

 SCCRTC	Policy	NUMBER: Poli. 7.1	Leases, Licenses, Encroachments and Rights of Entry on Rail Line ROW
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POLICY

Background

Purpose for Purchase of Branch Line

The Regional Transportation Commission (RTC) purchased the Santa Cruz Branch Rail Line (Branch Line) right-of-way (ROW) to:

- preserve it as a transportation corridor;
- continue existing freight and recreational rail service;
- facilitate increased freight and recreational rail service;
- explore passenger rail service options;
- construct a bicycle and pedestrian trail alongside the track where feasible;
and
- maximize its use as a transportation corridor.

Funding for Purchase of Branch Line

The purchase of the Branch Line right-of-way was facilitated by funding from Proposition 116 of 1990, which provided Santa Cruz County with \$11 million to use for "rail projects within Santa Cruz County which facilitate recreational, commuter, intercity and intercounty travel." The California Transportation Commission (CTC) developed policies and requirements for projects funded with Proposition 116 funds. The CTC imposed certain conditions on its approval of Proposition 116 funds for purchase of the Branch Line right-of-way. The Proposition 116 funds were provided through a master funding agreement and a program supplement agreement with the State of California and administered by Caltrans.

Rail Service Operations for Branch Line

When the RTC purchased the Branch Line ROW, Union Pacific retained an easement for freight operations. That easement was transferred to the shortline freight and

recreational rail operator selected by the RTC for the Branch Line. Over time, as the RTC selects new or replacement rail operators that easement is expected to be transferred to that operator. The Surface Transportation Board (STB) designates the RTC selected rail operator as the common carrier for freight service on the Branch Line, as long as the operator meets the requirements of the STB. The RTC enters into an administration, coordination and license (AC&L) agreement with the selected rail operator. That agreement outlines the responsibilities of the operator and provides the operator with a license to operate recreational passenger rail service on the Branch Line. There are a number of operating agreements for the rail line including crossing agreements and a trackage rights agreement with Santa Cruz Big Trees and Pacific Railway. Rail operations on the Branch Line are governed and inspected by the Federal Railroad Administration (FRA) and the California Public Utilities Commission (CPUC) to help ensure safety.

RTC Planning Documents Affecting Branch Line

The RTC adopts every 4 or 5 years a regional transportation plan with projects on the Branch Line. The RTC also completed a master plan and environmental document for the Monterey Bay Sanctuary Scenic Trail Network (MBSST), which includes as its spine a trail on the Branch Line right-of-way alongside the operating track, which is referred to as the Coastal Rail Trail. In addition, the RTC has completed a passenger rail service feasibility study for the rail line, a Unified Corridor Investment Study that includes the Branch Line ROW, and is in the process of completing a Transit Corridor Alternatives Analysis for the Branch Line ROW. The RTC may undertake other studies which may affect the Branch Line ROW.

Policies for Leases, Licenses, Encroachments and Rights of Entry on the Rail Line ROW

The RTC currently manages several long-term leases of the Branch Line for various uses including parking, storage, and related uses. A lease analysis completed in 2009 concluded that most of the existing leases that were assumed by the RTC at the time of the purchase are significantly below market rate and in need of an update. The RTC periodically receives requests for updates to existing leases and additional long-term leases on the Branch Line. The Branch Line also includes licenses for pipelines, crossings, etc. In addition, the RTC regularly receives requests for temporary use of the Branch Line, primarily for construction staging, utility crossings, and road construction projects that impact or cross the Branch Line. The RTC manages these requests by granting temporary rights of entry for use of its property consistent with authorization given to the Executive Director by

the RTC Board under these policies. Finally, the RTC is working with entities who are implementing capital projects within the Branch Line property, including the various segments of the MBSST.

The following policies shall apply to all leases, licenses, encroachments and rights of entry managed and/or issued by the RTC:

1. Leases, licenses, rights of entry and encroachments on the Santa Cruz Branch Rail Line right-of-way shall be consistent with:
 - a. The RTC's purpose for purchasing the right-of-way;
 - b. Funding requirements of Proposition 116, the California Transportation Commission, and agreements with the State;
 - c. Rail service operations and safety requirements of the STB, the FRA, the CPUC, agreements with the shortline rail operator, licenses and other agreements and arrangements affecting railroad operations;
 - d. Standards of the American Railway Engineering and Maintenance of Way Association (AREMA)
 - e. The RTC's Regional Transportation Plan for Santa Cruz County;
 - f. The RTC master plan for the MBSST;
 - g. Measure D and Measure D policies outlined in the Measure D Strategic Implementation Plan (SIP) for improvements funded by Measure D;
 - h. RTC policies for capital projects implemented by others within the Branch Line right-of-way and any associated agreements for implementation and maintenance of such projects;
 - i. Plans developed by the RTC for high capacity transit service or other uses on the Branch Line; and
 - j. All applicable federal, state and local laws and regulations.
2. To ensure that there is no gift of public funds, new and updated leases shall be at market rate defined as:

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

- a. Lessee and lessor are typically motivated;

- b. Both parties are well informed or well advised, and acting in what they consider their best interests, which can be aided by the production of a market rental rate survey or formal appraisal utilized during negotiations;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. The rent payment is made in terms of cash in U.S. dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and
 - e. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
3. The RTC shall use closed sessions consistent with the Brown Act to direct its lease negotiators regarding updated and new leases.
4. Leases (new and updated), licenses and rights of entry for a one-time or an annual amount exceeding the Executive Director's procurement authority for a single transaction, as established in the RTC's Administrative and Fiscal policies, shall be presented to the RTC for consideration in public session and the Executive Director is authorized to approve others.
5. There shall be a public review period of lease terms and conditions of at least 21 days prior to approval of a lease or lease update to give all responsible persons the opportunity to make credible and responsible offers with better lease terms and conditions to the RTC.
6. Leases shall include terms for escalation of rental rates consistent with market conditions.
7. Every five years, the RTC shall review existing leases to ensure that the rent is at market rates and for any leases found to be below market rates, the RTC shall work to update them to market rates based on a market rental rate survey, formal appraisal or other appropriate information.
8. Leases shall include a termination clause to ensure that leases will not unduly impact the development of transportation projects on the Branch Line right-of-way. Licenses and rights of entry that could potentially impact planned transportation projects on the Branch Line right-of-way due to length of term, purpose, etc. shall also include a termination clause.
9. Licenses and rights of entry shall include fees to the RTC and the rail service operator as applicable to reimburse the RTC and rail service operator for their cost to provide such right of entry in addition to a determined or negotiated market rate for the right of use provided by the license or right of entry.

10. Any lease, license, or right of entry that also crosses or otherwise impacts the rail service operator's easement or operations shall require review and acknowledgement by the rail operator.
11. If the license or right of entry will provide a service to the RTC benefiting its ownership, management, maintenance, improvement or operation of the Branch Line right-of-way, fees may be reduced or waived by the RTC.
12. Leases and rights of entry shall include appropriate indemnification to the RTC and the rail service operator as applicable.
13. Rights of entry shall include appropriate insurance requirements to protect the interests of the RTC and the rail service operator as applicable.
14. Leases, licenses, and rights of entry shall include prohibition against any alteration of RTC property except as approved by the corresponding lease, license, or right of entry.
15. Rights of entry and licenses shall include a requirement for notification of the rail service operator prior to entering the property as authorized.
16. Revenues from leases, licenses and rights of entry shall be used to cover costs of the RTC to negotiate, produce and implement such leases, licenses and rights of entry and for costs associated with the RTC's responsibility to manage, maintain, operate and improve the Branch Line as established in the funding agreements with the State.
17. Any encroachments onto the Branch Line shall be resolved by removal of the encroachment or conversion of the encroachment to a long-term lease, license or right of entry.
18. As resources allow and needs arise, the RTC will work to identify and address encroachments on the Branch Line ROW. Encroachments may also be brought to the attention of the RTC or discovered inadvertently.
19. Identification and addressing of encroachments shall prioritize encroachments which:
 - a. Impact the uses, operations, inspections and maintenance of the Branch Line ROW;
 - b. Impact the implementation of projects by the RTC or RTC partner agencies on or in the vicinity of the Branch Line ROW; and/or
 - c. Impact liabilities to the RTC.

20. Encroachments that are not the subject of an approved lease, license or right of entry in accordance with this Policy are not permitted, and are subject to removal in accordance with applicable law. Depending on the nature of the encroachment, and at the sole discretion of the RTC, options may include:
 - a. Immediate removal;
 - b. Removal within a specified period of time;
 - c. Possible modifications to the encroachment; and/or
 - d. Development of a lease, license, or right of entry at Fair Market Value.

21. For areas that should be fenced as determined by RTC:
 - a. RTC will gather relevant, available information to confirm the location of the applicable RTC property boundaries.

 - b. RTC will notify neighboring property owners in advance of the decision to install fences, barricades, and other barriers in the specified area.

 - c. RTC will cause the fences, barricades, and other barriers to be installed in the specific locations at the times specified in the notice to the property owners.

ATTACHMENTS