Roaring Fork Transportation Authority
Railroad Right of Way Corridor

ACCESS CONTROL PLAN
UPDATE

January, 2016

RFTA ACCESS CONTROL PLAN
UPDATE JANUARY, 2016

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III. Railroad Corridor Access Control Maps (will be added in the spring of 2016, this document is a complete list of all of the existing uses along the railroad corridor road, utility, encroachment, etc.)

IV. State Highway 82 Access Control Plan Maps (will be updated in 2016, Staff is working on securing copies of the ACP from each of the jurisdictions with ACP for Highway 133 & Highway 82)

V. Appendices:

Appendix A – Listing of All Utility Easements (List from initial acquisition documents attached. Up-date currently in process)

Appendix B – RFTA Rio Grande Railroad Corridor Design Guidelines and Standards (Preliminary draft attached)

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I. OVERVIEW

This document contains the Access Control Plan (ACP) for the historic Aspen Branch of the Denver & Rio Grande Western Railroad Corridor between Glenwood Springs and Woody Creek, Colorado (hereinafter the terms "Corridor", "Railroad", "Railroad Corridor", "Rail Trail", "Right of Way (ROW)" and "Property", all refer to the above noted Aspen Branch of the Denver & Rio Grande Western Railroad, are one and the same and used interchangeably throughout this document) as now owned by the Roaring Fork Transportation Authority (RFTA). The ACP applies to the entirety of RFTA's ownership area. The ownership area is approximately 33.4 miles in length and the width of the property varies from 50' to 200' with the predominant width of 100' covering approximately 460 acres of land.

The Railroad Corridor was acquired by the Roaring Fork Railroad Holding Authority (RFRHA) in 1997 as an operating line of railroad pursuant to authority granted by the Surface Transportation Board (STB). RFRHA subsequently "railbanked" the line (preserved it for future rail reactivation and interim trail use) pursuant to 16 U.S.C. 1247(d) and a "Notice of Interim Trail Use" ("NITU") issued by the STB. RFRHA transferred ownership of the property to the Roaring Fork Transportation Authority (RFTA) in 2001 pursuant to a "NITU" substituting RFTA for RFRHA as the railbanking entity. The right to reactivate rail service was also transferred to RFTA pursuant to an applicable STB order. This ACP is adopted in order to ensure that RFTA complies not only with STB's construction of 16 U.S.C. 1247(d), but also maintains the Corridor intact consistent with freight rail reactivation, possible future commuter rail use, interim trail use, open space uses, and other lawful public purposes.

The ACP includes a brief summary of RFTA's obligations for the Railroad Corridor related to its railbanked status, including an explanation of "railbanking" and the requirement to preserve the Corridor for future freight rail service. The ACP also includes a brief summary outlining the obligations related to use of the Great Outdoors Colorado (GOCO) funding and a brief summary of key findings of the Recreational Trails Plan. In addition, the ACP includes Railroad Corridor Access Control Plan Maps, State Highway 82 Access Control Plan Maps, and RFTA's Design Guidelines and Standards (DGS).

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RAILBANKING

Under 16 U.S.C. 1247(d), otherwise-to-be abandoned railroad lines are preserved for future freight rail reactivation, possible consistent commuter or passenger rail uses, and interim use for trail and other compatible public purposes. In essence, Railbanking is the mechanism that preserves the contiguous 33.4 mile Railroad Corridor intact for a future public transportation system and its interim trail and other public uses. Loss of the Corridor's Railbanked status could result in the loss of approximately seven miles of Federal Land Grant areas, render the corridor unsuitable for a future public transportation system, and also negatively impact the existing recreational trail. In order to ensure compliance with 16 U.S.C. 1247(d), and preserve the Corridor's Railbanked status, RFTA must be careful to ensure that the Corridor is kept intact, continuous, unencumbered by the accumulation of substantial future financial burdens, and unobstructed by significant structures that would impede or impair freight rail reactivation. This responsibility creates minimum conditions to which all proposed uses (including crossings) of the Corridor should adhere. In most instances, compatibility with freight rail will also ensure compatibility with possible future commuter rail use, as well as current and future trail uses. However, compatibility with trail uses does not necessarily mean that a proposed use or crossing is compatible with freight rail reactivation or future commuter rail uses. For this reason, parties seeking to use RFTA's Corridor for crossings or other purposes are encouraged, while in the early planning stages- to consider, whether their proposed crossings or other uses are compatible with freight rail reactivation and commuter rail uses before they file an application for such uses with RFTA.

RFTA Philosophy Regarding Proposed Public and Private Crossings and Other Uses of the Rail Corridor:

This ACP and the accompanying DGS are intended to help sponsors understand, from the outset of their planning processes, how to design their projects in ways that will not create concerns for RFTA with respect to future freight rail reactivation or commuter rail uses. Subject to Colorado Public Utilities Commission (CPUC) approval, and while rail service is inactive on the Corridor, RFTA will generally approve public and private at-grade crossings that meet its standards, insofar as such crossings would not preclude or impair RFTA's ability to reactivate freight rail service. Proposed crossings that would alter the existing grade and/or alignment of the Rail Corridor would be of greater concern to RFTA, which must ensure that they would not jeopardize the Corridor's Railbanked status for the reasons enumerated above.

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RFTA recognizes and appreciates that the constituent governments of RFRHA, from whom RFTA inherited the Corridor, are also members of RFTA and that they, too, are committed to preserving the contiguous Railroad Corridor intact for its future and current uses. For this reason, RFTA pledges that it will not unreasonably withhold approval of proposed public crossings and other Corridor uses that are consistent with RFTA's ACP and DGS.

In addition, RFTA acknowledges that no plans, policies, guidelines, or standards can foresee every condition or situation that could potentially arise with respect to all proposed future uses of the Corridor. To the extent feasible, therefore, RFTA's intends that its application of the ACP and DGS will be flexible to adapt to the unique circumstance presented by Corridor uses that are proposed in the future. RFTA will also endeavor to use a "common sense" approach when working with crossing sponsors to design their projects in the most cost effective manner that is feasible, so long as in the view of RFTA, its legal counsel, and railroad engineers, the preservation of the Corridor's Railbanked status would not be put in jeopardy.

RFTA assures parties proposing public or private uses of the corridor that it will endeavor to work cooperatively with them to help them achieve their objectives in the most efficient and cost-effective manner feasible, insofar as RFTA can do so without putting in jeopardy the Corridor's Railbanked status, including collaborating with our sponsors during the planning and design process for their process (please also see Section 18).

In instances in which RFTA and project sponsors disagree about Corridor project designs, it may be possible to obtain a Declaratory Order from the STB that would help to clarify whether proposed projects that don't meet RFTA's standards would, in the STB's view, be incompatible with freight rail reactivation. There is no guarantee, however, that the STB would be willing to consider such matters or render opinions on them, in which case, the RFTA Board of Directors would make the final determination.

GREAT OUTDOORS COLORADO (GOCO) – hyperlink to the current CEC reports will be set up as soon as the document is finalized

On June 30, 1997, the Roaring Fork Railroad Holding Authority (RFRHA), a public entity created in 1993 by the towns and counties within the Roaring Fork Valley, purchased the Aspen Branch of the Denver & Rio Grande Western Railroad right-of-way from the Southern

Pacific Transportation Company. The purchase was funded by a consortium of state and local interests. In exchange for financial participation of the property using some funding from Great Outdoors Colorado (GOCO), each of the funding participants agreed to the placement of a Conservation Easement on the Corridor to protect the "conservation values" of the property.

The restrictive covenants required that no new structures, fences, crossings, or pavement be placed, or that any mining or harvesting of timber occur on the Corridor. The Aspen Valley Land Trust (AVLT) was designated as the steward of the conservation easement and was responsible for correcting any of the violations to the satisfaction of GOCO.

On February 3, 2000, a Comprehensive Plan for the Railroad Corridor was adopted by the then RFRHA. One of the recommendations of the plan was to reduce the size and scope of the conservation easement on the Corridor. The plan cited that upon careful inspection and assessment of the Corridor through the Corridor Investment Study (CIS) process, many portions did not contain the attributes described as "conservation values" by the conservation easement. As such, these portions of the Corridor did not warrant protection under the conservation easement. In addition to the reduction of the size of the conservation areas, RFRHA received strong advice from a member of its federal legislative contingent that a conservation easement on the Corridor would significantly hinder RFRHA's ability to receive federal funding participation for future transportation improvements. In response to this issue, the Comprehensive Plan did the following:

- It changed the Conservation Easement to a Conservation Covenant. The covenant on the deed of the property requires the owner to abide by its terms through self-regulation. (This is different from the previous conservation easement, which was an encumbrance that ran with the land and required an entity other than the owner to regulate compliance.)

- It reduced the size of the area covered by the conservation covenant to encompass only those areas of the Corridor that contain the "conservation values" described within the original conservation easement. The size was reduced from 33.4 miles (the full length of the Corridor from Glenwood Springs to Woody Creek) to 18.04 miles (slightly more than one-half of the Railroad Corridor).

On January 17, 2001, an Agreement was reached between RFRHA and GOCO that replaced the Conservation Easement with the Conservation Covenant. On November 15, 2001, the

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Roaring Fork Transportation Authority (RFTA) accepted ownership of the Railroad Corridor from RFRHA and RFRHA was dissolved. RFTA then replaced RFRHA as a party to the Conservation Covenant Agreement. RFTA created a Covenant Enforcement Commission made up of representatives from each of the entities that the Authority serves. It is the responsibility of the Commission to meet annually to make an assessment of the Rail Corridor and to recommend to RFTA that it make any corrections necessary to ensure that the conservation values of the areas described within the Covenant Agreement are not compromised.

Rio Grande Trail – Recreational Trails Plan hyperlink to the current Recreational Trails Plan will be set up as soon as the document is finalized.

The overall intent of the Recreational Trails Plan is to develop a trails and recreation plan for the Corridor that provides a wide range of public recreational opportunities including trails, river access, wildlife viewing, habitat conservation and educational and interpretive activities.

The purpose of the Recreational Trails Plan is as follows:

- To provide a continuous trail between Glenwood Springs and Woody Creek within the Railroad Corridor that has been environmentally cleared through a National Environmental Policy Act (NEPA) process;
- To work with other Trails organizations in the Roaring Fork Valley to explore additional recreational and commuter connection opportunities;
- To meet the expressed community recreational needs;
- To develop trails programming and design principles that will provide a quality trail experience;
- To plan for support facilities such as trailheads and parking;
- To minimize impacts on adjacent landowners; and
- To develop implementation costs.

The Rio Grande Trail construction was completed in 2008. The RFTA Trails Department continues to work with RFTA's member jurisdictions, other local jurisdictions and other trails consortiums to stay up to date on the latest recommended safety improvements and recommendations for trail construction and amenities to keep the Rio Grande Trail one of the best and most widely used trails in the state.

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II. POLICIES FOR MANAGING RAILROAD CORRIDOR CROSSINGS AND ENCROACHMENTS

1.0 Title

This Policy shall officially be known, cited, and referred to as the "Access Control Plan." (ACP)

2.0 Purpose and Intent

A. **The purpose of this policy is to:**

1. Uphold and preserve the Railroad Corridor's railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB for future freight rail reactivation. So long as the Railroad Corridor is lawfully railbanked, it is protected from claims of state law easement extinguishment or base fee reversion under the express terms of 16 U.S.C. 1247(d). In order to ensure compliance with 16 U.S.C. 1247(d) as construed by the STB, RFTA in its ACP seeks to avoid any severance of the Corridor by not allowing any alterations in the alignment and/or elevation of the roadbed incompatible with freight rail reactivation, either by property sale or transfer, by physical obstruction with structures incompatible with freight rail reactivation or by burdening the Corridor with significant unfunded and/or unaccounted for financial obligations.

2. Preserve the Railroad Corridor for a future public transportation corridor, which is the primary purpose for which it was purchased.

3. Minimize and consolidate new or existing at-grade road crossings over the Railroad Corridor whenever feasible

4. Ensure the safe operation of existing Railroad Corridor crossings.

5. Ensure the safety of trail users of the Railroad Corridor at private and public at- grade crossings of the Railroad Corridor.

6. Implement the Conservation Covenant objectives, by avoiding adverse impacts to the open space, recreation, scenic and wildlife values of the

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Corridor, and adjacent lands that add to the scenic value and enjoyment of the Corridor. When adverse impacts cannot be avoided, they shall be mitigated to the extent practicable.

7. Avoid or minimize future financial liability and costs to RFTA and other jurisdictions arising from third party use of the Railroad Corridor, including the expense of upgrading any existing or approved crossings of the Railroad Corridor, to the maximum extent feasible.

B. **This Policy is intended to promote stewardship of the Railroad Corridor by RFTA, RFTA's member jurisdictions, the Colorado Department of Transportation (CDOT), Great Outdoors Colorado (GOCO) and adjacent property owners, in an attempt to preserve the Railroad Corridor for its future intended use as a Public Transportation Corridor.**

The intended audiences for the ACP are:

1. The RFTA Board of Directors, RFTA's member jurisdictions, Garfield County, the Colorado Department of Transportation (CDOT), Great Outdoors Colorado (GOCO) and RFTA staff tasked with the management of the Railroad Corridor;

2. Adjacent property owners currently holding a Lease/License/Contract for access across or parallel (encroachment) to the Railroad Corridor or adjacent property owners requesting a Lease/License/Contract for access across or parallel (encroachment) to the Railroad Corridor; and

3. Local, State or Federal jurisdictions and/or Utility Companies currently Leased/Licensed/Contracted for access across or parallel (encroachment) to the RFTA Railroad Corridor or requesting new access across or parallel (encroachment) to the RFTA Railroad Corridor.

3.0 Authority

The RFTA Board of Directors, (the "Board") has the authority to review, approve, conditionally approve, and disapprove applications for construction, reconstruction, realignment, consolidation, and modification of Railroad Corridor crossings. The Board's authority emanates from intergovernmental agreements, adopted pursuant

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to the Rural Transportation Authority Act, Section 43-4-601, et seq. The Board's authority also stems from RFTA's status as "Interim Trail Manager" and holder of rights to reactivate freight rail service arising under federal law pertaining to the Railroad Corridor's railbanked status under the jurisdiction of the Surface Transportation Board (STB).

4.0 Jurisdiction

The ACP applies to the entirety of the Railroad Corridor owned by RFTA, generally from the Railroad Corridor's connection with the Union Pacific Railroad main line (WYE area) in Glenwood Springs to County Road 18 in Woody Creek.

5.0 Interpretation, Conflict, and Severability

A. **Interpretation**. This ACP shall be interpreted to be consistent with all applicable federal requirements and orders of the STB. The ACP shall be interpreted consistent with RFTA's objectives to preserve the Corridor for freight rail reactivation in order to ensure its continued eligibility for federal railbanking status, to preserve the Corridor for possible future commuter (passenger) rail, to operate a public trail on the Corridor, to otherwise maintain the Corridor for open space and park uses consistent with its obligations under the GOCO agreement, and to promote other compatible and lawful public uses. This Policy shall be construed broadly to promote the purposes for which it is adopted.

B. **Conflict.**

1.0 ***Public Provisions***. The Surface Transportation Board (STB) has exclusive jurisdiction over transportation by rail, including railbanked right of way such as the Railroad Corridor (16 U.S.C. 1247(d)). In addition, 49 U.S.C. 10501(b) expressly preempts state and local law inconsistent with keeping railroad corridors intact for future freight rail reactivation and interim trail use.

2.0 ***Private Provisions***. To the extent consistent with 16 U.S.C. 1247(d) and 49 U.S.C. 10501(b) this ACP is not intended to abrogate any easement, license, covenant or any other private agreement or restriction, provided that where the provisions of the ACP are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or

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restriction, then the requirements of this ACP shall apply upon termination or expiration of such easement, license, covenant or other private agreement.

C. **Severability**. If any part or provision of this Policy or the application of the Policy to any person or circumstance is adjudged invalid by any court of competent jurisdiction, notwithstanding the federal jurisdiction of the STB, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of the Policy or the application of them to other persons or circumstances. The Board hereby declares that it would have enacted the remainder of the Policy even without any such part, provision, or application which is judged to be invalid.

6.0 Amendments

The ACP cannot anticipate every circumstance or question arising from the management of the Railroad Corridor and/or the Rio Grande Trail within the Railroad Corridor and the need may arise to change the policies, procedures or guidelines described in the ACP policy. The RFTA Board of Director's reserves the right to adopt amendments to the ACP pursuant to RFTA Procedures at the time of any proposed amendment. Unless an emergency exists, amendments of the ACP will require two readings by the RFTA Board of Directors prior to adoption and can only be adopted in the same manner that the ACP is adopted, i.e. by a unanimous vote of the seven original RFRHA member jurisdictions.

7.0 Owner Defined

"Owner" means the legal owner of real property or right of way, or the person or entity that holds fee title to the property or right of way. "Owner" may also include holders of other types of record title to the real property or right of way. "Owner" may also include the contract purchaser of real property of record or the holder of an easement. Owners may include public bodies, as in the case of a street right-of-way, or a private entity (e.g., private land owners and utility companies).

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8.0 Great Outdoors Colorado Requirements and Locations Defined

RFTA created a Covenant Enforcement Commission made up of representatives from each of the entities that the Authority serves. It is the responsibility of the Commission to meet annually to make an assessment of the Railroad Corridor and to recommend to RFTA that it make any corrections necessary to insure that the conservation values of the areas described within the Conservation Agreement are not compromised. ***The restrictive covenants require that no new structures, fences, crossings, or pavement be placed, or that any mining or harvesting of timber occur on the Corridor.***

The assessment of the nine conservation areas was last conducted in October 2015 and will generally be conducted annually while this ACP is in effect. The full report includes a spreadsheet that summarizes the observed violations, the remedies recommended, and the actions taken to address each violation. The spreadsheet is a living document – a checklist to be used by RFTA to track violations and take actions to resolve them.

The following is a list and brief description of the nine conservation areas:

- **Conservation Area #1: Railroad (RR) Milepost 362.90 to 363.82 or RFTA Milepost 2.68 to 3.60 (0.96 miles)** - Running from the Glenwood Springs City limits south to the intersection of Highway 82 and Grand Avenue (old Highway 82), this area is well vegetated by native, scrub oak dominated mountain-shrub vegetation that offers excellent habitat for birds and small animals.

- **Conservation Area #2: RR Milepost 365.40 to 366.47 or RFTA Milepost 5.18 to 6.25 (1.39 miles)** - This section begins at the crossing of County Road 107 (known as Coryell Ranch Road) to a location about one-fourth-mile below the CMC Road/Highway 82 intersection. This area is well vegetated by mature native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals

- **Conservation Area #3: RR Milepost 368.50 to 369.00 or RFTA Milepost 8.28 to 8.78 (0.50 miles)** - This section of the Railroad Corridor covers the broad bend in the Roaring Fork River between the River Edge property and

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the ranchette parcels near Aspen Glen. There are mature sage shrubs in this section and the mountain shrub ecosystem on the Corridor in this area provides excellent habitat for birds and small animals.

- **Conservation Area #4: RR Milepost 370.50 to 370.92 or RFTA Milepost 10.28 to 10.70 (0.42 miles)** - This section goes from about a three-fourths-mile south (up valley) of the Aspen Glen entrance to a private crossing located just below the confluence of the Crystal River and the Roaring Fork River. This area is well vegetated by mature native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals.

- **Conservation Area #5: RR Milepost 371.69 to 371.83 or RFTA Milepost 11.47 to 11.61 (0.14 miles)** - This section surrounds the Railroad Bridge at Satank and offers excellent river and recreation access opportunities and preserves wetland and riparian habitat. Views of Mt. Sopris are provided on the bridge.

- **Conservation Area #6: RR Milepost 376.14 to 381.82 or RFTA Milepost 15.92 to 21.60 (5.68 miles)** - This section begins near the Catherine Store Bridge (County Road 100) and continues southwest to Emma Road including the Rock Bottom Ranch property. Rock Bottom Ranch is owned by a non-profit entity, the Aspen Center for Environmental Studies, as a nature preserve. The nature preserve is also encumbered by a Conservation Easement held by the Aspen Valley Land Trust (AVLT). The Railroad Corridor is nestled between a broad, riparian area of the Roaring Fork River and Bureau of Land Management property. A number of conservation values are provided within this section of the Corridor including riparian and wetland habitat protection; access to river recreation opportunities; access to public lands; preservation of habitat critical to eagle, hawk and heron populations in the valley; and preservation of winter range migratory patterns for macro fauna (mule deer and elk).

- **Conservation Area #7: RR Milepost 382.19 to 384.90 or RFTA Milepost 21.97 to 24.68 (2.71 miles)** - This section begins shortly east of the Emma Road/Highway 82 intersection, continues toward the Basalt High School

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between ranch properties and federal lands and ends just west of the Wingo pedestrian bridge over Highway 82. A parcel of land owned by the Pitkin County Open Space and Trails Program along the Corridor contains a conservation easement to preserve a known migratory route for mule deer and elk. Another portion of private property in this area contains a golf course and very low density housing. The area is well vegetated by mature, native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals.

- **Conservation Area #8: RR Milepost 384.90 to 388.05 or RFTA Milepost 24.68 to 27.83 (3.15 miles)** - This section starts at the east side of the Wingo Subdivision and continues southeast to the end of the Dart Ranch on Lower River Road. Several conservation values are present on this section of the Corridor, including habitat for birds and small animals along the interface between mountain shrub and grassland habitat; access to the Roaring Fork River for recreation; access to National Forest lands; and preservation of critical habitat for macro fauna (mule deer and elk). A significant portion of this section is surrounded by a conservation easement held by Pitkin County on the Dart Ranch. Riparian vegetation along the Roaring Fork is also present. The Railroad Corridor can access several fisherman easements along the Roaring Fork River.

- **Conservation Area #9: RR Milepost 390.58 to 393.67 or RFTA Milepost 30.36 to 33.45 (3.09 miles)** - This section begins near the crossing of Lower River Road, continues through the Woody Creek area until the end of the Corridor at Woody Creek Road. The river side of this section contains mountain shrub and riparian vegetation that offers excellent habitat for birds and small animals. The Railroad Corridor is situated on a steep slope that comes down from Triangle Mountain (National Forest lands) and ends at the Roaring Fork River. The Railroad Corridor affords access to both the Roaring Fork River and National Forest lands. In addition, the Railroad Corridor can access several fisherman easements along the Roaring Fork River. The uphill side of the Railroad Corridor contains primarily steep shale hillside and includes or is adjacent to Lower River Road. In the Woody Creek area, the Railroad Corridor is perched on a short but steep hillside that affords excellent views of the Elk Mountain range and Aspen-area ski resorts.

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9.0 Rio Grande Trail (RGT) within the Railroad Corridor Requirements Defined

Trail Use: The trail is designed, built and operated within the Railroad Corridor and is operated for multi-purpose use. Uses include walking, running, biking, skating, equestrian and cross-country skiing. No motorized use except for emergency access and maintenance will be allowed. The trail is designed and operated with the potential for bicycle commuting in mind. No camping or open fires will be allowed on the Railroad Corridor.

Linkages: In so far as they are consistent with the ACP and DGS, and would not degrade the overall quality of the Rio Grande Trail user experience or safety, every effort will be made to allow for easy, convenient and direct access to the trail. Connections will be coordinated to provide access consistent with the purposes of this policy. A regional recreational experience will be emphasized as a part of the trail experience. Trail access is governed by RFTA's Recreational Trails Plan and administered by RFTA's Assistant Director, Project Management & Facilities Operations & RFTA's Trails Manager and staff. Design principles are located in:

- RFTA's Recreational Trails Plan
- AASHTO "Guide for the Development of Bicycle Facilities, 4th Edition" https://bookstore.transportation.org/collection_detail.aspx?ID=116 or Appendix A
- FHWA – FTA – United States Department of Transportation Policy Statement on Bicycle and Pedestrian Accommodation Regulations and recommendations http://www.fhwa.dot.gov/environmet/bicycle_pedestrian/overview/policy_accom.cfmhttp://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/bp-guid.cfm (see section 10, Design Guidance); http://www.dhwa.dot.gov/environment/recreational_trails/guidance/manuals.cfm

Environmental Impacts/Mitigation: The overriding goal of trail design and management has been to protect the natural quality of the Railroad Corridor. This was done through minimization of impacts to the natural environment through design, management and education. Sensitive areas were identified and mitigation measurements were and will continue to be implemented where appropriate.

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Safety: Safety of the trail user and the adjacent landowners has been addressed through design and management techniques. This includes providing adequate width to avoid user conflicts, situating trail access points so that they are sensitive to safety, and will include providing barrier protection where appropriate between trail and transit, when transit returns to the Railroad Corridor. Perimeter fencing is also used in various locations to reduce conflicts with livestock and wildlife.

Implementation: Implementation of the overall trail system has been a regional effort that included the local, federal, and state government agencies. RFTA was responsible for implementing the sections of trail not developed by local jurisdictions.

10.0 Types of Crossings Defined

A. **Private Crossings** – Access for adjacent private property owners or adjacent private business owners.

Private Road Crossing - means a crossing of the Railroad Corridor by a private driveway access at a single point for ingress and egress to an adjacent property for a homeowner and/or business. A private road crossing must be approved and licensed by RFTA. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 17.0)**

Private Utility Crossing – A "crossing" of the Railroad Corridor by a utility service for a single point service to serve an adjacent homeowner and/or a business. A private utility crossing must be approved and Leased/Licensed/Contracted by RFTA. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with the RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 17.0)**

Private Encroachment - is any use of any portion of the Railroad Corridor other than a Private Road Crossing or Private Utility Crossing without the permission of RFTA. Typical encroachments include fences, buildings, retaining walls or

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temporary construction accesses that encroach upon the Corridor, or agricultural or landscaping activities or uses by adjoining landowners that encroach upon the Corridor. It is RFTA's policy to treat any encroachment as similar to a crossing and to require a Lease/License/Contract for it. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights.. The Storage of vehicles, debris, trash, fences, etc. are examples of encroachments incompatible with open space, trails, Rail, wildlife and aesthetic uses of the Railroad Corridor that will not be Leased/Licensed/Contracted by RFTA. (**Refer to process in section 17.0)**

Private Crossing Maintenance Responsibility - The owner of a private crossing shall be responsible for repair and maintenance of the private crossings per the terms of the Lease/License/Contract agreement. Leases/Licenses/Contracts shall be specific to private individual landowners and entities and shall not run with the land, nor shall they be subject to assignment or transfer to another private party, although RFTA will not unreasonably withhold the issuance of new licenses to new owners when properties are sold. RFTA may require Lessee/Licensee/Contract to provide liability insurance coverage acceptable to RFTA for their use of the Railroad Corridor and/or to indemnify and hold harmless RFTA from all claims arising from the use and existence of the crossings.

B. **Public Crossings** – A Public Road Authority, Public Utilities and Local Jurisdictions wishing to create a crossing for public use.

Public Road Crossing – Means a crossing of the Railroad Corridor by a public street, trail, or similar facility that will serve more than one adjacent property and/or business. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with the RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. The design for a public crossing must be reviewed, approved and Leased/Licensed/Contracted by RFTA and to the extent the Colorado Public Utilities Commission (CPUC) has jurisdiction over railbanked crossings, require approval by the CPUC. **(Refer to process in section 17.0)**

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Public Utility Crossing - A crossing of the Railroad Corridor by a public utility meant to serve more than one residence or business. A public utility crossing must be approved by RFTA and to the extent CPUC has jurisdiction over railbanked crossings, require approval by the CPUC and be Leased/Licensed/Contracted by RFTA. Failure to obtain approval from RFTA for the utility crossing, failure to pay the Lease/License/Contract fee, or failure to comply with the RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 17.0)**

Public Encroachment - An "encroachment" is any use of any portion of the Railroad Corridor without the permission of RFTA. Typical encroachments include fences, buildings, retaining walls or temporary construction access that encroach upon the Corridor, or agricultural or landscaping activities or uses by adjoining landowners that encroach upon the Corridor. It is RFTA's policy to treat any encroachment as similar to a crossing and to require a Lease/License/Contract for it. An unleased/unlicensed/non-contracted encroachment is a trespass and must either be Leased/Licensed/Contracted by RFTA or removed. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. The storage of vehicles, debris, trash, fences, etc. are examples of encroachments incompatible with open space, trails, Rail, wildlife and aesthetic uses of the Railroad Corridor that will not be Leased/Licensed/Contracted by RFTA. **(Refer to process in section 17.0**)

Public Crossing Maintenance Responsibility - All public and utility crossings shall be maintained by the roadway authority or public utility in good condition, and in a manner that does not conflict with freight rail reactivation and other uses for which RFTA has obligated itself, including trail use. The owner(s) of a public street or utility crossing shall be responsible for:

(i) maintaining and repairing their respective crossing(s);

(ii) obtaining approvals from RFTA and any other applicable permitting authority(ies) (e.g., local government or CDOT) prior to commencing work on an existing crossing or altering an existing crossing. (If creating a new

crossing, RFTA will also require a signed maintenance and operating agreement prior to final approval for any such public or utility crossing of the Railroad Corridor); and

(iii) to the extent the CPUC has jurisdiction over railbanked Corridor crossings, obtaining required approval for new public or utility crossings and/or alterations to existing public or utility crossings from the CPUC.

11.0 Crossings and Existing Crossings Defined

A "crossing" means a crossing of the Railroad Corridor by a public street, private drive, trail, utility, or similar facility. "Permitted crossings" are crossings approved and duly Leased/Licensed/Contracted by RFTA. To the extent that they would jeopardize the railbanked status of the Corridor, RFTA shall not Lease/License/Contract a crossing that creates a significant future financial obligation or physical obstruction to freight and/or commuter rail reactivation or that precludes or adversely impacts other uses for which RFTA has obligated itself. In such cases, RFTA may need to refer plans for crossings to the STB for a determination as to whether they would be considered a physical severance or an abandonment of the corridor. If the STB declines to offer an opinion on such matters, the final determination will be made by the RFTA Board of Directors (See section 17.0.B.10 for RFTA Board guidelines) Permitted crossings include the following:

A. Crossings that had a Lease/License/Contract agreement, easement, or pending contract in place effective at the time of RFTA's (previously RFRHA's) purchase of the Railroad Corridor from Southern Pacific Transportation Company (List "A" on file with RFTA); or

B. Crossings that RFTA (previously RFRHA), CDOT, and GOCO approved as a "proposed new crossing" at the time of the Railroad Corridor purchase (List "B" on file with RFTA); or

C. Crossings for which RFTA has granted a Lease/License/Contract, to the extent the crossings comply with the terms of the Leases/Licenses/Contracts, including crossings used exclusively by RFTA.

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12.0 Crossing Improvements and Maintenance for Existing Crossings

A. **Improvements.**

- Owner Initiated: When owners want to initiate improvements to their crossings, they will be responsible for improving their existing crossings in conformity with applicable standards, so as to allow and not impede future freight rail reactivation:

- RFTA initiated: In the event of other general transit system improvements initiated by RFTA, RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.

1. In the event that RFTA determines that increased traffic over an existing crossing warrants trail safety improvements RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.

2. In the event that RFTA determines that increased traffic over an existing crossing warrants rail safety improvements, when rail on the Corridor is imminent or active, RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.

3. In those instances where improvements have been agreed to under the terms of a Lease/License/Contract Agreement or by separate proceedings.

RFTA shall review and approve the design for conformance with RFTA's DGS, and will also review and approve the materials to be used and specifications for all construction, in accordance with this ACP. No improvements shall be made unless a permit therefore has been issued by RFTA in accordance with Section 17.0.

B. **Maintenance.** Owners shall maintain their roadway approach in a state of good repair. Maintenance shall include, but not be limited to, removing rocks, soil, vegetation and other material that may fall, slide, wash, or be placed onto crossing areas; and maintaining the railroad or trail crossing free of other obstructions (e.g., snow storage, parked vehicles, equipment, etc.); maintaining the approach

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grades and acceptable pavement condition to the end of the ties; proper drainage in the crossing area; maintaining clear view, or site distances required in the DGS; and maintaining any gate crossing appurtenances. RFTA retains the right to undertake supplemental maintenance at the owner's expense, as necessary, although RFTA will endeavor to allocate the costs of such maintenances as equitably as feasible.

C. Any construction shall include the obligation to revegetate disturbed areas according to RFTA's Revegetation Policy, which is available through RFTA's website, www.rfta.com, or on file in the RFTA office.

13.0 Design Guidelines and Standards (for Up-Grading Existing Crossings).

To the greatest extent feasible, all crossings shall meet the current minimum DGS adopted by RFTA, included in the Appendices section of this Policy. The general types of crossings are listed in subsections A through E below. An owner may be required to upgrade an existing crossing that does not comply with the design standards. When freight or commuter rail activation takes place, a subdivision or site development is proposed, or when the crossing itself is proposed to be improved, realigned, or reconstructed. RFTA shall coordinate with the crossing owner, local, state jurisdictions and the CPUC to determine when improvements are required and develop cost allocations for the improvements.

A change in use of an existing crossing, which may include safety concerns, an increase in traffic, any physical changes proposed for the crossing location, or a change from a private crossing to a public crossing, may also result in the requirement to upgrade the crossing, or revocation/removal of the crossing and improvements.

A. **Grade-Separated Crossings**. A grade-separated crossing is a railroad or highway intersection consisting of an overpass or underpass structure that employs an elevation difference to avoid a direct connection of two physical alignments. A grade-separated crossing may require safety improvements in accordance with RFTA's DGS, as well as review and approval by RFTA and to the extent the CPUC has jurisdiction over railbanked corridors, require approval by the CPUC. It will also require a Lease/License/Contract agreement with RFTA.

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B. **Public At-Grade Street and Highway Crossings**. All public at-grade street and highway crossings that require improvements shall, to the greatest extent feasible, be constructed and maintained in conformance with the RFTA DGS; are subject to review and approval by RFTA; require a Lease/License/Contract Agreement with RFTA; and to the extent CPUC has jurisdiction over railbanked trails, require approval and an allocation of costs by the CPUC.

C. **Private At-Grade Vehicle Crossings**. Private at-grade vehicular crossings may require safety improvements in accordance with the RFTA DGS; are subject to review and approval by RFTA; and also require a Lease/License/Contract Agreement with RFTA.

D. **Trail Crossings**. Requests for new Trail crossings of the Railroad Corridor shall comply with the Recreational Trails Plan; RFTA's obligations under the 2001 GOCO Agreement on file with RFTA; the RFTA's DGS; and shall not create an obstruction to freight rail reactivation and other uses for which RFTA has obligated itself.

E. **Utility Crossings.** All existing underground utility crossings shall continue to be underground. To the greatest extent feasible, all newly proposed underground utilities shall be designed, constructed and maintained in conformance with the RFTA DGS. Any above-ground utilities may continue to cross the Railroad Corridor above ground, but shall comply with RFTA's DGS; include vertical clearance standards per the CPUC, as a minimum; are subject to review and approval by RFTA; and shall not create a significant future financial obligation, or physical obstruction to freight rail reactivation and other uses for which RFTA has obligated itself.

14.0 Crossing Repair Permits – Existing Crossings

No repairs to an existing crossing or other improvement in RFTA's right of way shall be made without a permit in accordance with paragraph 17.0. RFTA may issue Repair Permits only after receipt of a written application. Applications for a permit shall prescribe the kind of repair to be made, the material to be used, and sketches, plans, and specifications therefore.

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15.0 New Crossings Defined.

A "new crossing" means a crossing of the Railroad Corridor by a public street, private drive, trail, utility, or similar facility approved by RFTA and to the extent the CPUC has jurisdiction over railbanked property, require approval and an allocation of costs by the CPUC.

16.0 Policy and Design Standards for New Crossings

No new crossings will be permitted that could impose a significant future financial obligation or physical obstruction to freight rail reactivation, commuter rail use, trail use, or other uses for which RFTA has obligated itself.

When considering requests for new crossings, RFTA will first review the request for conformance with its primary obligations, which are to:

- Preserve the Railroad Corridor for rail reactivation, not simply for trail use, preserving the Railroad Corridor's railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB for future freight rail reactivation;

- Implement the conservation requirements of the Great Outdoors Colorado Conservation Covenants.

- Reference the DGS (appendix B) to insure that to the greatest extent feasible the design meets the minimum design standards developed by RFTA.

A. **Restriction on New Crossings to Serve New Parcels or Lots.** RFTA desires to limit new at-grade crossings to serve any new parcels or lots, and to attempt to consolidate new crossings with existing crossings whenever feasible, with the goal of no net new crossings. "New parcel" means the lot or parcel that was created (i.e., by plat or deed).

B. **Denial of Private Crossings**. RFTA retains the right to deny a private crossing request; however, approval of proposed crossings that are consistent with RFTA's DGS will not be unreasonably withheld.

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17.0 Process and Design Standards for Newly Proposed Railroad Corridor Crossings and Consolidations.

RFTA must exercise caution not to permit crossings that might impose significant future financial obligations on RFTA or create an obstruction to freight rail reactivation, and thereby jeopardize the Corridor's railbanked status. RFTA must also ensure that the crossings it approves would not adversely impact possible future commuter rail or trail and other uses for which RFTA has obligated itself.

For a private crossing, road, utility or encroachment that will utilize any portion of the RFTA Railroad Corridor, property owners shall review the DGS, (see Appendix B) submit an application to RFTA for a new crossing and, if approved by RFTA, obtain a Lease/License/Contract and construction permit from RFTA prior to commencing work on any Railroad Corridor crossing, improvements and/or consolidations. In addition to seeking approval from RFTA, If the crossing will tie into either the Colorado Department of Transportation (CDOT) right-of-way or one of the local jurisdictions street right of way, then owners will also need to obtain permission from CDOT and/or the local jurisdiction prior to commencing any work within the RFTA Railroad Corridor, or the CDOT and/or jurisdictional street right of way.

For a public crossing that is being proposed, in addition to the requirements listed above for a private crossing, shall also obtain any permits required by CDOT, and to the extent the CPUC has jurisdiction over railbanked property, require approval and an allocation of costs by the CPUC. *Please note that all crossings are crossing a railroad that is railbanked for the preservation of the Corridor for reactivation of freight rail service and must be considered as such even though rail service may not be active on the Corridor at the time of submittal of applications for crossings*.

The following review and permitting process applies to the RFTA Railroad Corridor only. It is the applicant's responsibility to check with local, state and federal agencies for any additional requirements related to working in their Rights of Way (ROW):

A. Applications. Permit applications for Railroad Corridor crossings, encroachments, repairs, improvements and consolidations within the RFTA Railroad Corridor right-of-way shall provide the following:

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1. Complete application form. RFTA shall provide standard application forms for proposed crossings, crossing improvements and crossing consolidations. The application forms (available online or from RFTA offices) shall provide the address and contact information for the owner and his/her contractor(s); the contractor license/registration number(s); a description of the proposed improvements; the construction schedule; proposed traffic control measures; and other pertinent information as deemed necessary by RFTA.

2. Payment of an application fee to cover the cost of processing the application. The fee schedule will be kept on file at RFTA offices and may also include costs for RFTA's, legal, engineering consultant reviews and survey services.

3. Submission of a site plan and related engineering drawings if necessary, prepared by a qualified licensed professional (e.g., engineer, surveyor, planner, landscape architect). The site plan and engineering drawings shall be drawn to a scale of at least 1 inch equals 40 feet. The plans and drawings shall be prepared in accordance with RFTA's DGS and be designed as a crossing of a freight railroad. Applications shall list all materials to be used, and provide section details and construction specifications.

4. Applications for crossing consolidations shall include two sets of plans: one for the proposed Corridor crossing and one for the Corridor crossing to be closed, and shall be provided in both hard copy plot and electronic .pdf file format. Once approved, Digital CAD drawing files will be required in addition to the hard copy and .pdf, in accordance with the design guidelines.

5. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall be responsible for determining when an application is deemed complete.

B. **Approval Criteria.** Leases/Licenses/Contracts for Railroad Corridor crossing improvements and consolidations shall comply with the following approval criteria:

1. Improvements shall not create a significant future financial obligation or physical obstruction to freight rail reactivation, future commuter rail, trail use and other uses for which RFTA has obligated itself;

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2. All of the applicable standards of this policy, including the DGS;

3. The State Highway Access Code, as applicable;

4. Any applicable local government land use and access permit requirements (e.g., permit to construct in the public way);

5. Conservation Covenant requirements, including: avoidance of adverse impacts to the open space, recreational, parks, and wildlife uses and values of the Railroad Corridor to the extent practicable. This shall be accomplished through careful consideration of alternative access alignments, consolidations, construction techniques, materials, and appropriate mitigation measures (e.g., erosion control, landscaping, screening, buffering, etc.);

6. The applicant agrees to enter into a Lease/License/Contract agreement to memorialize the crossing.

C. **RFTA Review Process for Railroad Corridor Crossings.** The following review procedures shall apply to applications for crossings, encroachments, repairs and consolidations. Public crossing application procedures will also require a Maintenance and Operating Agreement to be executed and, to the extent the CPUC has jurisdiction over railbanked Rail Corridors, submission to the CPUC for its review, approval and an allocation of costs.

Please note that RFTA's goal is to avoid approving any crossing that would pose a significant future financial obligation, physical obstruction to freight rail reactivation and other uses for which RFTA is obligated.

1. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall review the applications submitted as per Section 17.0 (A) based on the approval criteria in Section 17.0 (B).

2. RFTA may refer the application to its engineering consultant for review of conformance with the DGS.

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3. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall prepare an administrative determination recommending approval of or denying the application.

4. The determination is final unless the applicant timely files an appeal in accordance with this subparagraph. The applicant may appeal the decision of the RFTA Assistant Director, Project Management & Facilities Operations by filing an appeal of the administrative determination in writing to the RFTA Board of Directors within thirty (30) days of receipt of the determination by the Assistant Director and/or his designee. The thirty (30) days will begin upon receipt of an email determination and/or 30 days from the date of the postmark receipt of determination. Staff will forward the appeal to the RFTA Board of Director's at the next scheduled RFTA of Director's meeting for its consideration or as soon as practicable, along with the determination by the staff as to why the application was denied.

5. The determination is final, notwithstanding a timely appeal, unless the RFTA Board agrees to hear the appeal. The applicant will be informed within five (5) business days of the appeal determination made by the RFTA Board of Director's. The applicant will be notified about the determination by email (if provided) or mail. If the Board agrees to hear the appeal, a hearing will be scheduled at a subsequent Board meeting, no later than ninety (90) days after the Board has notified the appellant that the appeal will be heard. The hearing will generally be limited to one hour. Both the Assistant Director and the applicant will be allowed to present his/her reasons for the upholding or overturning the staff determination.

6. The RFTA Board will make a final determination on an appeal and provide the appellant with a written determination within 30 days of the date of the appeal. In all cases the decision must meet the following standards:

    a. The proposed crossing is consistent with freight rail reactivation and other uses for which RFTA has obligated itself.

    b. The proposed crossing will not interfere with or negatively impact the conservation or trail values; and

c. The landowner/entity will be financially responsible for design and construction of the crossing to so as to be consistent with the intent and requirements of RFTA's DGS and, to the extent the CPUC has jurisdiction over railbanked Rail Corridors, require approval and an allocation of costs by the CPUC.

18.0 Coordination of Development Review with Local Jurisdictions

RFTA desires to participate in the review of planning, zoning, and development applications, as necessary, to safeguard the interests of the Railroad Corridor as noted above. RFTA will coordinate with property owners, local governments, CDOT, and other affected agencies, in order to identify Railroad Corridor crossing requirements at the earliest possible stage in the development review process (i.e., preferably before a formal application has been submitted to a local jurisdiction). RFTA's review of any such proposals, failure to object or any statement implying approval does not mean that RFTA will approve Leases/Licenses/Contracts, permits or other contract relating to such proposals. In so far as RFTA believes that proposed plans or actions could jeopardize the Corridor's railbanked status, RFTA reserves the right to deny or condition any and all Leases/Licenses/Contracts, permits or contracts for use of RFTA property notwithstanding participation in a prior planning process.

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