

**RESOLUTION NO. 2010 - 45**

**PENINSULA CORRIDOR JOINT POWERS BOARD  
STATE OF CALIFORNIA**

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

**WHEREAS**, the Peninsula Corridor Joint Powers Board (“PCJPB”), as owner of various properties, receives numerous requests for the use of said properties by various public and private parties; and

**WHEREAS**, on April 7, 1994, pursuant to Resolution 1994-10, the Board adopted a “Revised Policy Regarding the Processing of and Action Upon Requests for Conveyance of Property Interests Involving the Peninsula Corridor Right of Way;” and

**WHEREAS**, in order to respond to requests to enter PCJPB 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 PCJPB to recoup costs associated with handling such requests;

**WHEREAS**, on October 7, 2010, the PCJPB Board of Directors held a properly noticed public hearing to consider the revised Fee Schedule; and

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby approves the attached “Policy Regarding Processing of Requests for Conveyance of Property Interests Involving Property Owned by the Peninsula Corridor Joint Powers Board”; and

**BE IT FURTHER RESOLVED** that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby approves the attached Fee Schedule; and

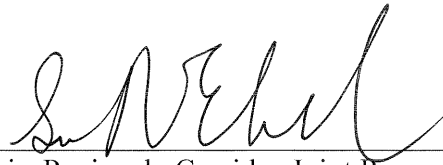
**.BE IT FURTHER RESOLVED** that the Executive Director is authorized to approve or deny requests in accordance with the attached policy.

Regularly passed and adopted this 7<sup>th</sup> day of October 2010 by the following vote:

AYES: AHMAD, CHURCH, CISNEROS, GAGE, KALRA, LLOYD,  
YEAGER, ELSBERND

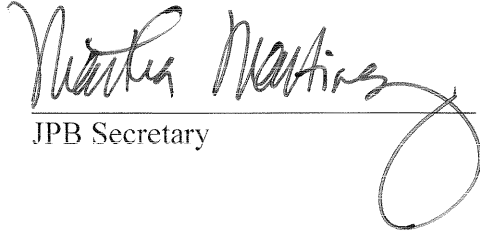
NOES: NONE

ABSENT: FORD



\_\_\_\_\_  
Chair, Peninsula Corridor Joint Powers Board

ATTEST:



\_\_\_\_\_  
JPB Secretary

## **PENINSULA CORRIDOR JOINT POWERS BOARD**

### **POLICY REGARDING PROCESSING OF REQUESTS FOR CONVEYANCE OF PROPERTY INTERESTS INVOLVING PROPERTY OWNED BY THE PCJPB**

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

#### **REVIEW OF ALL REQUESTS BY PCJPB PERSONNEL**

Staff will process all third party requests for agreements granting interests in, or use of, PCJPB-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 PCJPB-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 PCJPB 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 PCJPB 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 PCJPB 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 PCJPB’s processing and oversight costs, as applicable. Once the applicant has paid all necessary fees, and, if required, signed a Service Agreement to reimburse PCJPB for its actual costs, staff will develop a proposed form of Property Access Agreement based upon PCJPB’s standard forms.

When the property involved is on an operating railroad right-of-way, or when such coverage is deemed necessary by the Executive Director or his designee, and in order to insure that adequate and uniform insurance coverage is obtained, PCJPB may, in its discretion, procure Railroad Protective Liability Insurance in its name and for the benefit of PCJPB and any rail carriers operating on the line in question. The PCJPB 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 Executive Director or his designee, that it can provide coverage that is equivalent to, or better

than, the RIMA Railroad Protective Form, and names PCJPB 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 Executive Director of the PCJPB 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 PCJPB 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 PCJPB, 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 PCJPB to terminate for breach; and the requirement that the applicant and/or its contractor provide adequate insurance for the benefit of PCJPB, its successors and assigns.

If the request is within the authority of the Executive Director, as described below, the Executive Director 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 Executive Director shall decide whether or not to recommend Board approval. Any decision by the Executive Director, or his/her designee, to deny a request falling within the Executive Director'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 EXECUTIVE DIRECTOR**

The Executive Director 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 PCJPB-owned Property for PCJPB 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 PCJPB, its successors or assigns; and
- (4) The applicant shall indemnify the PCJPB 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 PCJPB's Fee Schedule.

#### **PCJPB 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 PCJPB's Fee Schedule.

### **AT-GRADE CROSSINGS**

The PCJPB Board hereby enunciates a policy that requests for at-grade crossings of rail right-of-way be denied. If however, upon review, the PCJPB 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 Executive Director may submit any of the foregoing requests to the Board for its approval. If the Executive Director 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 PCJPB 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 PCJPB's Fee Schedule. All required fees must be paid before the applicant is allowed to access PCJPB property or before staff commences any work on the applicant's request. Below is a list of the type of agreements issued by the PCJPB:

#### **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 PCJPB.

#### **Right of Entry Permit Agreement**

Purpose: Allows third party access to PCJPB 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 PCJPB 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 PCJPB for its costs and expenses, as necessary;

**Encroachment Permit**

Purpose: Allows third parties access to non-operating PCJPB 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 PCJPB 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 PCJPB for its costs and expenses, as necessary.

## PENINSULA CORRIDOR JOINT POWERS BOARD

### FEE SCHEDULE

#### FEES BY REAL ESTATE AGREEMENT TYPE

Note: The below agreement types are defined in the Peninsula Corridor Joint Powers Board's (PCJPB) "Policy Regarding Processing of Requests for Conveyance of Property Interests Involving Property Owned by the Peninsula Corridor Joint Powers Board".

#### **Right of Entry Permit Agreement**

Real Estate Processing Fee: \$1500

Annual Permit Payment: \$1500, if work continues for more than 1 year.

#### **License Agreement**

For a Transverse Encroachment (perpendicular to right-of-way):

Real Estate Processing Fee: \$1500

Annual License Payment: \$1500

For a Longitudinal Encroachment (parallel to right-of-way), or for fiberoptics facilities:

Processing Fee of \$1500,

Annual Rent: fair market value (as determined by staff, not less than \$1500);

#### **Encroachment Permit**

Real Estate Processing Fee: \$500

#### **Lease Agreement**

Real Estate Processing Fee: None

Monthly Rent: fair market value (as determined by staff, not less than \$500/mo.)

#### **Easement Agreement**

Real Estate Processing Fee: \$1500.

Payment of lump sum fair market value of the easement as determined by staff

#### SERVICE AGREEMENTS AND ASSOCIATED FEES

##### **Purpose**

If staff determines that a request to access property will require more than 5 hours of staff time and/or more than 3 hours of the Attorney's time, which costs are covered by the various Real Estate Processing Fees above, the applicant shall enter into a Service Agreement with PCJPB. The Service Agreement sets forth the terms and conditions under which the applicant will reimburse 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 property rights or right to use property.

**Service Agreement Administrative Fee**

A Service Agreement Administrative Fee will be assessed on an applicant requiring a Service Agreement to conduct work over PCJPB property. The purpose of Service Agreement Administrative Fee is to recoup costs associated with project set-up, including those of Finance, Engineering and Risk Management. The amount of the Service Agreement Administrative Fee will depend on the value of the project over PCJPB Property, as shown:

<u>Value of Project</u>	<u>Fee</u>
Less than \$20,000	\$250
\$20,001 and above	\$500

**Amendment to Service Agreement Administrative Fee**

When the applicant initiates an amendment to the Service Agreement (such as a change of scope), then an additional Service Agreement Administration Fee shall be assessed to recoup additional costs incurred by Finance, Engineering and Risk Management due to the project change. The amount of the Amendment to Service Agreement Administrative Fee will depend on the value of the project over PCJPB property, as shown above:

Exception

If the District initiates amendment(s), the Service Agreement Amendment Fee may be waived. The determination will be made by the Executive Director or his designee.

**Payment Policy**

Service Agreements Valued under \$50,000:

Service Agreements with an estimated cost of less than \$50,000 or Service Agreements that will be completed in 120 days or less require full prepayment.

Service Agreements Valued over \$50,000:

If the Service Agreement has an estimated total project cost of more than \$50,000 or will last more than 120 days, a payment option may be pre-arranged on a case-by-case basis. A minimum 10% deposit with monthly progress billings or a deposit based on a cash flow analysis with monthly progress billings (whichever is greater) may be arranged and approved at the discretion of staff. Payments under a progress billing are due 30 days following the date of invoice. All overdue balances due to PCJPB not contested in writing, by the due date shall bear interest at the rate of 1.5% per month, compounded monthly, from the due date. Additionally, PCJPB may require that all work cease until all payments are received in full.



## Service Agreement Payment Schedule

Total Project Cost	Service Agreement Duration	Payment Terms
< \$50,000	Any duration	Full Prepayment
Any amount	< 120 days	Full Prepayment
> \$50,000	> 120 days	Minimum 10% deposit with monthly progress billings or a deposit based on a cash flow analysis prepared by PCJPB with monthly progress billings, whichever is greater (approved on a case-by-case basis).

### **REASON FOR FEES**

The Purpose of the Real Estate Processing Fee and the Service Agreement Administrative Fee is to recoup costs associated with staff time to negotiate and draft the real estate document, legal time for review of documents and staff time to set up and monitor the project. The Annual License Payment and Annual Permit Payment represent the value of the encumbrance to the property created by the agreement.

### **FEE EXCEPTIONS IN GENERAL**

Only the Executive Director or his designee has the authority to waive any fee. The decision to waive the fee will be determined on a case-by-case-basis depending on the circumstances.

### **PRE-PAYMENT OF ANNUAL FEES**

Any third party applicant may choose to pay a one-time fee in lieu of an Annual License Payment or Annual Permit Payment. This fee will be 10 times the Annual License Payment or Annual Permit Payment Annual Fee.

### **REGULAR REVIEW OF FEES**

All fees shall be reviewed regularly by staff and updated as PCJPB's cost of processing permits increases. Annual License Payments and Annual Permit Payments shall be reviewed regularly by staff and updated to reflect current property values.