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Roaring Fork Transportation Authority
Railroad Right of Way Corridor

ACCESS CONTROL PLAN
UPDATE

RFTA ACCESS CONTROL PLAN UPDATE

May, 2017

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V. Railroad Corridor Access Control Maps (will be added in the spring of 2017, this document is a complete list of all of the existing uses along the railroad corridor road, utility, encroachment, etc.).

VI. Appendices are intended to be advisory or informational in nature and can be revised and/or updated as needed without RFTA Board action:

Appendix A – Listing of All Utility Easements (List from initial acquisition documents attached. Up-date will be completed as funding becomes available). List of existing uses, proposed uses and potential uses (including crossings)

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

Appendix C – Map of Federal Land Grant Areas, Conservation Covenant Areas, and Section 6f Land and Water Conservation Fund Areas.

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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 Roaring Fork Railroad Holding Authority (RFRHA) acquired the Railroad Corridor in 1997 as an operating line of railroad pursuant to authority granted by the Surface Transportation Board (STB). RFRHA subsequently "railbanked" the line, which preserved it for future freight rail reactivation and allowed the Corridor to be used in the interim as a public trail and for open space purposes. Pursuant to 16 U.S.C. 1247(d), a "Notice of Interim Trail Use" ("NITU") was issued to RFRHA by the STB in 1998. RFRHA transferred ownership of the corridor to the RFTA in 2001 pursuant to a "NITU" substituting RFTA for RFRHA as the railbanking entity. The residual common carrier obligation and the right to reactivate rail service was also transferred to RFTA pursuant to a 2004 STB order. This ACP is adopted in order to ensure that RFTA 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, while providing reasonable access across the Railroad Corridor. The ACP is also intended to define the responsibilities and expectations of the sponsors of projects proposed to cross or utilize the Corridor.

RFTA's intent is to facilitate the interim use of the Corridor for public trail, open space, and other lawful uses and to enable reasonable access to and crossing of the Railroad Corridor, while preserving the Corridor's railbanked status for future commuter and/or freight rail service. The ACP takes into consideration the interests of RFTA's constituent-members as well as private property owners and allows for reasonable, planned access into and across the Corridor in keeping with this ACP and RFTA's Design Guidelines (DG). It is not the RFTA's intent, by this document, to interfere with any constituent member or other local governments land use, control or authority over private or public development other than

to protect and preserve RFTA's rights and obligations to the corridor. Insofar as necessary to ensure RFTA's obligations for the Railroad Corridor related to its railbanked status, this ACP includes an explanation of "railbanking" and the requirements necessary to maintain that status. 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 DG.

II. Background

Train operations in the Roaring Fork Valley decreased in phases between the 1960s and the mid-1990s. Recognizing its potential value as a future public transportation corridor, RFRHA was created in 1994 by means of an Intergovernmental Agreement between the City of Glenwood Springs, Garfield County, Town of Carbondale, Eagle County, Town of Basalt, Town of Snowmass Village, Pitkin County, the City of Aspen and the Colorado Transportation Commission, for the express purpose of acquiring the Aspen Branch of the Denver & Rio Grande Western Railroad right-of-way (33.3 miles from Woody Creek to Glenwood Springs) from the Southern Pacific Transportation Company. In 1997, RFRHA purchased the corridor for $8.5 million funded by a consortium of state and local interests, including RFRHA's members, the Pitkin County Open Space and Trails Program, the Colorado Department of Transportation (CDOT), and the Great Outdoors Colorado Trust Fund (GOCO).

State of Colorado Rural Transportation Authority (RTA) enabling legislation, enacted in 1997, (i.e. 43-4-601 et. seq., now known as the Regional Transportation Authority Law), was the impetus for creating a more effective regional Transportation Authority structure. In November 2000, voters in Glenwood Springs, Carbondale, Eagle County, Basalt, Snowmass Village, Pitkin County and Aspen approved the creation of RFTA, the successor to the Roaring Fork Transit Agency (the Transit Agency) and dedicated sales taxes to support the ongoing operation and development of transit and trails programs. Subsequently, over the next two years, the employees and assets of the Transit Agency and RFRHA were merged into RFTA. Currently, RFTA manages the Corridor and is preserving it for future rail/transportation purposes pursuant to the federal rail banking provision of the National Trails System Act, thus limiting activities that might preclude re-introduction of rail or other mass transportation systems in the Roaring Fork Valley. The interim use is an extremely popular 10' wide paved trail, known as the Rio Grande Trail (RGT), from Glenwood Springs to Woody Creek. A paved and soft surface trail, owned by Pitkin County, connects Woody Creek with Aspen.

The Corridor, bounded by hundreds of adjacent private property owners, traverses three municipalities and three counties, and it is encumbered by numerous licenses, easements, and agreements. It is the intent of RFTA by means of this ACP to address the reasonable

access needs of RFTA constituent-members in a cooperative fashion, while protecting the

Corridor and fulfilling RFTA's regulatory and other contractual obligations given the best information and legal precedent now available.

RAILBANKING

Under 16 U.S.C. 1247(d), Congress acted to encourage interim uses of otherwise-to-be abandoned railroad lines for trail and other compatible public purposes while preserving potential future use of such railroad lines for freight and other consistent commuter or passenger rail uses. As such, Railbanking provides a mechanism that allows RFTA and local jurisdictions to maintain the Rio Grande Railroad Corridor for alternative public uses, while preserving the contiguous 33.4-mile Railroad Corridor intact, so long as the Corridor is maintained in a manner allowing for future freight rail use .

An underlying concern is the interests of individual property owners along the Railroad Corridor, who maintain property interests subservient to the Corridor's Railbanked status. In 2014, the Supreme Court of the United States ruled that federally granted rights of way that comprise many of the nation's railroad corridors may revert to adjacent property owners upon STB approved abandonment and the consummation of that abandonment authority. If the Corridor was removed from Railbanked status and RFTA exercised its underlying abandonment authority through consummation of the abandonment, then the Corridor would no longer be subject to STB jurisdiction and approximately seven miles of Federal Land Grant areas could revert to adjacent property owners. This would 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, any agreement, crossing, or interim use of the established Corridor must be subject to the right of restoration and reconstruction of the Corridor for freight railroad purposes. This is necessary to avoid any potential determination that the corridor has been abandoned. Regulatory and interpretive guidelines create conditions to which 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 the 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.

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

This ACP and the accompanying DG are intended to help sponsors of crossing projects and other uses of the Corridor 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 CPUC approval, and while rail service is inactive on the Corridor, RFTA will generally approve public and private at-grade crossings that meet its DG, insofar as such crossings would not preclude or unreasonably impair RFTA's ability to reactivate freight rail service.

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 withhold approval of proposed public crossings and other Corridor uses that are consistent with RFTA's ACP and DG. However, the corridor is subject to obligations associated with Colorado Department of Transportation (CDOT), Federal Highways Administration (FHWA), Great Outdoors Colorado (GOCO), and Land and Water Conservation Funding (LWCF) grants involved in its acquisition and the construction of the recreational trail , which may require consultation with these agencies for certain actions involving the corridor.

In addition, RFTA acknowledges that no plans, policies, or guidelines, can foresee every condition or situation that could potentially arise with respect to all proposed future uses of the Corridor. RFTA intends that its application of the ACP and DG will be flexible enough 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 help them design their projects to be cost effective, 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 jeopardized.

RFTA assures parties proposing public or private uses of the corridor that it will endeavor to work cooperatively with them, consistent with the policies stated herein, to help them achieve their objectives in the most efficient and cost-effective manner possible, including collaborating with sponsors during the planning and design processes for their projects (please also see Section 18).

IV. 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, 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 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 of the Conservation Easement 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, 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 as long as such corrections are consistent with this ACP].

V. 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.

VI. 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. Establish guidelines to ensure reasonable access into and across the Corridor for present and future users consistent with its status as a railbanked corridor.

2. Support, promote, and maintain the Corridor's trail, open space, and public uses.

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

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

5. Preserve the Railroad Corridor for future private and public transportation and maintain the Corridor's railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB for future freight and/or commuter rail reactivation. In order to ensure compliance with 16 U.S.C. 1247(d) as construed by the STB and the courts, access to and across the Corridor should be designed by the project proponent so as to not preclude or significantly impair freight rail reactivation or the implementation of commuter rail without significant cost to RFTA and to maintain the Corridor and its interim uses in such a manner as to be subject to restoration or reconstruction for freight and/or commuter rail purposes. Significant irreversible alterations and unfunded or unaccounted for financial obligations burdening the Corridor, including significant alterations in the alignment and/or elevations of the roadbed, property sales or transfers, and physical obstructions of the railroad line that are incompatible with freight rail reactivation, would be of significant concern to RFTA and would require greater assurances from crossing sponsors with respect to how such issues would be addressed or mitigated.

6. Minimize and consolidate new or existing at-grade road crossings over the Railroad Corridor whenever necessary or practicable.

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

8. Minimize future financial liability and costs to RFTA and constituent-member jurisdictions arising from third party use of the Railroad Corridor, including the expense of upgrading any existing or approved crossings of the Railroad Corridor, as practicable.

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

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Public Transportation Corridor.

The intended audiences for the ACP are:

1. RFTA's member jurisdictions, Garfield County, the Colorado Department of Transportation (CDOT), GOCO, the RFTA Board of Directors, 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 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 STB. RFTA acknowledges that this authority is exercised subject to the rights of public and private interests underlying and adjacent to the Corridor.

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

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(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 or applicable court decisions. The ACP shall be interpreted consistent with RFTA's objectives to operate a public trail on the Corridor while preserving the Corridor for future freight rail and/or compatible commuter rail reactivation in order to ensure its continued eligibility for federal railbanking status, to otherwise maintain the Corridor for open space and park uses consistent with its obligations under the GOCO agreement, the Corridor's 6(f) designation under the Land and Water Conservation Fund, its eligibility for listing on the National Register of Historic Places in 1999, and to promote other compatible and lawful public uses. This Policy shall be construed broadly to promote the purposes for which it is adopted.

Notwithstanding anything in this document to the contrary, nothing herein is intended to grant to or permit any adjacent landowner or public entity any greater rights of access over, under, along or across the Corridor than they would otherwise have under Colorado law or to impair or limit RFTA's rights as a public entity and landowner in managing its Corridor.

B. **Conflict.**

1.0 ***Public Provisions***. The 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 guidelines or regulations than an existing easement, covenant, or other private agreement

or restriction, then the requirements of this ACP shall apply upon termination or expiration of such easement, license, covenant, or other private agreement. RFTA will not unreasonably withhold the issuance of new licenses to new owners when properties are sold as long as such licenses are consistent with this ACP and DG.

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 and such judgment is upheld on appeal, if applicable, 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 that is judged to be invalid.

6.0 Amendments

The ACP cannot anticipate every circumstance or question arising from RFTA's management of the Railroad Corridor and the Rio Grande Trail 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 landowners and utility companies).

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, among other things, 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 November 2016 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 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 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.

9.0 Rio Grande Trail within the Railroad Corridor Requirements Defined

Trail Use: The Rio Grande Trail (RGT) is designed, built, and operated within the Railroad Corridor and is operated for multi-purpose use. Trail uses, include walking, running, biking, skating, equestrian, and cross-country skiing, should be encouraged. No motorized use except for emergency access and maintenance will be allowed. No camping or open fires will be allowed on the Railroad Corridor.

Linkages: Access and increased connections to the trail should be encouraged to maximize use by, between, and among neighborhoods and communities. Insofar as connections are consistent with the ACP and DG, and would not degrade the overall quality of the RGT 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 for all individuals and non-motorized modes 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 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.

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 should 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 by RFTA and granted by lease/license/contract. Failure to obtain approval from RFTA for the encroachment, failure to pay the lease/license/contract fee, or failure to comply with RFTA DG 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 DG 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 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 DG 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 shall issue a new lease/license/contract to new owners when properties are sold unless there is a significant expansion of the crossing's use or there are other changes in design inconsistent with this ACP or DG, or other legitimate RFTA concerns that must be addressed by the new owner. RFTA may require the private individual landowners and entities 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 – Public road crossing means a highway-rail crossing where the highway on both sides of the crossing is under the jurisdiction of and/or maintained by the state, county or city. Public road crossings shall be granted by easement, so long: (1) as the designs are consistent with RFTA's ACP and DG or such other design as may be approved by the RFTA Board of Directors; (2) the road authority obtains any necessary PUC approval of the crossing; and (3) the easement is approved by the RFTA Board of Director's. Failure to obtain approval from RFTA for the public crossing or failure to pay the lease/license/contract fee 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 granted by easement, lease, license, or other contract 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)**

Public Utility Crossing - A crossing of the Railroad Corridor by a public utility meant to serve more than one residence or business. Unless otherwise ordered by a court, a public utility crossing must be approved by RFTA. To the extent CPUC has jurisdiction over utility crossings of railbanked corridors, such a crossing must also require approval by the CPUC and RFTA shall have the right to oppose that approval request unless such crossing is consistent with this ACP and DG or is appropriately approved by the RFTA Board of Directors. 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 DG or any applicable court, CPUC, or STB order 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 any encroachment. An unapproved encroachment is a trespass and must either

be approved by lease, license or contract by RFTA or removed. Failure to obtain approval from RFTA for the encroachment, failure to pay the lease/license/contract fee may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of an encroachment 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 to be negotiated between the road authority and RFTA 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 by easement, lease, license, or other contract by RFTA and for public crossings also approved by the CPUC. To the extent that they would jeopardize the railbanked status of the Corridor, RFTA shall not approve any easement, lease, license, or other contract for a proposed crossing that RFTA determines would create 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. Among potential concerns in the grant of any right for proposed crossings are those that would significantly alter the existing grade or alignment or create physical obstructions of the railroad line. .

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 (Appendix A); 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 and attached as Appendix A) 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.

D. New Crossings that RFTA, CDOT, and GOCO may approve upon further review prior to approval and adoption of the CMP.

12.0 Crossing Improvements and Maintenance for Existing Crossings

A. **Improvements.**

- Owner initiated: The costs of owner-initiated improvements to crossings shall be borne by the owner, and owners will be responsible for improving their existing crossings consistent with this ACP and DG, so as to allow and not impede future freight rail reactivation. To the extent RFTA will benefit from such improvements or maintains a significant interest in the condition or manner of improvements to be made, RFTA shall collaborate with the owner and negotiate the parties' equitable contributions to the cost of improvements. Nothing in this document, paragraph, or section however, is intended to obligate RFTA to make any contributions or otherwise obligate

RFTA to collaborate on such improvements if such improvements would be inconsistent with this ACP and DG.

- RFTA initiated: In the event of other general transit system improvements initiated by RFTA, RFTA will bear the costs of such improvements. To the extent RFTA's improvements provide a significant, discrete benefit to identifiable owners, above the benefit conferred to other owners, RFTA shall cooperate with said owners and negotiate the parties' equitable contributions to the cost of improvements.

- In the event that a proposed public or private project causes a twenty percent increase in either the peak hour vehicular volume or the total vehicular volume using the corridor crossing, or a documented safety issue exists, the need for trail and/or safety improvements shall be assessed. RFTA shall cooperate with owners to allocate the cost of the safety improvements between the owners and RFTA as equitably as possible

1. In the event that RFTA determines that an emergent safety issue over an existing crossing has developed, notwithstanding threshold traffic increases, the need for rail or trail safety improvements shall be assessed, and RFTA shall cooperate with affected owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.

2. In instances in which improvements have been agreed to under the terms of an easement/lease/license/contract Agreement or by separate proceedings.

RFTA shall review and approve the design for conformance with RFTA's DG, 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

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 DG; and maintaining any gate crossing appurtenances. As a last resort and after reasonable notice, 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 (for Up-Grading, Modifying, or Improving Existing Crossings).

To the greatest extent feasible, all crossings shall meet the current minimum DG adopted by RFTA, included as Appendix B of this Policy. The general types of crossings are listed in subsections A through E below. Pursuant to 12.0, above, an owner may be required to upgrade an existing crossing that does not comply with the DG. Pursuant to 12.0, above an existing crossing may require safety improvements 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. In such event, RFTA will collaborate with the owner(s) of existing grade-separated crossings requiring safety improvements to determine RFTA and other parties' equitable contributions in making such improvements.

A substantial 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. An existing grade-separated crossing may require safety improvements in accordance

with RFTA's DG, as well as review and approval by RFTA and to the extent the CPUC has jurisdiction of public road crossings over railbanked corridors, also require approval by the CPUC. RFTA will collaborate with owner(s) of grade-separated crossings requiring safety improvements to determine RFTA and other parties' equitable contributions in making such improvements. It will also require an easement, lease, license, or other contract agreement with RFTA. Grade-separated crossings will most likely not be necessary or required until freight or commuter rail is imminent or active in the corridor, and in any event, will only be required if deemed necessary following review of measured traffic volume relative to expected traffic volume increases, applicable DG, and other safety concerns. At-grade crossings, including, potentially, crossing gates and signals, will generally be approved where practicable given all relevant circumstances. However, if a grade-separated crossing is proposed by a project sponsor before rail is active in the corridor, it should be constructed in accordance with RFTA's DG and must be consistent with this ACP.

B. **Public At-Grade Street and Highway Crossings**. All public at-grade street and highway crossings that require improvements shall, insofar as reasonably necessary and possible, be constructed and maintained in conformance with the RFTA DG; are subject to review and approval by RFTA; require an easement, lease, license, or other contract with RFTA; and to the extent CPUC has jurisdiction over crossings of railbanked corridors, 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 DG; 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 DG; and to the extent CPUC has jurisdiction over crossings of railbanked corridors, require approval and an allocation of costs by the CPUC, and shall not create a permanent obstruction to freight rail reactivation and other uses for which RFTA has obligated itself. All trail connections in conformance with RFTA's DG shall be approved unless unique

circumstances would create unreasonable safety concerns, expenses or permanently interfere with the potential for freight rail reactivation.

E. **Utility Crossings.** All existing underground utility crossings shall continue to be underground. Newly proposed underground utilities shall be designed, constructed, and maintained in conformance with the RFTA DG. Any above-ground utilities may continue to cross the Railroad Corridor above ground, but shall comply with RFTA's DG; include vertical clearance standards per the CPUC, as a minimum; are subject to review and approval by RFTA; and shall not create a 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

Repairs to an existing crossing or other improvements in RFTA's right of way shall not be made without a permit in accordance with paragraph 17.0 unless in the case of emergency. 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. Emergency repairs to critical infrastructure or necessary utilities may be performed without RFTA's prior approval. Any utility or local jurisdiction undertaking emergency repairs shall return the right of way to pre-repair conditions and notify RFTA of the event of such repairs as soon as practicable but no later than 12 hours. Ensuring the safety of trail users will be the responsibility of the entity making emergency repairs.

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 crossings of railbanked corridors, require approval and an allocation of costs by the CPUC.

16.0 Policy and Design Guidelines for New Crossings

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 freight rail reactivation and interim trail use by preserving the Railroad Corridor's railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB;

- Implement the conservation requirements of the Great Outdoors Colorado Conservation Covenants and ensure the safety of recreational trail users.

- Reference the DG (Appendix B) to insure that to the greatest extent feasible the design meets the minimum DG developed by RFTA.

RFTA will attempt to negotiate and agree with crossing sponsors to an equitable allocation of design, construction, and maintenance costs for new crossings. If the Parties are unable to reach such an agreement, if applicable, they will seek the same by determination of the CPUC, as necessary. Nothing in this paragraph, however, is intended to obligate RFTA to pay any costs or to support such approvals at the CPUC.

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 practicable. DG and the distance between existing crossings will be considered during review of any proposed new crossing. "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 where another existing or proposed crossing provides reasonable access; however, approval of proposed crossings that are consistent with RFTA's DG and this ACP will not be unreasonably withheld.

17.0 Process and Design Guidelines 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 the potential to permanently interfere with the right to reactivate freight service, and thereby jeopardize the Corridor's railbanked status. RFTA must ensure that the crossings it approves would not

adversely impact possible future freight 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 DG, (see Appendix B) submit an application to RFTA for a new crossing and, if approved by RFTA, obtain a license, lease, or other 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 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.

Until freight or commuter rail is imminent or active in the corridor, RFTA will generally approve new public and private at-grade crossings that are consistent with its DG or otherwise are approved by the RFTA Board of Directors, insofar as such crossings would not preclude or permanently interfere with RFTA's ability to reactivate freight rail service. For a public crossing that is being proposed, in addition to the requirements listed above for a private crossing, the applicant shall also obtain any orders required by CDOT, and to the extent the CPUC has jurisdiction over crossings of railbanked corridor crossings, require approval and an allocation of costs by the CPUC. If a public crossing is designed consistent with RFTA's DG or otherwise approved by the RFTA Board of Directors, RFTA will grant an easement to the project sponsor, subject to the approval of the RFTA Board of Directors and/or the CPUC. The easement, however, will be subject to the following reservation and such other terms and conditions as the RFTA Board, in its sole discretion, may determine at the time of issuance:

> Should RFTA need to extend, modify, or relocate a crossing to accommodate the activation of freight or passenger rail service on the Corridor by RFTA, RFTA shall be entitled to do so as long as the extension, modification, or relocation does not substantially and materially interfere with the connectivity of the crossing after review and approval of plans detailing the extension, modification, or relocation by the public entity holding the easement, which approval will not be unreasonably withheld, and if applicable, approval by the CPUC. If the sole cause of the need for such extension, modification, or relocation is the needs of RFTA, such cost will be borne by RFTA if RFTA approves the project and costs thereof; it being understood that any funding for such a project is subject to appropriation of funding. If the public entity holding the easement should desire to extend, modify, replace,

relocate, or remove the crossing to further its needs, then such cost shall be borne by the public entity. Any such extension, modification, relocation, or replacement or repair by the public entity shall only be made in accordance with plans prepared by the public entity and reviewed and approved by RFTA, which approval will not be unreasonably withheld, and approval by the CPUC, if CPUC jurisdiction is exercised. For extensions, modifications, or relocations that are jointly caused and will benefit both parties, the allocation of costs shall be by further agreement, or if no agreement, then as determined by the CPUC in a hearing.

Easements for public roadway crossings and utilities, which are conveyed by RFTA to jurisdictions shall contain the following provision:

> **Railbanking Protection.** "Jurisdiction" acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the federal Surface Transportation Board. "Jurisdiction" further acknowledges that the Corridor is "railbanked" under the National Trails System Act, 16 U.S.C.§1247(d), so that RFTA is required to preserve the Corridor for future rail use. "Jurisdiction's" improvements and use shall not interfere with RFTA's use of the Corridor for transportation, shipping, trail, and/or conservation purposes and that no disturbance or interference of said any such uses shall be allowed hereunder without the prior written approval of RFTA. This Easement shall not be deemed to give "Jurisdiction" exclusive possession of any part of the Easement area described, and nothing shall be done or suffered to be done by "Jurisdiction" at any time that shall in any manner impair the usefulness or safety of the Corridor or of any track or other improvement on the Corridor or to be constructed thereon by RFTA in the future. If RFTA in its sole discretion upon advice of legal counsel believes that an action permitted by this Easement has or will cause a severance of the Corridor from the UPRR main line, RFTA shall notify the "Jurisdiction" and RFTA and the " Jurisdiction" shall work together to revise this Easement to correct the potential severance or impediment to freight rail service. Only in the event no modification can be agreed upon, may RFTA terminate this Easement.

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.

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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/utilities, repairs, improvements, and consolidations within the RFTA Railroad Corridor right-of-way shall provide the following:

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 DG 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.

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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 and consolidations shall not create a significant future financial obligation or be designed in such a way so as to permanently interfere with the future reactivation of freight rail service, future commuter rail, trail use, and other uses for which RFTA has obligated itself;

2. To the extent feasible, unless otherwise approved by the RFTA Board of Directors, all of the applicable DG of this policy:

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, but not limited to: 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.

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 DG.

3. The RFTA Chief Executive Officer 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 Chief Executive Officer or his/her designee 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 Chief Executive Officer and/or his designee. The thirty (30) days will begin upon receipt of an email determination and/or thirty (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 unless appealed to the RFTA Board of Directors. If an appeal to the Board is made, a hearing will be scheduled at a subsequent Board meeting within (90) days. The hearing will generally be limited to one hour. Both the RFTA Chief Executive Officer and his/her designee and the applicant will be allowed to present his/her reasons for the upholding or overturning the staff determination.

6. The RFTA Board of Directors will make a final determination on an appeal and provide the appellant with a written determination within thirty (30) days of

the date the appeal is heard. In all cases the decision must meet criteria set forth in 17.B., 1 – 6, above:

18.0 Coordination of Development Review with Local Jurisdictions.

RFTA is and should remain a referral agency for land use and development applications that may affect the Railroad Corridor, including potential rail reactivation, RFTA's interim trail and public recreational uses, and conservation covenants; therefore, RFTA desires to participate in the review of planning, zoning, and development applications to continue to secure its interests and to work cooperatively with RFTA's constituent-members and other local jurisdictions. It is not RFTA's intent to exercise its authority over the Corridor to limit or control local land use decisions along the Corridor unless such decisions will unreasonably interfere with the potential for future freight or commuter rail reactivation, interim trail and public recreational uses, and conservation covenants. Land use and development decisions are and should remain within the authority of the local jurisdiction with development review authority, but RFTA will not approve any actions inconsistent with this ACP or DG.

RFTA will coordinate with property owners, local governments, CDOT, and other affected agencies to identify areas of concern in any proposed crossing or improvement during the early stages of development, preferably before a formal development application has been submitted. RFTA will not withhold approval of any easement, license, lease, or other contract relating to a crossing or improvement that is consistent with RFTA's ACP and DG, and approved by the RFTA Board of Directors. RFTA will work cooperatively with all interested parties to maximize efficient, reasonable access to and across the Railroad Corridor while securing RFTA's rights as necessary for potential rail reactivation and continued interim uses.

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