

RESOLUTION NO. 2010 - 64

**BOARD OF DIRECTORS, SAN MATEO COUNTY TRANSIT DISTRICT
STATE OF CALIFORNIA**

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**POLICY REGARDING THE PROCESSING OF REQUESTS FOR CONVEYANCE OF
PROPERTY INTERESTS INVOLVING PROPERTY OWNED BY THE DISTRICT AND
FEE SCHEDULE**

WHEREAS, the San Mateo Transit District (“District”), as owner of various properties, receives numerous requests for the use of said properties by various public and private parties; and

WHEREAS, on May 10, 2000, pursuant to Resolution 2000-36, the Board adopted a resolution “Amending Policy Regarding the Processing of and Action Upon Requests for Conveyance of Property Interests Involving the District;” and

WHEREAS, in order to respond to request to enter District property, including the Peninsula Corridor Right of Way, in an orderly fashion, staff has developed a new policy to govern such requests and a Fee Schedule that will allow the District to recoup costs associated with such requests; and

WHEREAS, on October 13, 2010, the District Board of Directors held a properly noticed public hearing to consider the revised Fee Schedule.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the San Mateo County Transit District hereby approves the attached “Policy Regarding Processing of Requests for Conveyance of Property Interests Involving Property Owned by the District Including The Peninsula Right Of Way”; and

BE IT FURTHER RESOLVED that the Board of Directors of the San Mateo County Transit District hereby approves the attached Fee Schedule; and

BE IT FURTHER RESOLVED that the General Manager/CEO is authorized to approve or deny requests in accordance with the attached policy.

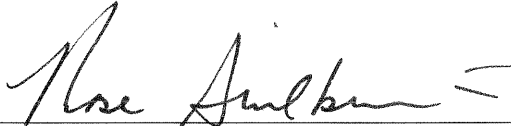
Regularly passed and adopted this 13th day of October 2010 by the following vote:

AYES: AHMAD, CHURCH, DEAL, KERSTEEN-TUCKER, LLOYD,
MATSUMOTO, GUILBAULT

NOES: NONE

ABSENT: HARRIS

ABSTAINED: TISSIER


Chair, San Mateo County Transit District

ATTEST:


District Secretary

SAN MATEO COUNTY TRANSIT DISTRICT

POLICY REGARDING PROCESSING OF REQUESTS FOR CONVEYANCE OF PROPERTY INTERESTS INVOLVING PROPERTY OWNED BY THE DISTRICT

In order to facilitate the timely processing of requests from third parties for rights to utilize portions of property which are owned by the San Mateo County Transit District (“District”), including the Peninsula Corridor right-of-way, which is co-owned with the Peninsula Corridor Joint Powers Board, (collectively the “District-owned Property”) the District hereby establishes the following policy:

REVIEW OF ALL REQUESTS BY DISTRICT PERSONNEL

Staff will process all third party requests for agreements granting interests in, or use of, District-owned Property, including leases, licenses, encroachment permits, crossings, easements, or other documents as may be appropriate (collectively “Property Access Agreements”). Staff will analyze each request for its compatibility with the current use, and anticipated future development, of the District-owned Property from an engineering feasibility and planning perspective. It will also review the project to estimate the level of legal and technical support the District will require to process the application and oversee the project.

The review will verify that (a) the request is compatible with current, and anticipated future, engineering and operational requirements and future potential uses of the property; (b) all applicable provisions of California Public Utilities Commission regulations; (c) for any District property on an operating railroad right-of-way, that the applicant's improvements are designed to meet the broadest range of possible transportation alternatives for the entire width of the right-of-way, to minimize disruption of current service and the necessity for later relocation; and (d) that the request is in full compliance with the requirements of applicable federal and state law including any conditions embodied in grants and conditions of financing for the property acquisition by the District or its predecessors in interest.

Staff will analyze each such request in accordance with this policy and, if it supports granting the request, will present the applicant with an estimate of the District’s processing and oversight costs, as applicable. Once the applicant has paid all necessary fees, and, if required, signed a Service Agreement to reimburse the District for its actual costs, staff will develop a proposed form of Property Access Agreement based upon the District’s standard forms.

When the property involved is on an operating railroad right-of-way, or when such coverage is deemed necessary by the General Manager/CEO or his designee, and in order to ensure that adequate and uniform insurance coverage is obtained, the District may, in its discretion, procure Railroad Protective Liability Insurance in its name and for the benefit of the District and any rail carriers operating on the line in question. The District shall charge the applicant for the cost of that coverage as part of the other fees charged for the issuance of the Property Access Agreement. An applicant and/or its contractor may seek a waiver of this requirement so that it may provide its own Railroad Protective Liability Insurance, by demonstrating to the satisfaction of the General Manager/CEO or his designee, that it can provide coverage that is equivalent to,

or better than, the RIMA Railroad Protective Form, and names the San Mateo County Transit District and any rail carriers operating on the line in question as named insureds.

Once negotiations with the applicant are complete, staff, with the assistance of the Attorney as necessary, shall prepare the final form of Property Access Agreement and will forward the agreement, all documentation, and a staff recommendation to the General Manager/CEO of the District or his/her designee. As part of the Property Access Agreement, the applicant will be required to agree to the following conditions: Indemnification of the District from liability; relocation of applicant's facilities (at applicant's expense) if necessary for the development of the Property for transportation purposes, as determined by District, its successors or assigns; the agreement of the applicant to maintain and repair its improvements at its sole expense; a reservation of a right in favor of the District to terminate for breach; and the requirement that the applicant and/or its contractor provide adequate insurance for the benefit of District, its successors and assigns.

If the request is within the authority of the General Manager/CEO, as described below, the General Manager/CEO or his/her designee shall decide whether or not to grant the request. If the request falls within the Board's authority, as described below, the General Manager/CEO shall decide whether or not to recommend Board approval. Any decision by the General Manager/CEO, or his/her designee, to deny a request falling within the General Manager/CEO's authority, or to reject a recommendation to request Board approval, shall be final subject only to the right of any Board member to bring the matter before the Board.

AUTHORITY OF GENERAL MANAGER/CEO

The General Manager/CEO or his/her designee may approve Property Access Agreements without the prior approval of the Board, provided that the request will not have an adverse impact on the use or potential future development of the District-owned Property for District purposes and that the following conditions are included in the agreement:

- (1) The Property Access Agreement is for a term not more than five years;
- (2) Maintenance and repair of any and all lessee or permittee-owned improvements shall be the responsibility of the lessee or permittee;
- (3) When the property involved is on an operating railroad right-of-way, the lessee or permittee shall relocate the improvements at its expense, if necessary, to avoid interference with development of the right-of-way for public transportation purposes, as determined by the District, its successors or assigns; and
- (4) The applicant shall indemnify the District against liability (including for the release of hazardous materials) arising out of permittee's or lessee's use of the property.
- (5) The applicant has paid the appropriate amount of compensation as described in the District's Fee Schedule.

DISTRICT BOARD REVIEW

The Board of Directors shall review and approve or disapprove all requests for Property Access Agreements of duration of more than five years, as well as any and all conveyances of permanent

property rights. The property interest may be granted provided the applicant pays appropriate compensation as set forth in the District's Fee Schedule.

AT-GRADE CROSSINGS

The District Board hereby enunciates a policy that requests for at-grade crossings of rail right-of-way be denied. If however, upon review, the District determines that the request is necessary to provide access to the adjacent property and no other feasible alternatives exist, the Property Access Agreement may include the grant of a temporary license for an at-grade crossing, which shall be terminable at will. The Property Access Agreement shall provide that upon termination of such agreement, if the applicant has no other feasible alternative access, the applicant shall construct a suitable over-crossing or under-crossing at its sole cost and expense.

The General Manager/CEO may submit any of the foregoing requests to the Board for its approval. If the General Manager/CEO does not approve a request or recommend Board action, the applicant will be notified of the decision, and no further action will be taken on the request, unless a member of the Board requests that the full Board decide upon the request.

TYPES OF AGREEMENTS

All forms of Property Access Agreements used by the District shall be approved by the Attorney. With the exception of leases, for which the lessee shall pay fair market rent, all applicants shall pay a Real Estate Processing Fee, as further set forth in the District's Fee Schedule. All required fees must be paid before the applicant is allowed to access District property or before staff commences any work on the applicant's request. Below is a list of the type of agreements issued by the District:

Service Agreement:

Purpose: Sets forth the terms and conditions under which the applicant will reimburse the PCJPB for all actual costs of providing the services and materials required to support the applicant's proposed project (including applicable general and administrative overhead costs) and for costs associated with processing the Property Access Agreement. A Service Agreement does not convey and property rights or right to use property.

Other Conditions: If the staff determines that the property access request will require more than 5 hours of staff time and/or more than 3 hours of the Attorney's time, the applicant shall enter into a Service Agreement with District.

Right of Entry Permit Agreement

Purpose: Allows third party access to District Property for a specified period of time to accomplish a specific activity, which generally involves construction work.

Other Conditions: Permittee (or agency contracting with Permittee) shall sign a Service Agreement to reimburse District for its costs and expenses, as necessary.

License Agreement

Purpose: Allows a semi-permanent facility to be on operating property.

Other Conditions: Licensee shall sign a Service Agreement to reimburse District for its costs and expenses, as necessary;

Encroachment Permit

Purpose: Allows third parties access to non-operating District property for a specific purpose and a limited duration when a Right of Entry Permit, License Agreement or Lease is not appropriate and when no construction is to occur on the property.

Lease Agreement

Purpose: Allows a third party use of non-operating right-of-way for a defined period. This agreement is typically used when the third party is a commercial business leasing District property for fair market rent.

Easement Agreement:

Purpose: Provide permanent property rights to the grantee for a specific purpose.

Other Conditions: Licensee shall sign a Service Agreement to reimburse District for its costs and expenses, as necessary.