

RESOLUTION NO. 2021- 18

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

* * *

**ADOPTING AN UPDATED POLICY REGARDING THE PROCESSING OF REQUESTS FOR
CONVEYANCE OF PROPERTY INTERESTS AND ASSOCIATED FEE SCHEDULE**

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB), owns various properties, including the Caltrain right of way, which are the subject of numerous requests for use by various public and private parties; and

WHEREAS, in order to respond to third-party requests to enter or use JPB property, on October 7, 2010, pursuant to Resolution 2010-45, the Board of Directors (Board) adopted a Policy Regarding Processing of Requests for Conveyance of Property Interests Involving the Property Owned by JPB (Policy); and

WHEREAS, the Policy includes a Fee Schedule to allow the JPB to recoup costs associated with handling such requests and to generate revenue from the use of JPB property by third parties; and

WHEREAS, on February 6, 2020, pursuant to Resolution 2020-05, the Board adopted the Caltrain Rail Corridor Use Policy (RCUP) to facilitate agency review of potential uses of JPB property to ensure they are compatible with the railroad's current and future needs; and

WHEREAS, staff has updated the Policy to describe the JPB's current process and terms for issuing Property Access Agreements to third parties to access and/or use JPB property; be consistent with the RCUP; and update terms and procedures for other aspects of the process for reviewing proposed third-party uses of JPB property; and

WHEREAS, staff also has updated the associated Fee Schedule to reflect current costs of processing requests to access and/or use JPB property, and to reflect current market values; and

WHEREAS, on April 1, 2021, the Board held a public hearing to seek and consider input on the revised Fee Schedule.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby approves the updated "Policy Regarding Process of Requests for Conveyance of Property interests Involving Property Owned by the Peninsula Corridor Joint Powers Board" and associated Fee Schedule, attached hereto with the understanding that: (1) the policy will specifically require the accurate recording of all physical right of way for utilities approved through the process and the maintenance of records that reflect the nature and location of such facilities and (2) the policy will permit staff to consider the waiver of encroachment and other fees for qualified non-profit and governmental entities in accordance with a Guiding Principal Statement that staff will prepare for review by the WPLP Committee; and

BE IT FURTHER RESOLVED that the Executive Director is authorized to approve or deny requests for access to, or use of, JPB property in accordance with the attached policy.

Regularly passed and adopted this 1st day of April, 2021 by the following vote:

AYES: Chavez, Gee, Hendricks, Pine, Stone, Walton, Zmuda, Heminger, Davis

NOES: None

ABSENT: None


Chair, Peninsula Corridor Joint Powers Board

ATTEST:


JPB Secretary

PENINSULA CORRIDOR JOINT POWERS BOARD

POLICY REGARDING THIRD PARTY REQUESTS TO USE PROPERTY OWNED BY THE PENINSULA CORRIDOR JOINT POWERS BOARD

Overview, Background, and Purpose

The Peninsula Corridor Joint Powers Board (“PCJPB”) owns a railroad right-of-way running from San Francisco down through San Jose, the Caltrain Rail Corridor (“Corridor”) for the purposes of operating the Caltrain passenger rail service. Within San Mateo County, Corridor ownership is shared with the San Mateo County Transit District. Additionally, PCJPB separately owns property near 26 Caltrain stations, as well as other property purchased in support of various capital projects. It is intended that, as additional property is purchased by PCJPB, third party use of that property shall be governed by this Policy. As of 2021, the PCJPB’s property holdings (“PCJPB property”) total approximately 690 acres, a substantial portion of which is dedicated to transportation uses.

Due to the Corridor's location along the Peninsula, and the historic economic development that it triggered, the Corridor runs through the middle of many communities between San Francisco and San Jose. As a result, the PCJPB receives numerous requests from utilities to cross, or otherwise occupy, portions of the Corridor, as well as various other third party requests to use PCJPB property for uses unrelated to railroad operations. In addition, properties that are not currently required to support Caltrain operations may be leased to generate revenue to offset the cost of operating Caltrain.

PCJPB, and its predecessor Southern Pacific Railroad, have had a long history of allowing third-party utilities to operate within the Corridor and has entered into numerous revenue-generating leases of PCJPB Property. The process for reviewing and approving both types of requests is currently governed by the “Policy Regarding Processing of Requests For Conveyance of Property Interests Involving Property Owned by the PCJPB” which was adopted in 2010 via Resolution 2010-45. Following Board adoption, this updated policy will supersede that previous policy.

PCJPB recognized a need to update its property use process in response to the PCJPB Board of Directors’ adoption of an ambitious Long-Range Service Vision for the railroad on October 3, 2019. As such, the PCJPB Board of Directors adopted the Caltrain Rail Corridor Use Policy on February 6, 2020 via Resolution 2020-05 (“RCUP”) to guide the use of the agency’s property and support delivery of Caltrain’s Long-Term Service Vision

The RCUP is intended to provide a process to facilitate agency review of requested uses of PCJPB property to ensure they are compatible with the railroad’s current and future needs. Following approval through the RCUP compatibility review process, a proposed use is required to undergo additional review for engineering, operational, and regulatory compliance before the agency will issue an agreement to allow a third party the right to use PCJPB property. The types of agreement issued by PCJPB are listed below and are hereafter referred to as “Property Access Agreements.”

This updated policy describes the agency's process and terms for granting Property Access Agreements to third parties to access and/or use PCJPB property. It has been updated to include and clarify the role of the RCUP in the process, as well as update terms and procedures for other aspects of the review process for proposed uses.

The contents of this updated policy are as follows:

- Summary of Property Access Agreements
- Staff review process and terms for non-lease agreements
- Staff review process and terms for lease agreements
- Final approval process for all agreements

Summary of Property Access Agreements

Below is a list of the types of agreements most frequently issued by the PCJPB and a brief description of each, including required conditions.

Service Agreement

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

Right of Entry Permit Agreement

Purpose: Allows third party access to PCJPB Property for a specified period to accomplish a specific activity, which generally involves construction work on an existing facility. No facilities may be constructed on PCJPB Property.

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 third party access to PCJPB Property for a specified period to accomplish a specific activity, which generally involves construction work and allows an applicant's semi-permanent facility to remain on PCJPB 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 PCJPB Property for a specific purpose and a limited duration when a Right of Entry Permit, License Agreement or Lease is not appropriate, when no construction is to occur on the property and when the property is outside of the Operating Use Zone as defined in RCUP.

Lease Agreement

Purpose: Allows a third party to use PCJPB Property not currently required for rail operations 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: Provides 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. Requires Board approval.

Staff Review Process and Terms for Non-Lease Agreements

This section describes the review process and terms for all agreements that are not leases. Non-lease agreements are typically issued for utility crossings, but may be used in other circumstances when a lease agreement is not appropriate.

After receipt of an application form, staff will analyze each request in accordance with this Policy and, if the request warrants further review, will present the applicant with an estimate of PCJPB's processing and oversight costs ("Processing Costs"), as applicable. Only after the applicant has paid a non-refundable processing fee (the "Real Estate Processing Fee") and, if required, signed a Service Agreement to reimburse PCJPB for its actual cost of reviewing the request, will staff analyze the request to ensure the following, which shall be hereafter referred to as "Baseline Conditions":

- The request is determined to be compatible with current and anticipated future operational requirements and potential railroad uses of the property, and is consistent with RCUP; and
- The applicant's improvements are designed to be compatible with 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
- All facilities constructed on PCJPB Property are constructed in a manner consistent with all applicable general engineering standards, Caltrain standards and California Public Utilities Commission regulations; and
- The request is in full compliance with the requirements of applicable federal and state laws including any conditions embodied in grants and conditions of financing for the property acquisition by the PCJPB or its predecessors in interest.

Once the review is completed, staff will process the appropriate Property Access Agreement, typically based upon PCJPB's standard forms, and will forward the agreement and a staff recommendation to the Executive Director of the PCJPB (or his/her designee) for consideration. The Property Access Agreement will require the applicant to agree, at the minimum, to the following conditions ("Required Conditions"):

- The Applicant must agree to relocate applicant's facilities (at applicant's expense) if necessary to accommodate the use of the Property for public transportation purposes or real estate development, as determined by PCJPB, its successors or assigns; and
- The applicant must maintain and repair its improvements at its sole expense; and

- The applicant must indemnify the PCJPB against liability (including for the release of hazardous materials) arising out of permittee’s use of the property; and
- The agreement will include a reservation of a right in favor of PCJPB to terminate for breach; and
- The agreement will require that the applicant (and/or its contractor) provide adequate insurance for the benefit of PCJPB, its successors and assigns, including, when necessary Railroad Protective Liability Insurance (RPLI).
 - PCJPB shall obtain RPLI in its own name, at the sole cost and expense of the applicant. An applicant may provide its own RPLI by demonstrating that it can provide coverage that is equivalent to, or better than, the RPLI available to PCJPB.

Staff will record the location and nature of any utility or similar agreement approved through this process and will require the applicant to provide the PCJPB with current and accurate “as built” drawings of any facility constructed. Staff will maintain accurate records of each such Non-Lease Agreement to support and facilitate future Caltrain capital and other projects.

Staff Review Process and Terms for Lease Agreements

This section describes the review process and terms for all lease agreements, for which there are two general types of sites:

- **Independently Usable Sites:** In certain locations, especially along commercial corridors, commercial demand exists for use of PCJPB Property that is not currently required to support Caltrain operations. Such properties are typically accessible from the public street system and can be used independently, without reliance upon use of property owned by entities than other the PCJPB (“Independently Usable Sites”).
- **Landlocked Sites:** In other instances, property not currently required to support Caltrain operations is landlocked, meaning it has no means of access other than from the Caltrain corridor or though the contiguous site, but may have commercial value to the contiguous property owners (“Landlocked Sites”).

In both such cases, PCJPB may seek to lease property to generate revenue, and all potential leases must be analyzed and approved in accordance with the terms and process described below.

Requirement for Fair Market Rent: All property shall be leased at market value unless otherwise approved by the Board in its sole and complete discretion. Market value will be evaluated in consideration of current market conditions, the proposed use, the site’s physical characteristics (including location, size, access and shape of the property), and taking into account all rights and limitations created by the lease agreement, and shall be referred to throughout as “Fair Market Rent.”

RCUP Compatibility and Determination of the Lease Term: Before any site is made available for lease, staff shall ensure that use of the site by a third party is compatible with the

railroad's current and future needs for its property and is compliant with RCUP. Real Estate staff shall also review the site with other departments, including Planning and Engineering, to determine if and when the site will be needed to support future rail activities or capital projects. For revenue-generating commercial leases, staff shall seek to make the site available for the longest possible duration that does not conflict with potential PCJPB uses of the property, it being understood that longer lease terms generally lead to more lucrative financial return.

The review and approval process and terms for leases are different for independently usable sites and landlocked sites, as described below.

Independently Usable Sites: When property with independent commercial potential is identified as available for lease, and the proposed use will be for more than five years, staff shall seek to competitively market the site, either through a commercial broker or directly by staff, to attract a pool of qualified potential tenants. Leases of less than five years are not required to be marketed but may be if staff feels it would be appropriate to do so.

Proposals will be evaluated using criteria, developed by staff to reflect the specific site, and will typically include the maximization of rent paid, compliance with the Baseline Conditions, and other conditions specific to the property itself. In no case shall rent be for less than Fair Market Rent, unless approved by the Board.

Once the review is completed and a potential tenant has been selected, staff will process the lease agreement, which will be based upon PCJPB's standard form, and will forward the agreement and a staff recommendation to the Executive Director of the PCJPB (or his/her designee) for consideration. The lease will require the applicant to agree, at a minimum, to the Required Conditions.

Landlocked Sites: Staff may negotiate directly with the contiguous property owner, unless other potential lessees have expressed interest in the site or staff otherwise believes that marketing the site will attract a larger pool of qualified tenants, in which case staff shall follow the procedures for marketing a non-landlocked site. When leases for landlocked property come due, staff may choose to negotiate directly with the existing tenant if the tenant has been a tenant of good standing throughout previous lease term. The lessee must comply with the Baseline Conditions and the rent must be no less than Fair Market Rent unless otherwise approved by the Board.

Once the review is completed and a potential tenant has been selected, staff will process the lease agreement, typically based upon PCJPB's standard form, and will forward the agreement and a staff recommendation to the Executive Director of the PCJPB (or his/her designee) for consideration. The lease will require the applicant to agree, at a minimum, to the Required Conditions.

Final Approval of Property Access Agreements

This section describes the final approvals that are needed to issue a Property Access Agreement to a third party after staff has reviewed and recommended the request for approval.

If the Property Access Agreement is within the authority of the Executive Director, as described below, the Executive Director or his/her designee may execute the agreement. If the request falls within the Board's authority, as described below, the Executive Director may sign the agreement only being delegated authority by 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 met:

- The Property Access Agreement is for a term not more than five years
 - Exception: if the lease is an extension of a lease to an existing tenant and is for an Independently Usable Site, the new term will extend the occupancy of the same tenant for more than 5 consecutive years, the lease will require board approval; and
- The applicant has paid the appropriate amount of compensation as described in the PCJPB's Fee Schedule (unless such fees are waived by the Executive Director or his/her designee for public agencies or certain nonprofits, whose qualifications meet and satisfy the Guiding Principles to be developed by staff and provided to the Work Program-Legislative-Planning Committee), or for leases, the rent is set at Fair Market Rent; and
- The Property Access Agreement includes all of the Required Conditions and staff has determined that such use is consistent with the Baseline Conditions.

PCJPB BOARD REVIEW

The Board of Directors shall review and approve all conveyances of permanent property rights as well as any other requests that do not fall into the authority of the Executive Director, as outlined above. The Property Access Agreements may be issued only after the applicant pays appropriate compensation as set forth in the PCJPB's Fee Schedule or, for leases has paid the first month's rent and any security deposit.

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 Third Party Requests to Use Property Owned by the Peninsula Corridor Joint Powers Board"

Right of Entry Permit Agreement

Real Estate Processing Fee: \$2,100

Annual Permit Payment: \$5,000, if the total area is 2,000 or less

Annual Permit Payment: fair market value (not less than \$5000) if the area is greater than 2,000 sq. ft.

License Agreement

Real Estate Processing Fee: \$2,100

Annual Permit Payment: \$5,000, if the total area is 2,000 or less

Annual Permit Payment: fair market value (not less than \$5000) if the area is greater than 2,000 sq. ft.

Encroachment Permit

Real Estate Processing Fee: \$1,000

Lease Agreement

Real Estate Processing Fee: None

Monthly Rent: fair market value (as determined by staff), but not less than \$800/mo.

Easement Agreement

Real Estate Processing Fee: \$2,100

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

SERVICE AGREEMENTS AND ASSOCIATED FEES

Purpose

If staff determines that staff review of a request to access property will require more than 8 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 conveys neither property rights nor right to use property.

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.

RAIL CORRIDOR USE POLICY – USE VARIANCE FEE

All proposed non-railroad uses of JPB property must be determined to be compatible with the railroad’s current and future uses, as demonstrated through compliance with the Board-adopted Rail Corridor Use Policy, or the “RCUP” (adopted February 6, 2020 as Resolution 2020-05).

The RCUP review process does not charge a fee for the initial compatibility review(s) of proposed uses.

For uses that are determined to be not compatible with the railroad’s current and future needs after the initial compatibility review, third parties may opt to request an RCUP Use Variance. A Base Fee of \$2500 is charged for all proposed uses of PCJPB property that enter into the RCUP Use Variance process. This nonrefundable Base Fee must be fully paid by the applicant at the time of submitting the RCUP Use Variance application. The Base Fee is charged to cover PCJPB costs for reviewing and processing the RCUP Use Variance application, inclusive of up to 12 hours of staff time and up to 3 hours of the Attorney’s time.

The RCUP Use Variance Review Base Fee is likely to cover PCJPB costs for reviewing *most* Use Variance applications; however, there may be some instances in which the complex nature of the proposed use or its location on the corridor requires a more extensive review of the Use Variance application. In these instances, the Base Fee may not be adequate for covering PCJPB costs for processing and reviewing, and additional staff and/or Attorney time may be required. Therefore, on a case-by-case basis, the PCJPB may charge an Additional Fee (on top of the Base Fee) to seek reimbursement for PCJPB costs for Use Variance applications requiring extensive review. Staff will determine if an Additional Fee is required to cover PCJPB costs for processing a complex Use Variance application after receipt of the application, and as soon as a determination is made, staff will notify the applicant of any Additional Fee as soon as possible. The Additional Fee to process complex Use Variance applications is to be issued and paid using a Service Agreement, under the terms and conditions described for Service Agreements above. The Additional Fee is nonrefundable and must be fully prepaid by the applicant before staff may process a complex Use Variance application.

Notes:

- Payment of the RCUP Use Variance Fee neither conveys PCJPB’s approval of the compatibility of the proposed use, nor provides authorization to use property.
- Additional information about the RCUP review process, including the Use Variance process, can be found in the adopted Rail Corridor Use Policy, available on Caltrain’s website.

REASON FOR FEES

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

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.