple ownership.

Fee simple ownership entitles a property owner to full enjoyment of the property, including the land and any structures that may be erected on the land. It's limited only by zoning laws, deed or subdivision restrictions, covenants, and easements. The law recognizes fee simple ownership as the highest form of ownership in real estate.

The problem is the railroad doesn't own the land the ROW sits on.

The attempted land grab would strip rightful property owners of their vested rights. As reserved in the Homestead patents, the railroad simply has a surface easement. Success in the lawsuit would change all that, awarding the railroad exclusive use, which would be tantamount to virtual ownership of the land.

Adding insult to injury, property owners were never notified of any changes in their ownership interest, depriving them of due process under the law.

The railroad consummated the new exclusive use easement when it was issued 43 federal patents in 2005 and 2006. These patents were accepted by ARRC without legislative approval, as required by law. They were superimposed over vested existing Homestead patents, creating two federal patents over the same parcel of land. This created clouds on many fee simple titles. Those clouds were not discovered until recently due to a different indexing system used to record them.



## Making Money off Right of Way

The Alaska Railroad has always been a money loser, requiring regular infusions of cash from state and federal governments. To supplement main line operational revenue, ARRC devised a plan to monetize its real estate holdings.

As part of that strategy, railroad officials proposed a Residential ROW Use Policy (RRUP) in 2012, aimed at requiring permits and charging fees to property owners along the ROW.

Some of those folks recognized that the program relied on the exclusive use claim and challenged ARRC to prove the federal government was authorized to convey such interest at the time of transfer. Legislation was passed in Juneau requiring ARRC to make such a showing. The RRUP program was withdrawn, but ARRC has ignored legislative guidance and continues to seek validation of its exclusive use claim.

The lawsuit against Flying Crown Airpark would provide such validation, and open the door to roughshod treatment of property owners everywhere along the ROW. It would also embolden ARRC to begin charging the public for any use of the ROW, including simple access for hiking, hunting, fishing, snowmobiling, and other outdoor activities.

ARRC's lawsuit is intended to obliterate ROW ownership established by earlier homestead patents and grant ARRC the right to unilaterally prohibit access and fence off the entire 200-foot ROW. This would inhibit Flying Crown's use of its land, adversely affect all property values along the rail line, and enable ARRC to completely control public access over significant portions of Alaska's backcountry.

If successful, this action will have been accomplished behind closed doors with no regard to state statutes, the Fifth Amendment to the Constitution, or due process of law.

While pleading the Fifth is well-known as part of criminal proceedings, the Fifth Amendment also requires that due process of law be part of any proceeding that denies a citizen life, liberty or property and requires the government to compensate citizens when it takes private property for public use.

## How Could This Happen?

ARRC is a quasi-state agency, a separate public corporation with minimal oversight, accountability, or transparency. Hence, there was no public notice regarding the transfer of railroad assets.

ARRC has been free to implement self-serving policies and has successfully convinced Alaska's political, residential, and business communities that it owns the ROW, allowing them to deny access or charge adjacent business and residential property owners exorbitant fees for ROW use.

When it was discovered that 43 new federal land patents had been secretly recorded and now cloud title to many business and residential properties along the entire rail belt, Flying Crown and other South Anchorage residents attempted to identify the problem and right the wrong by offering a relatively simple corrective solution. But ARRC has refused to cooperate, and the situation has morphed into a David vs Goliath scenario.

Paralyzed by politics at the state level, Flying Crown is now up against a legacy corporation with deep pockets and political advantage. Flying Crown is faced with task of carrying the water for the entire rail belt, trying to defend itself from a ruling that would establish precedent and set the stage for many additional lawsuits.

ARRC is subsidized by Congress and state coffers. It can easily afford to hire a big gun law firm to go after Flying Crown, which it has done.

It's up to us to defend ourselves. While we have the law and all of the moral and ethical high ground firmly in our camp, ARRC has all the money and political power.

## How Can You Help?

Please help spread the word to fellow aviators and others, and support Flying Crown and many other Alaskans as you can. You can also donate to the cause at Flying Crown's [GoFundMe page](#).

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If you would like to reach out to us with questions or ideas, please contact us at [aaspr@yahoo.com](mailto:aaspr@yahoo.com)

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