

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Trackage Rights and Interchange Agreement with Santa Cruz, Big Trees and Pacific Railway Company)

FOR VALUE RECEIVED, SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Assignor**"), ASSIGNS AND TRANSFERS to SIERRA NORTHERN RAILWAY, a California corporation ("**Assignee**"), its successors and assigns, all of Assignor's right, title and interest in and to the attached February 1, 1985 Trackage Rights and Interchange Agreement made by and between Southern Pacific Transportation Company and Santa Cruz, Big Trees and Pacific Railway Company ("**Big Trees**"), as amended on August 21, 1986, (the "**Trackage Agreement**"), subject to the following terms, conditions and exceptions:

1. This assignment shall take effect upon the close of escrow on Assignor's purchase of the Santa Cruz Branch railroad line from Union Pacific Railroad Company via an August 20, 2010 Purchase and Sale Agreement.
2. Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Trackage Agreement accruing after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Trackage Agreement after the date hereof, and (2) claims under the Trackage Agreement by Big Trees accruing after the date hereof.
3. The Trackage Agreement shall become a "Sierra Agreement" under the terms and conditions of the September 28, 2010 Administration, Coordination and License Agreement between Assignor and Assignee (the "**Administration Agreement**") and shall be subject to the terms and conditions set forth therein.
4. Assignee acknowledges Big Trees' rights to operate under the terms of the Trackage Agreement. Any agreement to expand Big Trees' operations beyond those permitted under the Trackage Agreement shall be subject to the terms and conditions of the Administration Agreement (including Section 2.3.2 *et seq.*).
5. With respect to Article VII of the Trackage Agreement, Assignor assigns to Assignee only the right to collect payments for maintenance, repair and capital improvements, as set forth in Section 2.3.2 *et seq.* of the Administration Agreement, provided that such payments shall not exceed the amount otherwise collectible under Article VII. Assignor retains all other rights under Article VII of the Trackage Agreement.
6. With respect to Article IX of the Trackage Agreement, Assignee shall instruct Big Trees to name Assignor as an additional insured under the insurance policy required by that Article.

7. Assignor retains the right to enforce all terms and conditions of the Trackage Agreement as a third-party beneficiary thereof.
8. Section 2.3.2.8 of the Administration Agreement is incorporated by reference into this assignment, as if set forth in full.
9. This assignment is made and accepted without recourse against Assignor as to the performance by any party under the Trackage Agreement.

Dated the 13th day of October, 2010.

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION, a public
agency created under California law**

By: George Douglas
Title: EXECUTIVE DIRECTOR

**SIERRA NORTHERN RAILWAY,
a California corporation**

By: David Magaw
Title: President

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TRACKAGE RIGHTS AND INTERCHANGE AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of February 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP") and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"):

WHEREAS, SP presently owns a line of railroad extending through the City of Santa Cruz, California;

WHEREAS, SCR proposes to acquire from SP under a separate agreement of even date SP's Santa Cruz Branch north of Mile Post 120.96 in the City of Santa Cruz;

WHEREAS, SCR desires to use certain of SP's tracks at Santa Cruz for the purpose of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains to and from trackage between SP's Mile Post 120 and 120.418;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS

- A. The term "track" or plural thereof and the term "trackage" shall mean track structure and all appurtenances thereof, including but not necessarily limited to rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, signals, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

- B. The term "Joint Track", as herein used shall mean trackage, including underlying property, shown by red line on Exhibit "A", attached hereto and hereby made a part hereof, over which SCR is granted joint operating rights.
- C. The Term "Interchange Track" or plural thereof, as herein used, shall mean any SP tracks shown by blue line on Exhibit "A" which SP may from time to time designate for the interchange of cars between SP and SCR.

ARTICLE II. GRANT OF RIGHTS

SP hereby grants to SCR for the term of this agreement, and subject to limitations herein set forth, the right to operate its trains, engines and cars with its own employees, over the Joint Track and on the Interchange Track, as defined herein, in common with SP and such other parties as SP may hereafter admit to the use of the Joint Track and Interchange Track.

ARTICLE III. LIMITATION ON USE BY SCR

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Post 120 and 120.418, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

ARTICLE IV. ADMINISTRATION, OPERATION AND MAINTENANCE OF JOINT TRACK

- A. SP shall have exclusive control with respect to management, maintenance and operation of the Joint Track and shall maintain and keep same in reasonable repair and reasonably suitable for the combined requirements of the parties hereto, but it is expressly understood and agreed that SCR shall not by reason of any defect in the Joint Track or Interchange Track or in any track, structure or appliance appurtenant thereto, or by reason of failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any

loss, damage, or injury whatsoever arising from such defect, failure or neglect.

- B. SCR shall assume the entire cost of any changes, additions or betterments to the Joint Track that may be required for its operations, including but not limited to any changes or improvements for the handling of passengers and passenger trains, or as the result of entering into this agreement.
- C. SP shall order and direct the movement of trains and cars on the Joint Track under such reasonable rules and regulations as SP from time to time may adopt. All interpretations and application of the rules shall be by SP.
- D. SCR shall, at the request of SP, bar from service upon the Joint Track any SCR employees who shall be found by SP to be responsible for violation of SP rules and regulations. SCR shall bear and assume all expenses which it and SP may incur as a result of any such barring from service. If such disciplinary action is appealed by an SCR employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Track by reason of such occurrence.
- E. SCR's operations shall be scheduled so as not to interfere with SP's normal operations. SCR shall not operate on any portion of the Joint Track or Interchange Track when SP is operating or about to operate thereon.
- F. Each party agrees to comply with all lawful requirements for operation of the Joint Track and Interchange Track, and if failure to comply therewith shall result in any fine, penalty, cost or charge being suffered or incurred by either party, the party so failing agrees promptly and fully to reimburse and indemnify the other party for and on account thereof. Any locomotive, train or car used or operated by either party over or upon said trackage covered by this agreement shall be deemed to be the locomotive, train or car of such party, whether owned by it or not.

- G. SCR shall secure such additional permits from public bodies for its train operations above and beyond those covered by the currently outstanding franchises and/or permits of SP, including those franchises and/or permits for the loading and unloading of passengers.
- H. SCR, at its expense, shall install and maintain upon its engines and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of SP and as installed and maintained by SP, on its own engines and cars, or as required by rules and regulations of public agencies having jurisdiction, for operation of trains upon the Joint Track.
- I. In the event any SCR engine or car shall be wrecked or derailed on the Joint Track or Interchange Track, said wreck or derailment shall be picked up or rerailed by SP, unless otherwise agreed by the parties, and SP shall repair the damage to said tracks. The cost incurred shall be borne in accordance with Article VIII hereof.

ARTICLE V. INTERCHANGE

- A. SCR shall deliver and receive cars to be interchanged between the parties hereto on Interchange Tracks designated from time to time by SP.
- B. Cars that are interchanged between the parties shall be placed on said Interchange Tracks by the delivering party and billing therefor delivered to the receiving party. Such placing and delivering of billing shall constitute delivery, and such cars shall be considered in the custody of the receiving party from the time of such delivery.
- C. Subject to the provisions of Paragraph B of this Article V, the interchange of cars between the parties shall be in accordance with the Code of Rules of the Association of American Railroads then in effect.

ARTICLE VI. EMPLOYEE CLAIMS

SCR shall reimburse Southern Pacific in full for any and all costs incurred by SP in satisfying and complying with any conditions prescribed by the Interstate Commerce Commission pursuant to the provisions of 49 U.S.C. Section 11347 of the

Interstate Commerce Act for protection of interests of railroad employes affected by this agreement.

ARTICLE VII. PAYMENTS

SCR shall pay SP the sum of \$1.00 per annum, the receipt of which is hereby acknowledged, for the rights granted herein; provided, however, that SCR shall pay SP the additional sum of \$1,000 for each month it receives and discharges passengers on that portion of the Joint Track between Mile Post 120 and 120.418. Said additional amount of \$1,000 shall be increased, but not decreased, commencing July 1, 1985 and on July 1 of each subsequent year, in accordance with percentage changes in the AAR Railroad Cost Recovery Index, Series RCR (1977=100) of Railroad Material Prices and Wage Rates, Railroads of Class I, Western District, Material Prices Wage Rates and Supplements Combined (excluding fuel), from the year 1983 which shall be used as the base year, to the calendar year immediately prior to the year in which the change is to be made. Thus, the percentage change from the year 1983 to the year 1984 shall be used to adjust the rate effective July 1, 1985.

ARTICLE VIII. LIABILITY

- A. Determination, as among the parties hereto, of liability for "Loss and Damage" as defined in this Article shall be governed by the following provisions:
- B. The term "Loss and Damage" shall mean all loss of or damage to any property and injury to or death of any person, including amounts paid or payable under all applicable laws, and shall also embrace all cost and expense incident to any such injury, death, loss or damage (including without limitation expense of rerailing the equipment and clearing wrecks) arising in connection with operations on or adjacent to the Joint Tracks and Interchange Tracks under this agreement.
- C. SP shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of its trackage used hereunder, and SCR shall not, be reason of any

defect in said trackage or by reason of the failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any loss, damage or injury whatsoever, arising from such defect, failure or neglect.

D.. Except as provided in subparagraph C of this Article VII, liability for Loss and Damage shall be fixed among the parties as follows:

- (1) When caused solely by the acts or omissions of the employees of one party or the defective property of one party (other than said trackage), such loss and damage shall be borne solely by such party.
- (2) When caused by the acts or omissions of the employees of one party or defective property (other than said trackage) of one party in combination with the acts or omissions of the employees of the other party or the defective property (other than trackage) of the other party, then, whether or not the acts or omissions of the employees of a third party or the defective property of a third party is involved, all such Loss and Damage which occurs shall be borne solely by each party hereto as to its own passengers, employees and property (other than said trackage, and equally as to Loss and Damage to said trackage and to third persons and their property.
- (3) Loss and Damage due to any other cause shall be borne solely by each party as to its own passengers, employees and property in its custody, and equally as to damage to trackage and as to loss or damage suffered by third parties and their property.

The foregoing notwithstanding, if such Loss and Damage involves the trains, engines or cars of only one party, that party shall bear all Loss and Damage.

Anything hereinbefore in this Article VIII to the contrary notwithstanding, none of the parties shall have any claim against any other party for Loss and Damage caused by or resulting from interruption of or delay to such party's business.

Each of the parties hereto covenants and agrees that it will forever indemnify and save harmless the other party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by it; PROVIDED, HOWEVER, that the party liable, in whole or in part, as to any claim or suit filed against the other party, shall be given prompt notice thereof and an opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. All releases taken pursuant to the settlement of claims or suits involving joint liability shall include each of the parties hereto involved, and copies thereof shall be furnished each of them.

ARTICLE IX. INSURANCE

SCR, at its expense, shall procure and keep in effect during the term of this Agreement, a Comprehensive General Liability Insurance policy issued in the name of SCR, covering any liability arising out of or in any way connected with operations on the Joint Track and Interchange Tracks. Said policy shall provide coverage in the amount of not less than Seven Million Dollars (\$7,000,000 .00) combined single limit for all damages arising out of bodily injury to or death of persons and for loss of or damage to property; shall name SP as an additional insured, with a cross liability endorsement; cover all of SCR's contractual liability hereunder; and shall provide 30 days' prior written notice to SP in case of cancellation or material reduction. SCR shall furnish SP a certified copy of such policy prior to commencing the operations herein involved. The form, substance and limits of said policy shall be subject to the approval of SP.

ARTICLE X. ARBITRATION

Any dispute over the terms of this agreement shall be settled by a board of three arbitrators experienced in railroad operations, one to be named by each party and the third by the two so named. If one party fails to name an arbitrator (or the two chosen do not name the third) within sixty days (60) after notice to do so, such arbitrator shall be named upon application by either party hereto to any judge of the U.S. District Court whose jurisdiction includes the Joint Track. The decision of the arbitrators shall be final and binding upon the parties. The expenses of arbitration shall be apportioned by the arbitrators. The parties may agree upon a single arbitrator.

ARTICLE XI. DEFAULT

If SCR fails to cure its breach of any term or condition of this agreement within 60 days after notice from SP to do so, SP may, at its option, terminate this agreement forthwith.

ARTICLE XII. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon the successors and assigns of SP and SCR, except that SCR may not assign this agreement without the prior written approval of SP.

ARTICLE XIII. EFFECTIVE DATE AND TERM

This agreement is conditioned upon its approval by the Interstate Commerce Commission and any other prerequisite legal authority. It shall be effective for an initial period of ten (10) years from the date hereof and shall continue thereafter until terminated by either party on one (1) year's written notice.

ARTICLE XIV. OBLIGATION TO PROVIDE TRACKAGE

If at any time during the term of this agreement SP elects to abandon its own operations on the Joint Track, or any portion thereof, it shall no longer have an obligation to provide or maintain it for SCR. Thereupon the Joint Track shall be subject to the applicable portions of the Right of First Refusal given to SCR by SP in the Purchase Agreement of even date between the parties.

IN WITNESS, the parties hereto have executed this agreement in duplicate as of the date and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By

(Title)

E. L. Johnson
Vice President - Finance

SANTA CRUZ, BIG TREES & PACIFIC
RAILWAY COMPANY

By

(Title)

Thomas Clark



SANTA CRUZ. BIG TREES & PACIFIC RAILWAY COMPANY

P.O. BOX G-1 • FELTON • SANTA CRUZ COUNTY • CALIFORNIA 95018 • (408) 335-4484

Transportation Office (408) 335-1171

April 19, 1991

Mr. John E. Grother, Mgr. Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004
San Francisco, CA 94105

Mr. Grother:

I am enclosing a copy of the only supplemental agreement in my records revising the February 1, 1985 Trackage Rights and Interchange Agreement. The change was minor, out-lining the former main line between SP's MP 120.41 and our trackage at 120.96.

Recently there has been uncertain local word that Southern Pacific is considering a Santa Cruz yard track revision and I do hope we can be included within any planning. Our agreement also allows the purchase of surplus track and we remain interested in doing so to expand our facilities in Felton as freight carloadings continue to grow.

With any planned change, please consider that we have to turn a significant number of boxcars and some flatcars interchanged to this railroad, thus the existence of the wye is essential to both our freight and passenger operations. We also anticipate greatly expanding freight operations in the future and any reduction of interchange capacity may prove to be detrimental to both of our railroads.

Cordially,

Karl R. Koenig
Superintendent

TRACKAGE REVISION

THIS SUPPLEMENTAL AGREEMENT, made this 21st day of August, 1986, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP"), Delaware corporation, and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"), a California corporation;

RECITALS:

The parties entered into an agreement dated February 1, 1985 (SP's Document Audit No. 166136), providing for use by SCR of certain trackage owned by SP at Santa Cruz, California, for the purposes of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains. The parties now desire to amend said agreement in the manner herein set forth.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

1. The combined single limit of \$7,000,000.00 of insurance liability coverage called for in Article IX of said agreement dated February 1, 1985, is hereby reduced to a combined single limit of Five Million Dollars (\$5,000,000.00); provided, however, that this reduced limit shall be effective only through the end of this current year.

2. Article III (Limitation on Use by SCR) of said agreement dated February 1, 1985, is hereby amended to read as follows:

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Posts 120 and 120.418, and between Mile Posts 120.418 and 120.96, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

3. Notwithstanding the provisions of Article II and III (as herein amended) of said agreement dated February 1, 1985, SCR shall hereafter operate its passenger trains over the Joint Track only to a point 300 feet south of the existing station building, until such time as the \$7,000,000 of insurance liability coverage is provided by SCR. *WES*

4. Except as herein otherwise provided, all the terms, covenants and conditions of said agreement dated February 1, 1985, shall remain in full force and effect, subject to termination as therein provided.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

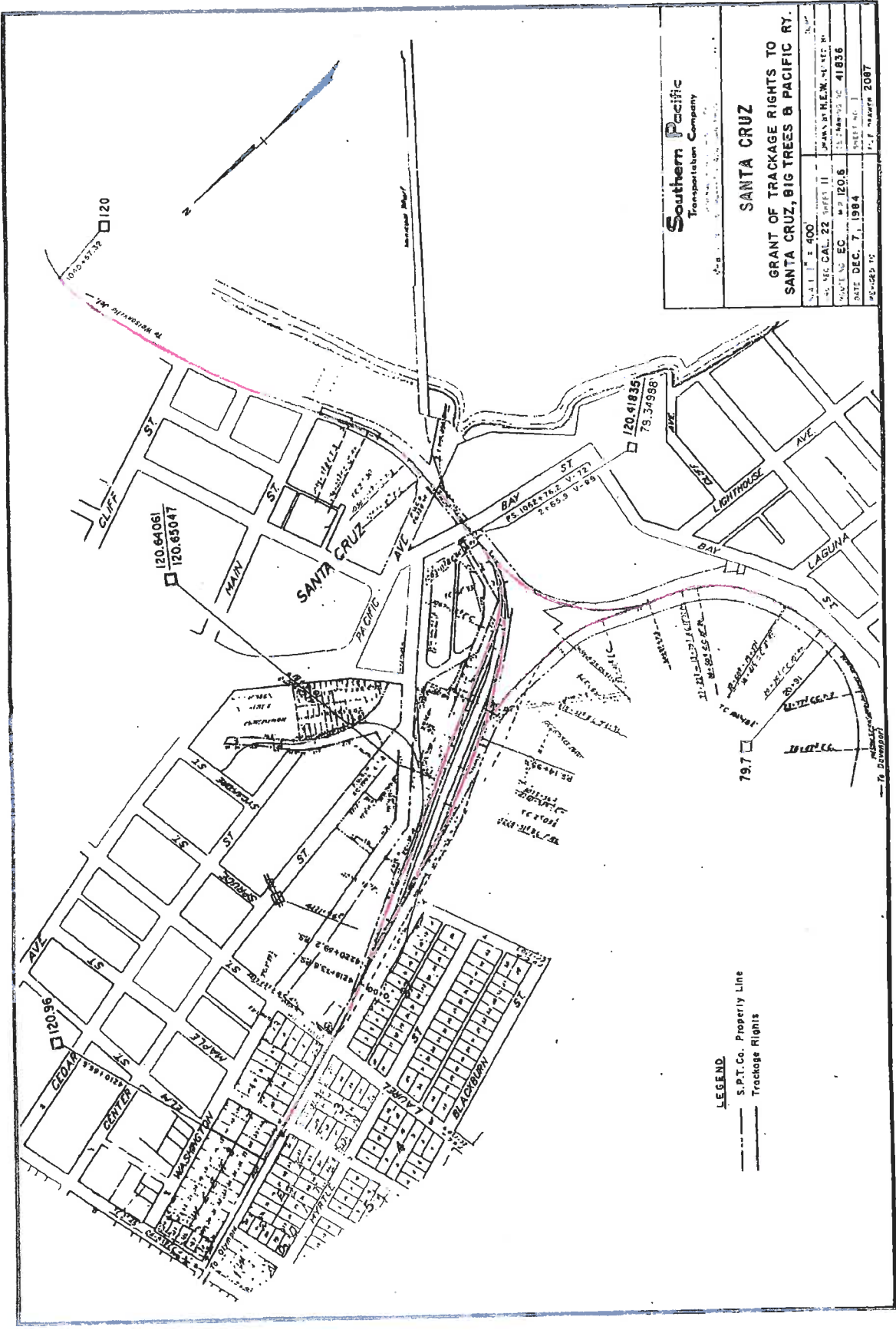
SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By W. Fowler
(Title) Manager - Joint Facilities

SANTA CRUZ, BIG-TREES & PACIFIC RAILWAY
COMPANY,

By Michael J. Donato V.P.
(Title)

EXHIBIT "A"



Southern Pacific
 Transportation Company

SANTA CRUZ
GRANT OF TRACKAGE RIGHTS TO
SANTA CRUZ, BIG TREES & PACIFIC RY.

Map No.	400
AS SEC CAL. 22	APPROX. N.E.M. SEC. NO.
SANTA CR. EC	M.P. 120.6
DATE DEC. 7, 1984	41836
15-225 10	P.O. NUMBER 2087

LEGEND
 - - - - - S.P.T.Co. Property Line
 ———— Trackage Rights

