



APPENDIX E

RFTA Responses to Public Comments Received on the Proposed Access Control Plan Update

Exhibit E

**RFTA STAFF RESPONSES TO THE OCTOBER 2015 COMMENTS RECEIVED ON THE
RIO GRANDE RAILROAD CORRIDOR ACCESS CONTROL PLAN UPDATE
AND DESIGN GUIDELINES AND STANDARDS**

April 2016

Responses to the City of Glenwood Springs Comments:

City Comment #1: Evaluate the risk to the corridor by determining the number of rail banked corridors in the United States, and the number of successful challenges to a corridor's rail banking status to force abandonment:

RFTA Staff Response: There is little STB precedent on the topic of severing a railbanked line. However, RFTA believes that severing a railbanked railroad corridor is an issue the STB takes seriously and examines closely when the issue is raised. As the steward of the Rio Grande Railroad Corridor, RFTA must do its best to avoid circumstances that might give rise to claims of severance and, if they are raised, be in the best position possible to defend against them. As a case in point, the STB examined a May 1999 claim by Garfield County that the Rio Grande Railroad Corridor had been severed at Wingo Junction due to the CDOT Highway widening project. The STB ultimately ruled that no severance had occurred because the Roaring Fork Railroad Holding Authority (RFRHA) had obtained a [commitment](#)¹ from CDOT to restore the corridor to proper working order at such time that rail service was restored. In the future, when public crossing sponsors propose crossing designs that RFTA's railroad experts believe might create a severance of the corridor, RFTA and the crossing sponsor could potentially seek a declaratory judgement to determine whether the STB would consider it a severance, although it is possible that the STB could decline to rule on the request.

The Rails to Trails Conservancy, the preeminent authority on railbanked corridors, states the following in its Railbanking Fact Sheet (see [Attachment B](#)):

"3. The tracks and ties on a railbanked line can be removed. However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way."

- A. **City Comment:** Research the access policies and design guidelines of other major rail banked corridors in the United States and supply the policies and design guidelines to the RFTA Board to show how other corridors are protected, and to ensure that the proposed policy for the RFTA corridor is not overly onerous or restrictive.

RFTA Staff Response: In light of the holding of the United States Supreme Court case of [MARVIN M. BRANDT REVOCABLE TRUST ET AL. v. UNITED STATES -01-2014](#),² whereby landowners prevailed in their argument as adjacent owners that they were entitled to ownership of abandoned Federal

¹ See RFTA response to City Comment #7, Attachment C, below.

² Citation. 572 US _ (2014)

easements, railbanking both protects the Corridor from intrusion by private interests and preserves it for its intended use in the future as a public transportation corridor for the entire region.

RFTA's primary objectives related to the Rio Grande Railroad Corridor are as follows:

1. Maintain the corridor's railbanked status, which preserves federal land grant areas that comprise approximately 7 miles of the 34-mile long corridor.
2. Comply with Great Outdoors Colorado (GOCO) Conservation Covenants that were agreed to by RFRHA and its constituent governments as a condition of receiving \$1.5 million in grant funding used to acquire the corridor, and subsequently assigned to RFTA.
3. Maintain the Rio Grande Trail for use by residents and visitors.
4. Preserve the corridor for its primary purpose as a future public transportation corridor.

In order to achieve these objectives, RFTA must have policies to assist with the management of a regional asset of inestimable value. RFTA staff believes that it would be nearly impossible to develop policies and guidelines that would foresee every potential circumstance that might arise or which could be as flexible as the commenter would prefer and still enable RFTA to achieve the four objectives stated above. RFTA would be interested in knowing how the City would modify the proposed ACP update in order to make it less onerous and restrictive, while still providing the corridor with adequate management tools to achieve the objectives that were assigned to RFTA by RFRHA.

City of Glenwood Springs' staff has previously performed research regarding the [crossing](#)³ policies of other railbanked trail corridors. The policies of a number of these corridors stipulate that crossing sponsors must enter into agreements requiring them to remove their crossings if freight rail is reactivated or to otherwise indemnify the corridor owners. It is possible that other owners of railbanked corridors could have less restrictive Access Control Policies than RFTA, or no policies at all for that matter. However, their corridors are not likely to be bound by GOCO covenants, and: 1) They may not include any federal land grant areas; 2) They may not have been acquired for the express purpose of being preserved as future public transportation corridors; 3) They may not be in areas in which there are any public crossings that are being proposed; 4) They may not have private property owners adjacent to the federal land grants that make up their corridors; and/or 5) They may not be adequately protecting the federally granted segments of their assets in light of the relatively recent Supreme Court decision involving MARVIN M. BRANDT REVOCABLE TRUST ET AL. v. UNITED STATES -01-2014.⁴

Although researching the access control policies of all other railbanked railroad corridors might yield useful information, RFTA staff believes that the unique historical, legal, geographical, and political circumstances surrounding each corridor would make it challenging to identify corridor peers that would match the Rio Grande Railroad corridor closely enough to make them relevant to the discussion at hand. In addition, the effort would be time-consuming and expensive.

³ See Attachment D, below.

⁴ Citation. 572 US _ (2014)

RFTA is proposing to update the 2005 Access Control Plan, which updated the 2001 Access Control Plan. Very little of substance has changed from one iteration of these policies to the next. Section 17.0 of the current update of the ACP has been revised to make it clear to crossing sponsors that they will be permitted to cross the railroad corridor at grade in so far as their proposed designs would not, in the opinion of RFTA’s railroad experts, jeopardize the corridor’s railbanked status. RFTA does not believe this requirement is overly restrictive or onerous.

- B. **City Comment:** Identify the parcels that are at risk under abandonment and assess the cost of buying the corridor outright. Determine whether ownership of the corridor would be less costly than designing and building for freight rail.

RFTA Staff Response: The Rio Grande Railroad Corridor includes approximately 7 miles of federal land grant areas. The width of the right of way in the federal land grant areas is typically 200 feet. A price per square foot, ranging from \$1 - \$15 has been estimated for four different purchase scenarios below, depending upon whether the full 200 feet or only 100 feet of the land grant areas are acquired:

	Line Item	Scenario 1	Scenario 2	Scenario 3	Senario 4
1	Feet per Mile	5,280	5,280	5,280	5,280
2	Miles of Federal Land Grant Areas	7	7	7	7
3	Linear Feet of Federal Land Grant Areas	36,960	36,960	36,960	36,960
4	Width of Federal Land Grant Areas	200	200	200	200
5	Square Feet of Federal Land Grant Areas	7,392,000	7,392,000	7,392,000	7,392,000
6	Hypothetical Cost Per Square Foot	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00
7	Hypotehtical Value of Federal Land Grant Areas	\$ 7,392,000	\$ 36,960,000	\$ 73,920,000	\$ 110,880,000
8	Assuming only 100 ft. of R.O.W Acquired	\$ 3,696,000	\$ 18,480,000	\$ 36,960,000	\$ 55,440,000

Without obtaining a formal appraisal it is difficult to accurately estimate the value of the federal land grant areas. However, the chart above serves to illustrate that at even \$1 per square foot, the cost would be significant, not including staff time, appraisal costs, and legal fees involved in the acquisition process. RFTA staff acknowledges that in some cases the adjacent property owners may be governmental entities. In such instances, it might be possible to obtain portions of the right of way needed by RFTA for trail and future public transportation purposes without cost.

As an alternative, RFTA is planning to approach property owners adjacent to the federal land grant areas to determine their willingness to exchange bargain and sale deeds. The plan would be for RFTA to deed 50 feet of the outermost extremities of the federal land grant areas to adjacent property owners in exchange for bargain and sale agreements from them deeding to RFTA any interests they have in the remaining portions of the federal land grant areas and the corridor. Subsequent to the exchange of deeds, RFTA would attempt to obtain Congressional ratification of the deeds. Although there would still be staff and legal expenses involved, RFTA staff believes this approach would be a more cost-effective way to preserving the contiguous corridor for its current and future uses, than attempting to buy the federal land grant areas from adjacent property owners.

- C. **City Comment:** Determine a future vision and purpose for the corridor and combine and reconcile the Access Control Plan, the Regional Trails Plan and the 6f designation or the rail/trail corridor. Recently, through the South Bridge Environmental Assessment process, the City, CDOT and RFTA have discovered that the RFTA corridor is encumbered with 6f environmental protection status. This designation requires that the trail use be protected in the RFTA corridor in perpetuity. Given this, the City believes it is important for RFTA to review combine and reconcile the Regional Trails Plan, the Access Control Plan and the 6f status and write a corridor use masterplan. At this point the 6f designation is not fully understood and the separate documents create conflicts.

RFTA Staff Response: A vision for the corridor was established by RFRHA and assigned to and assumed by RFTA. The [primary](#)⁵ intended use of the corridor, agreed to by all RFTA's constituent governments, including the City of Glenwood Springs, was as a future public transportation corridor. Allowable secondary recreational and other uses were permitted so long as they didn't preclude the primary use. In 2003, consistent with RFRHA's purpose for the corridor, the RFTA Board of Directors adopted the following End Statements pertaining to the corridor:

1.1 The Rio Grande Corridor is Appropriately Protected and Utilized

- A. The valley-wide trail is completed by 2010 (completed)
- B. Rio Grande Corridor open space is protected
- C. Rio Grande Corridor is preserved for transit use

It is unclear why the City believes the vision or purpose of the corridor should be revisited. However, because the City is a member of RFTA, and is represented on the RFTA Board of Directors, it is free at any time to propose changes to the purpose/vision for the corridor, although such changes would likely require a unanimous vote of the seven constituent governments of RFRHA who acquired the corridor.

The corridor is encumbered by 6f protections by virtue of three Land and Water Conservation Fund (LWCF) grants RFTA received from Colorado State Trails for the construction of the Rio Grande Trail. RFTA is verifying that that segments of the trail constructed using these funds were:

- Buffalo Valley to County Road 154.
- Pitkin County Line to Hooks Lane in Eagle County
- Catherine Store - Rock Bottom Ranch in Garfield County

Applicable conditions associated with this funding are as follows:

Section 6(f)(3) of the LWCF Act contains strong provisions to protect Federal investments and the quality of assisted resources. The law is firm but flexible. It recognizes the likelihood that changes in land use or development may make some assisted areas obsolete over time, particularly in rapidly changing urban areas. At the same time, the law discourages casual "discards" of park and recreation facilities by ensuring that changes or "conversions from recreation use" will bear a cost - a cost that assures taxpayers that investments in the "national

⁵ See Attachment E, below, i.e. Attachment B to RFTA Letter to Mayor Leo McKinney, dated May 15, 2015

recreation estate" will not be squandered. The LWCF Act contains a clear and common sense provision to protect grant-assisted areas from conversions.

SEC. 6(f)(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

Railbanking experts have pointed out that 6f protects the corridor, but it should not be an impediment to rail reactivation. Sponsors of crossings in the segments of the corridor protected by 6f must take the above provisions into consideration. RFTA will include a map as an appendix to the proposed Access Control Plan Update that identifies the segments of the corridor protected by 6f. RFTA is attempting to ascertain from Colorado Parks and Wildlife whether 6f restrictions pertain to only the segments of the corridor in which they were used to help construct the Rio Grande Trail, or whether they encumber the entire 34 miles of RFTA-owned corridor.

RFTA intends to update the Rio Grande Corridor Comprehensive Plan, which includes the Access Control Plan and the Recreational Trails Plan. The First Amended and Restated RFRHA Intergovernmental Agreement Dated June 26, 1997 set forth the content of the Comprehensive Plan as follows:

"The Plan shall include the following:

- I. A listing and description of possible uses for the property, including but not limited to such improvements necessary to place and operate a public transportation system, public trail, and/or access to public lands;
- II. A detailed improvements and operations plan for the ultimate preferred uses(s) on the property, including a recommended management and funding strategy; and
- III. An interim plan which incorporates the interim use of the rail corridor for a temporary trail following approval from the Surface Transportation Board of a certificate of interim trail use pending the re-establishment of rail service."

RFTA plans to update the other elements of the Corridor Comprehensive Plan after the Access Control Plan Update has been adopted by the RFTA Board of Directors.

City Comment # 2: In addition, the City asks that these items be addressed:

- A. **City Comment:** The final draft of the Design Guidelines should be fully reviewed.

RFTA Staff Response: RFTA staff plans to change the title from Design Guidelines and Standards to "Design Guidelines." The introduction of the Design Guidelines will be revised to

reflect that the Design Guidelines are intended to be advisory in nature.⁶ No guidelines, standards, or policies can foresee every circumstance that might arise. When uses of the corridor are proposed, RFTA staff will consult the guidelines and work with project sponsors during the design phase to develop their projects in a manner that is as consistent with the guidelines as feasible. RFTA staff will also have design plans reviewed by its team of railroad engineers and legal consultants, when appropriate and necessary, to determine whether the proposed plans would adversely impact the corridor or potentially jeopardize the corridor's railbanked status. To be efficient with staff time and resources, it would be helpful if the City would identify specific provisions of the Design Guidelines about which it is concerned and RFTA will attempt to provide clarification.

- B. **City Comment:** Page 8, Section 2.0, A, 3 - The purpose of the policy is to "Minimize and consolidate new or existing at grade road crossings over the railroad whenever feasible." If consolidations are desired, RFTA should go through a similar process to CDOT to plan and communicate consolidation points to the adjacent property owners.

RFTA Staff Response: Because the primary purpose of the railroad corridor is to serve as a future public transportation corridor, RFTA staff believes it is appropriate to have a goal of minimizing new crossings and/or consolidating existing crossings "when feasible." The proliferation of roadway crossings along the corridor could degrade the efficiency and safety of a future public transportation system. When new crossings are being proposed or a change in use for an existing crossing is being sought, an opportunity may be created to consider the consolidation of crossings. It would be prudent for RFTA to determine the feasibility of consolidating crossings whenever possible; however, it would be challenging to foresee when these opportunities might present themselves or to know in advance what the circumstances surrounding these situations might be. Yet, it would not be unrealistic to anticipate that developers might offer or agree to consolidate existing crossings in exchange for the creation of new crossings. Given that there are no imminent plans to develop a public transportation system using the corridor it could be counter-productive to embark upon a process now to identify the specific crossings that it would be desirable to consolidate, without knowing more specifics about the future public transportation system's technology and alignment. In other words, in the short term, RFTA should attempt to act on opportunities to consolidate crossings when they arise and are feasible, but staff does not believe there is a great necessity or even that it would be productive to attempt to identify all of these opportunities before knowing whether consolidation will ever be necessary. Most likely, if use of the corridor for a future mass transportation system becomes a reality, the planning effort recommended by the City would be undertaken and the cost of consolidating crossing would largely be borne by the public transportation project itself.

- C. **City Comment:** Section 5.0, B (2) - "this ACP is not intended to abrogate any easement, license, covenant or other private agreement or restriction, provided that where the provisions of the ACP are more restrictive or impose higher standards or regulations, then the requirements of the ACP shall apply upon termination or expiration of such easement, license, covenant or other private agreement." This is a concern to the City in

⁶ See separate Attachment F for revised Design Guidelines' introduction.

that private property owners may be subject to this provision when a property is sold. Depending upon RFTA's management, new requirements could be reasonable or unreasonable.

RFTA Staff Response: Change of ownership of properties that are adjacent to the railroad corridor will require new owners to apply for crossing licenses because the licenses don't run with the land. The use of licenses is the standard practice in the railroad industry and provides the opportunity to conform license agreements to current conditions and policies. RFTA has a long standing practice of being fair and reasonable with new property owners who have applied for crossing licenses. In Section 10.0, under the heading of Private Crossing Maintenance Responsibility, it states, "Licenses shall be specific to private individual landowners and entities and shall not run with the land, nor shall they be subject to assignment or transfer to another private party, ***although RFTA will not unreasonably withhold the issuance of new licenses to new owners when properties are sold.***" RFTA will revise the draft update of the ACP to include similar language at Section 5.0, B (2).⁷

RFTA is a public transportation authority and property owners can lodge protests and appeals directly with the RFTA Board of Directors if they believe the terms of the licenses are illegal, unreasonable or unfair. The RFTA Board, in its sole discretion, can overturn staff decisions and revise policies. Ideally, the ACP should be updated every 5 years and can only be adopted by a unanimous vote of the seven original Roaring Fork Railroad Holding Authority constituent governments. This also provides an opportunity for the public to comment and register any concerns that it has about this and other ACP policies. Very few comments on the ACP have been submitted by adjacent property owners with whom RFTA has been working cooperatively for the past 15 years, and RFTA does not believe this is a significant concern to them.

Also see Attachment C (below) for RFTA Response to City ACP [Comment](#) # 16.

- D. ***City Comment:*** Section 10, B - Licensing for public crossings. The policy requires revocable license agreements for all public and private crossings. We understand through communication with CDOT that when CDOT crosses a UPRR or BNSF property, they request and receive permanent property interests (usually labeled an easement). Because public projects represent a large expenditure of public funds, the City believes that we should also get permanent property interests (an easement) for public roadway crossings and critical utility crossings.

RFTA Staff Response: Because the corridor was acquired by the seven original constituent members of RFRHA primarily to be used as a future public transportation corridor, it would be unwise for RFTA to convey any property interests in the railroad corridor that might subsequently act as an impediment to this goal. The 1997 RFRHA Intergovernmental Agreement executed by the seven RFRHA constituent governments, including the City, stated the following:

If any one Government wishes to utilize all or a portion of the Property for a new or different use not enumerated in the Comprehensive Plan and within the jurisdiction of that Government, it may do so provided that such a use is approved by the Board of

⁷ See Attachment A (below) for redline copy of proposed update to the ACP.

Directors of the Roaring Fork Railroad Holding Authority, does not preclude the desired future uses as determined by the Board of Directors, as is consistent with the obligations imposed by the funding sources referenced at Section 5, above. **It is the responsibility of the Government proposing this new or different use to prove and otherwise insure that the use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.**

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing and proposed at-grade crossings by public rights-of-way and accesses. **Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from the various funding sources described above.** Attached as Exhibit “H” is an inventory of the Property identifying certain crossings, accesses, and uses along the Property (the “Access Plan”). This Access Plan shall assist the Roaring Fork Railroad Holding Authority in identifying current uses of the corridor, and in the adoption of the Comprehensive Plan. Notwithstanding any language to the contrary herein, nothing in this Agreement shall be construed or interpreted to mean that any illegal crossings, trespass, uses, unauthorized encroachments or homesteads upon the Property are being legalized or approved by the adoption of this Agreement.”

RFTA staff is currently recommending that easements be granted to public crossing sponsors, so long as the crossings conform to RFTA’s DG and would not create a severance and/or jeopardize the corridor’s railbanked status. However, RFTA must retain the ability to relocate and/or reconstruct crossings as part of a future public transportation system using the corridor. It is likely, though, that most of the costs of relocation and reconstruction of public crossings and utilities, if that becomes necessary, would be borne by the potential public transportation project. Currently, no public transportation system operating in the corridor is in the planning stages and projects of this nature typically have planning horizons of 10 – 30 years.

Subject to discussion and approval by the RFTA Board of Directors at its May 12, 2016 Board meeting, RFTA staff proposes adding the following language to 17.0., **Process and Design Guidelines for Newly Proposed Railroad Corridor Crossings and Consolidations**: “If a public crossing is constructed in conformance with RFTA’s DG, RFTA may be willing to grant an easement to the project sponsor, subject to the approval of the RFTA Board of Directors. The easement, however, will be subject to such other terms and conditions as the RFTA Board, in its sole discretion, may determine at the time of issuance.”⁸

E. City Comment: Section 12, A 1 and 2–Thresholds for crossing improvements and cost allocation: Both of these sections state that in the event RFTA determines that increased traffic over an existing crossing warrants trail or rail improvements, RFTA will work cooperatively with owners to allocate costs as equitably as possible. There is no threshold

⁸ See Attachment A, below, for a redline copy of the proposed update to the ACP.

for increased traffic. As an example, CDOT uses a 20% increase in the peak hour volume to require improvements to an intersection. RFTA should set parameters at which crossing improvements are required.

RFTA Staff Response: Pertaining to Section 12, A (1), RFTA staff believes that “working cooperatively” with owners to allocate costs of crossing safety improvements as equitably as possible provides all the assurances that the City or others might need that RFTA will not act in an unfair or unreasonable manner when situations arise in which increases in traffic volumes create unsafe conditions for trail users. The impetus for improving the safety of a crossing should not be tied to how greatly the peak hour traffic volume increases but, rather, whether the crossing in its current configuration is safe for trail users. RFTA staff believes that no local government would want to put trail users at risk due to an unsafe roadway crossing. In some instances, it might be possible for traffic volumes to increase exponentially, but still not pose a hazard for trail users. In other instances, perhaps, a small increase in traffic volumes could create an unsafe condition for trail users. It would be imprudent for RFTA to allow the continued existence of a known unsafe condition just because an arbitrary traffic volume threshold had not been exceeded. When safety concerns arise, and they should be relatively rare, RFTA will work with the crossing owners to find acceptable solutions. Unless there is a change in use, wherein it is proposed that a private crossing with limited traffic be converted to a public crossing with significant greater vehicular traffic, this provision should not greatly affect private crossing owners.

Pertaining to Section 12, A (2), which envisions the potential reinstatement of freight rail or the institution of passenger rail service, the need for safety improvements at public and private crossings will most likely be dictated by the PUC, the Federal Railroad Administration, or some other government agency. Again, as has been stated elsewhere in these responses, the majority of the costs of such improvements would likely be borne by a future public transportation project. Inasmuch as the planning horizon for the development of a rail system is typically 10 – 30 years, RFTA does not believe that any considerable effort should be invested to plan for a scenario that may be many years in the future. Conversely, RFTA staff sees no harm in providing advance notice in the ACP that this issue could arise in the future.

In the event of the institution of commuter rail service in the corridor, the 2000 Access Control Plan developed by RFRHA provided the following guidance with respect to conditions that might trigger the need to grade separate crossings:⁹

Grade-Separated Crossings. RFRHA shall use the guidelines in subsections 1-6, below, in determining when an existing private crossing must be grade-separated. The standards may also be used by RFRHA in providing comments to the PUC to assist in the agency's review of public crossing requests. Public crossings are subject to review and approval by the PUC.

1. All collector streets, arterial streets, and highways (public streets) should be grade-separated when they exceed an exposure factor of 35,000 (number of trains daily times average daily traffic count); except that the exposure factor

⁹ Part I Policy for Managing Railroad Crossings, page 28.

threshold may be increased to 75,000 for street crossings in areas with slower train speeds (e.g., within municipalities and unincorporated urban areas). In such areas, rail crossings are treated as streetcar type crossings, for purposes of analysis and in determining design standards.

2. Exposure factors are determined based on projected rail usage and trip generation rates published by the Institute of Transportation Engineers (latest edition of the ITE Trip Generation Manual), or other traffic forecasting model if approved by RFRHA.

3. Private streets and drives that meet the exposure factors in subsection 2, above, shall be grade separated, except as the standard may be modified under Section 19.0- Adjustments.

4. RFRHA or the PUC may require grade separation for crossings which have exposure factors less than the levels in subsections 2 and 3, above, when necessary due to unsafe site conditions (e.g., sight distance, road grades, accident history, etc.).

5. An exception to the grade-separation requirement may be approved for public streets (i.e., existing at-grade crossings may continue to exist) if a similar public street at-grade crossing in the vicinity is closed or consolidated, subject to PUC approval.

RFTA staff believes that the above policy, updated to reflect recommendations from the most recent ITE Trip Generation Manual, would be instructive in the event that planning is undertaken for the development of a commuter rail system. Since staff believes commuter rail using the corridor may be many years in the future, there should be time to incorporate these guidelines in a subsequent update of the ACP, inasmuch as updates should normally occur every five years. As has been mentioned in other staff responses to comments RFTA has received, the cost of grade separating crossings for the benefit of a future rail system most likely will need to be included in the total project costs and submitted to the region's voters for approval.

- F. **City Comment:** Also in Section 13.0, the policy states that an owner may be required to upgrade an existing crossing that does not comply with the design standards, at no cost to RFTA, unless a portion of the cost is allocated to RFTA by the CPUC, 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.

These sections conflict in terms of cooperation and cost allocation, and should be reconciled.

RFTA Staff Response: Section 13.0 pertains to upgrading existing crossings. The provision to which the City's comment above refers applies under certain circumstances such as the reactivation of freight or commuter rail activation, a subdivision or site development is being proposed, or when the crossing itself is proposed to be improved, realigned or reconstructed by someone else. RFTA staff believes it would be fair to revise this provision by linking it to

Section 12. A. 2, in order to indicate that RFTA will work cooperatively to fairly allocate costs of crossing improvements if freight rail or commuter rail are planned for implementation. In such a case, the PUC could require RFTA to defray a percentage of the crossing improvements; however, in the event that commuter rail is planned, the rail project might want or need to assume a greater share of the costs than the PUC might allocate to it, in order to gain public approval for the project.

In the event that another entity, whether public or private, proposes to improve, realign or reconstruct a crossing, or when a subdivision or site development is proposed, RFTA should not be expected to bear a portion of the crossing costs unless the PUC requires it to do so. While this provision doesn't preclude RFTA from contributing to the cost of these types of crossings under certain circumstances, RFTA does not have unlimited resources and RFTA should not be expected to bear a portion of crossing costs simply because it is the steward of the corridor.

- G. **City Comment:** The policy goes further in Section 13 and states that a change in use, 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 result in a requirement to upgrade the crossing (and bear 100% of the cost). Here again, no thresholds are given, RFTA is the judge of a change in use. Thresholds should be established.

RFTA Staff Response: As explained in RFTA's responses to City Comments E. and F., above, there may be situations in which RFTA will cooperate to allocate the cost of crossing improvements as equitably as possible, or bear a portion of costs allocated by the P.U.C., and/or bear a substantial portion of the costs as part of a future public transportation project using the corridor. However, there may also be situations in which crossing improvements are initiated at the discretion of other parties and, while RFTA might be willing to share in the costs, it should not be assumed or expected that it has an obligation to do so. All agreements for RFTA to share any significant costs of crossing improvements would need to be appropriated and would require an affirmative vote of 2/3rds of the RFTA Board of Directors.

Responses to Town of Carbondale Comments:

Town General Comment on the ACP: RFTA states the purpose of the ACP is to uphold and preserve the Railroad Corridor's railbanked status under 16 U.S.C. 1247 (d), under the jurisdiction of the Surface Transportation Board for future freight rail reactivation. All of the provisions within the ACP and the DGS are written for the preservation of freight rail activation.

The Board of Trustees would still like to see RFTA explore other areas where the transportation corridor can be preserved without requiring the strong policies and procedures that create and maintain freight rail corridor. Some areas of concern we have with the draft ACP and DGS are as follows:

RFTA Staff Response to Town's General Comment: Please see RFTA Staff Response to [City](#) Comment 1. B., above.

Town of Carbondale Comment # 1: *All RFTA corridor crossings, whether they are public or private, will be revocable licenses agreements.*

The Town has concerns on the requirement of revocable license in the ACP and feels that language should be modified to allow public entities the ability to receive an easement or an irrevocable license agreement. This is consistent with what COOT requires for Union Pacific crossings. We have checked with DOLA on federal grant requirements and we would be at risk of having to shoulder the complete cost of relocating the infrastructure if a license is revoked. If we are building the crossing improvements to the Design Guidelines and Standards, then the improvements should be considered permanent and that entity seeking rail reactivation should cover any relocation costs. There is the potential to receive a license agreement for the life of the improvements but the Town would need to review any specific language proposed by RFTA.

RFTA Staff Response: The Town has a valid point that if project sponsors design infrastructure improvements that conform to RFTA's Design Guidelines it should preclude the necessity to remove or relocate them in the event of the reactivation of freight rail service or the institution of commuter rail service. However, it is not possible to foresee every future circumstance that might make it necessary to reconstruct or relocate these types of improvements and, at a minimum, RFTA must maintain the ability to do so, albeit at the expense of such future rail projects. RFTA staff agrees that this caveat would be appropriate to include in whatever form of agreement is used governing crossing and utility projects that are designed and constructed in a manner that conforms to RFTA's Design Guidelines. Please see RFTA Staff Response to City [Comment 2. D.](#), above, which has revised ACP language, at Section 17.0, that RFTA staff proposes to address this concern.

Town Comment # 2: *The documents states that utilities are generally treated as a private crossing or encroachments in nature, covered by a license agreement with RFTA, even if owned and operated by a public agency or public utility. RFTA states that railroads traditionally allowed private crossings only by 30-day terminable licenses. In order to protect the corridor in a fashion compatible to rail reactivation, RFTA intends to continue that practice.*

It would be difficult, if not impossible, for a public or private utility to operate on a 30-day revocable license agreement. Long range planning, operations and maintenance would be difficult with a 30-day revocable license. A utility would not be able to obtain state or federal funding to construct and maintain their utility on a 30-day revocable license.

RFTA Staff Response: See RFTA Responses to City [Comment 2. D.](#) and Town Comment #1, above.

Town Comment # 3: *RFTA desires to limit new at-grade crossings to serve any new parcels or lots, and to attempt to consolidate new crossings with existing crossings whenever feasible, with the goal of no net new crossings. "New parcel" means the lot or parcel that was created by plat or deed.*

If RFTA is looking at consolidating accesses, they should go through a process similar to what the Town did with CDOT and the SH 133 Access Control Plan. We met with all property owners where their accesses to the highway corridor were going to change and identify how their access was going to be maintained.

RFTA Staff Response: See [RFTA](#) Response to City Comment 2. B, above.

Town Comment # 4: *RFTA desires to participate in the review of planning, zoning and development applications, as necessary, to safeguard the interest of the railroad corridor. RFTA will coordinate with property owners, local governments, COOT and other affected agencies, in order to identify railroad corridor crossing requirements at the earliest possible stage in the development review process.*

RFTA's involvement with all aspects of community development review process could be cumbersome, and areas of influence within that process needs to be clearly defined and consistent throughout the region.

RFTA Staff Response: Please see RFTA Staff Response to City [ACP](#) Comment # 39 from the first round of comments (attached below). Also, RFTA's role in the review of planning, zoning and development applications, as it relates specifically to this provision of the proposed ACP update, would be strictly limited to potential impacts on the railroad corridor. Currently, RFTA is generally a referral agency for land use reviews in all jurisdictions in the region, so this provision is intended only as a reminder for developers and jurisdictions to get RFTA involved as early in the review process as practicable if uses of the corridor are proposed, so as to avoid potential problems.

Town Comment # 5: *In the event RFTA determines that increased traffic over an existing crossing warrants rail safety improvements, when rail on the corridor is imminent or active, RFTA will work cooperatively with the owners to allocate the cost of improvements between owners and RFTA as equitably as possible.*

How will RFTA determine what triggers increased traffic? RFTA needs to develop standards that will establish traffic numbers. Our SH 133 Access Control Plan uses a 20% increase in peak hour volumes at an intersection before improvements are required. How will RFTA determine equitable cost sharing?

RFTA Response: Please See RFTA Staff [Response](#) to City Comment 2. E., above.

Town Comment # 6: *To the greatest extent feasible, all crossings shall meet the current minimum Design Guidelines and Standards adopted by RFTA, included in the Appendices section of this policy. The general types of crossings are listed in subsections A through E. An owner may be required to upgrade an existing crossing that does not comply with the design standards, at no cost to RFTA, unless a portion of the cost is allocated to RFTA by the CPUC, when freight or commuter activation takes place, a subdivision or site development is proposed, or when the crossing itself is proposed to be improved, realigned, or constructed.*

This language appears to be in conflict with other financial sharing statements within the ACP. This section places a potentially significant financial burden on the owners of crossings.

RFTA Staff Response: Please see RFTA Staff Response to City Comment 2. [E.](#), above.

Town Comment # 7: *A change in use of an existing crossing, which may include safety concerns, an increase in traffic, any physical changes proposed for the crossing location, or a change from a private crossing to a public crossing, may also result in the requirement to upgrade the crossing, or revocation/removal of the crossing and improvements.*

This could be an unknown expense for the owners of a crossing. More or less at RFTA's discretion, they can force an entity to upgrade a crossing. If the entity cannot afford to meet the DGS standard, the crossing can be removed. No standards or thresholds are listed; RFTA will determine when a change in use occurs.

RFTA Staff Response: Please see RFTA Staff Response to City Comment 2. [G.](#), above.

Town Comment # 8: The RFTA Access Control Plan Working Group has not discussed the Design Guidelines and Standards. Although we have reviewed the ACP in detail, a broad discussion needs to take place on the standards. There are areas where language maybe conflicting.

RFTA Staff Response: Please see RFTA Response to City Comment 2. [A.](#), above.

Town Comment # 9: The Board of Trustees would like to see better clarification on thresholds and standards that will require any upgrade to crossings along the corridor. The Trustees would request RFTA thoroughly investigate other alternatives for protecting the corridor. Town staff will continue to work with RFTA staff and members of the Working Group to clarify some of the concerns the Trustees and Town staff have with the ACP and DGS.

RFTA Response: Please see RFTA Staff Responses to Town Comment # 5 and [General](#) Comment, above.

Responses to Comments Received From Garfield County:

Garfield County General Comment # 1 on the ACP: The Garfield County Board of County Commissioners has reviewed this document and remains concerned about the tone and the general philosophy expressed by the Plan. Foremost, the Board believes this document to be draconian in nature in that the Plan advances the need of the Corridor over private property rights and shifts all significant financial burden directly onto the backs of either local government or private property owners.

RFTA Staff Response to General County Comment: The Rio Grande Railroad Corridor is a public asset of inestimable value. The corridor was purchased with the express purpose of preserving it for its primary use as public transportation corridor. In the interim, the corridor is being used for recreational purposes and a paved, contiguous, hiking and biking trail has been constructed, which is enjoyed by many thousands of residents and visitors each year. The corridor is also encumbered by Great Outdoors Colorado (GOCO) Conservation Covenants, which prohibit certain uses in nine conservation covenant areas, as well as the entire corridor itself, unless such uses are included in a Comprehensive Plan that has been approved by GOCO. Development of the Comprehensive Plan is intended to be guided by certain principals and take into consideration a number of conditions and restrictions, among which are:

5.4 The principles that will guide any Updated Comprehensive Plan (including an access management plan) and optimize the Corridor's trail, mass transit, open space, recreational, parks and wildlife uses and values are as follows:

5.4.1 The Corridor shall be managed to protect the health and safety of those using the Corridor;

5.4.2 New road crossings over the Corridor shall be minimized;

5.4.3 Existing crossings shall be consolidated so long as the trail, mass transit, open space, recreational, parks, and wildlife uses and values will not be impaired by so doing; and

5.4.4 Any development permitted in the Corridor (including, but not limited to mass transit facilities, trails, road crossings, etc.) shall be located, designed, constructed and managed in a manner that avoids, minimizes or mitigates adverse impacts to the open space, recreation, scenic and wildlife values of both the Corridor and adjacent lands that add to the scenic value and enjoyment of the Corridor.

5.5 Except as necessary to carry out existing uses of the Corridor and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STB, no facilities or structures related to mass transit uses shall occur on the Corridor that are inconsistent with the Comprehensive Plan or any Updated Comprehensive Plan, which plans shall limit and control the development, location, size and use of such mass transit facilities and structures allowed on the Corridor as well as all other uses allowed on the Corridor.

6.0 Prohibited, Restricted and Permitted Uses and Activities Upon the Property. The parties hereto acknowledge and agree that certain uses of and activities upon the Property would be inconsistent with the purpose and intent of the Agreement. Accordingly, the parties agree that except to the extent permitted in this Section 6, any activity on or use of the Property inconsistent with the purposes or intent of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or permitted as specifically indicated and RFRHA agrees it shall not engage in any activities or uses nor shall it permit third parties to engage in any activities or uses on the Property that are inconsistent with the purposes and intent of the Agreement.

6.1 Construction of Buildings and/or Other Structures. The construction or reconstruction of any building or other structure or improvement, except those existing on the date of this Agreement and except as necessary to implement other approved uses set forth in the Comprehensive Plan (such as mass transit, trails, signage for trails and trailheads, and existing licenses and easements), is prohibited except as may be permitted below.

As it relates to public or private lateral access across the corridor, the GOCO Agreement states the following:

15.0 Access. Notwithstanding anything else in this Agreement to the contrary, RFRHA shall provide the public access to and along the Corridor to the extent necessary to facilitate the Corridor's use for recreational, trail, open space, wildlife, parks and mass transit uses. To the extent provided by Colorado law, RFRHA shall maintain, operate and keep open a public trail with the Corridor that meets the definition of a "public highway legally established" as used in 43 U.S.C. § 912 and all regulations promulgated thereunder. However, with respect to public or private access laterally across the Corridor not consistent with the Comprehensive Plan or any Updated Comprehensive Plan, access shall be restricted so as to: (i) allow for the possible resumption of rail use along the Corridor as is contemplated by 16 U.S.C. § 1247(d) and the regulations promulgated thereunder; (ii) protect the health and safety of those using the Corridor for recreational purposes; and (iii) discourage the occurrence of increased vehicular traffic over the Corridor which is inconsistent with the Conservation Values, the Comprehensive Plan and any Updated Comprehensive Plan.

GOCO requirements encumber the corridor by virtue of \$1.5 million that GOCO invested in the purchase of the corridor in 1997. The 2001 Agreement between the Roaring Fork Railroad Holding Authority (RFRHA) extinguished the Aspen Valley Land Trust conservation easement governing the entire length of the 34-mile corridor and established nine Conservation Covenant Areas on approximately 50% of the corridor. This Agreement was assigned by RFRHA and assumed by RFTA in 2001 and RFTA must do its best to abide by them or risk having to repay GOCO \$1.5 million plus interest, as follows:

The Board, in its sole discretion, shall be entitled to receive the greater of

(i) the gross proceeds multiplied by eighteen percent (18 %), which figure represents the percentage of the original purchase price of the Corridor paid by RFRHA (\$8,500,000) which was provided by the Board (\$1,500,000), or

(ii) the amount of the Grant, as amended, from the Board which was used to acquire the Corridor multiplied by a fraction, the denominator of which shall be the Consumer Price Index ("CPI") figure published for the month immediately preceding the month in which the Grant was given (June, 1997), and the numerator of which shall be the CPI figure published for the month in which the sale, exchange or involuntary conversion occurs. As used herein, the term "Consumer Price Index" or "CPI" shall mean the U.S. Department of Labor's Bureau of Labor Statistics' Consumer Price Index All Urban Consumers All Items, Denver, Colorado (1982-1984 equals 100), or the successor of such index as determined by the Board.

RFTA has limited resources and many operating and capital needs. Repayment to GOCO of \$1.5 million plus interest would be a significant unwanted, unnecessary, and unanticipated expenditure if it were determined by GOCO that RFTA was in a non-curable breach of the Agreement. That is why RFTA is currently attempting to update the Access Control and Recreational Trail plans that are the major elements of the Comprehensive Plan. RFTA must update its list of existing and new proposed uses of the Corridor in the Comprehensive Plan Update in order to comply with the terms of the GOCO Agreement. In this respect the GOCO agreement states as follows:

5.0 Comprehensive Plan.

5.1 The Corridor shall be developed and operated in accordance with the terms of the Comprehensive Plan. The Comprehensive Plan will be updated and reapproved by RFRHA, all voting members of RFRHA, and the Board no less frequently than every five (5) years thereafter until such time as the mass transit and trail uses are implemented throughout the Corridor (the "Updated Comprehensive Plan"). The parties hereto acknowledge and understand that approval of any Updated Comprehensive Plan by the Board shall be in accordance with Section 5.2, below.

5.2 The Board shall not unreasonably withhold its approval of any Updated Comprehensive Plan. In deciding whether to approve an Updated Comprehensive Plan, the Board shall consider the updated plan's impact on use of the Corridor for rail, trail, open space, wildlife, and parks purposes. Specifically, the following factors will be evaluated:

5.2.1 Whether the Updated Comprehensive Plan is consistent with the purpose and intent section (Section 2.0, above) of this Agreement and the guiding principles set forth below in Section 5.4.

5.2.2 Whether the Updated Comprehensive Plan is generally consistent with the project as initially described in the original Legacy Grant Application; and

5.2.3 Whether the Updated Comprehensive Plan includes the items that the Board has agreed it will contain (access plan, trail plan, etc.) listed in Section 5.3, below.

5.2.4 In the event that the Board does not approve an Updated Comprehensive Plan, RFRHA and/or the Board shall have the right to terminate this Agreement and all of RFRHA's obligations with respect to the Board. RFRHA's obligations to the Board may only be terminated upon the repayment of the funds granted by the Board plus interest on such sum at the rate earned by the Board's funds invested by the Treasurer of the State of Colorado from the date of this Agreement until repayment, provided that repayment is made within six (6) months of the Board 's disapproval of any Updated Comprehensive Plan. In the event of RFRHA 's timely repayment, the parties will cooperate in the execution and recording of such documents as either party may in its discretion deem appropriate to accomplish the formal termination of this Agreement; provided that this Agreement will not be terminated until the Grant is repaid in full as provided in this Section.

5.3 Any Updated Comprehensive Plan shall include, but is not limited to: (1) location of both a permanent continuous public recreation trail running along the entire length of the Corridor and the location of a continuous interim trail within the Pitkin County portion of the Corridor, all in accordance with Ordinance 97-26 of the Board of County Commissioners of Pitkin County and the location of an interim trail outside of Pitkin County; (2) location and description of trail head facilities; (3) identification of public access points over the Corridor for the purpose of gaining access to the Roaring Fork River and other public lands along the Corridor for public recreation; (4) description of proposed wildlife and environmental education programs on the Property; (5) a signage

plan for all activities to be developed within the Property; (6) location and existence of historic structures or areas; (7) a biologic inventory of the Property to amend and update the Comprehensive Plan; (8) identification of criteria to be considered in implementing any Updated Comprehensive Plan to protect and preserve the Conservation Values of the Property to the extent reasonable and practicable; (9) description of structures and facilities necessary to place and operate a mass transit system and their location within the Corridor; (10) the identification of all areas, other than Pitkin County, where the Corridor will not support both trail and mass transit uses (in these areas the Updated Comprehensive Plan will identify alternate routes for trails); (11) identification of all utility easements and facilities, both underground and above surface, including, but not limited to, telecommunication facilities; and (12) a detailed improvements and operations plan for all uses, including a management and funding strategy.

In Section III of the ACP, RFTA has pledged to work cooperatively with local governments and property owners to design and construct proposed crossings and other uses of the corridor in the most affordable and practical manner possible, insofar as such improvements would not, in the opinion of RFTA's railroad engineers and legal experts, jeopardize the railbanked status of the railroad corridor. It is essential for RFTA to maintain the corridor's railbanked status in order to prevent the loss of approximately 7 miles of federal land grant areas, which are keeping the contiguous 34-mile corridor intact.

Compliance with legal and contractual requirements that RFTA inherited should not be deemed "draconian." The proposed ACP update is the third iteration of the Access Control Plan and very little of substance has been changed from previous versions, which were unanimously approved by RFRHA and RFTA. Again, the corridor is a public asset and, as such, it must be managed so as to protect and preserve it for the benefit of the public. The scope of the authority of the Access Control Plan extends only to the right of way within the corridor. By comparison the scope of the County's Land Use and Development Code extends to all land within the unincorporated areas of the County and, unlike RFTA, the County can impose criminal and civil penalties for violations of its code. RFTA's primary tool for ensuring compliance with its Access Control Policies is the ability to revoke or withhold licenses and/or agreements for crossings and other proposed uses of the corridor. RFTA should not be expected to bear the costs associated with new crossings and other uses of the corridor proposed by others, unless allocated to it by the CPUC. It would also not be reasonable to expect RFTA to approve uses that:

1. Might cause RFTA to jeopardize the corridor's railbanked status and potentially cause seven miles of Federal land grant areas to revert to adjacent property owners;
2. Would cause RFTA to violate GOCO, CDOT, and Intergovernmental Agreements governing the corridor;
3. Would require RFTA to incur costs associated with any and all uses of the corridor proposed by others, unless by mutual agreement; or
4. Would require RFTA to incur costs to cure deficiencies with existing licensed crossings and other uses of the corridor, unless by mutual agreement.

Ultimately, disputes or protests regarding the application of Access Control Plan provisions can be submitted to the RFTA Board of Directors. When disputes arise, the ability to appeal to the RFTA Board should provide reasonable assurance that local governments and private property owners will be afforded due process and treated fairly.

Garfield County General Comment # 2 on the ACP: The County also believes that some of these policies dictate the ability of public agencies to approve and manage land development and zoning master plans that have been in place before this policy was developed. For example, in requiring "no net increase" in crossings, and consolidations of existing crossings, this will dictate how properties may develop overtime. These types of land use related issues are generally reserved for the local land use authority.

RFTA Staff Response to General County Comment: Section 16.0., A., of the ACP states as following:

“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 whenever feasible, with the goal of no net new crossings.”**

Because the corridor was purchased for the primary purpose of using it as a public transportation corridor, it is advisable for RFTA, *whenever feasible, to attempt to limit or consolidate* at-grade crossings in order to preserve the corridor’s viability, safety, and effectiveness, as a future public transportation corridor. Please also see RFTA Staff Response to [Garfield](#) County General Comment # 1, above, as well as [RFTA](#) Staff Response to City Comment 2. B., above.

Garfield County General Comment # 3 on the ACP: Though the County strongly supports both the interim use of the recreational trail and the long term use as a future rail corridor, the County believes this ACP is an excessive means to protecting the "rail banked" status of said corridor. The County continues to request of RFTA to seek other alternatives for protecting the corridor. This may include converting the corridor to a right of way for trail use instead of preserving it for future rail under the STB Railbanking legislation or exploring purchasing the approximately 7 miles of "Railbanked" corridor so that RFTA could be the fee simple owners of this property and thus not subject to the arduous and expensive standards related to preserving this corridor for freight rail.

RFTA Staff Response to General County Comment: Please see RFTA Response to [City](#) Comment 1. B., above.

Garfield County General Comment # 4 on the ACP: In reviewing this plan, the issue of paramount importance to County is the need to ensure that private landowners (e.g. owners in the Cole Subdivision) are protected and that, if necessary, adjustments are made to impacted property boundaries and areas of encroachment. Garfield County has received correspondence from concerned constituents in regard to fee titles to land that may have existed before the railroad. The County would, if nothing else, implore RFTA to resolve these issues proactively and promptly with respective property owners.

RFTA Staff Response to General County Comment: RFTA staff agrees that title issues associated with some private property owners adjacent to federal land grant areas should be resolved as rapidly as possible. RFTA is actively working to do that by proposing to exchange bargain and sale deeds with affected property owners in the near future and by requesting Congress to ratify the transactions.

Garfield County Specific Comments on the ACP: Beyond the general philosophy and approach of the Plan, the County provides the further additional comments on the specific provisions of the Draft ACP:

County Specific Comment # 1: Overview. The County was recently provided a map by RFTA of the RFTA Railroad Corridor that shows both the Federal Land Grant Areas and the Conservation Covenant areas. This map (or similar) should be included in the Plan to better articulate and provide references as to where these areas lie within the corridor.

RFTA Staff Response: RFTA will include a map as an Appendix C to the ACP that identifies the Federal Land Grant and Conservation Covenant areas.

County Specific Comment # 2: Section 2.0 A.3. the purpose of the policy is to "minimize and consolidate new or existing at grade road crossings over the railroad when feasible." As an exhibit to the Plan, there should be a map showing where consolidation, limitation or removal of accesses may take place.

RFTA Staff Response: See [RFTA](#) Staff Response to City Comment 2. B., above.

County Specific Comment # 3: Section 2.0.A.7. The purpose of the policy is intended to avoid or minimize future financial liability...to the maximum extent feasibility. In other sections of the Plan, it is also noted that RFTA will avoid *significant* future financial obligation. It is unclear on what may constitute "significant" and this term will mean different things to every RFTA Board. The County is concerned that the application of this standard may be inconsistent and unpredictable.

RFTA Staff Response: RFTA expended approximately \$10 million to construct the Rio Grande Trail, over \$1 million to perform a survey of the corridor, and approximately \$200,000 in engineering and legal review expenses, for the update of the ACP so far. In addition, RFTA expends approximately \$500,000 per year to manage and maintain the trail and corridor. In RFTA staff's view, these are significant costs. RFTA has approximately \$50 million in bus replacement costs that it must address over the next 12 – 15 years and it does not have sufficient capital reserves to do so. RFTA has numerous other facility needs and an annual operating budget of approximately \$33 million. Consequently, any additional unanticipated corridor-related costs could be viewed as significant. RFTA staff does not believe it should incur costs related to crossing projects proposed by others, unless a portion is allocated to it by the CPUC. There may be situations, though, in which RFTA might be willing to invest in public crossing costs depending upon the circumstances and RFTA's financial capability. RFTA could assist with crossing costs either by contributing cash, applying for grants, and/or providing project management services. Without knowing the specific circumstances on a case-by-case basis as they arise, RFTA cannot commit to cost-sharing amounts or percentages that would most likely be determined through negotiations with the parties involved. Ultimately any such amounts that RFTA might contribute to crossing projects would require approval of the RFTA Board of Directors and a supplemental budget appropriation, if they had not already been included in the approved RFTA Budget.

County Specific Comment # 4: Similar to Section 8.0 whereby the plan lists the conservation areas, it may be helpful to list the approximate 7 miles of lands that are federally land banked so that there is a continuum of understanding of the asserted need to Railbank the corridor.

RFTA Staff Response: RFTA will include a map as Appendix C to the ACP that identifies the Federal Land Grant and Conservation Covenant areas.

County Specific Comment # 5: Section 10.A. The ACP notes that it is RFTA's policy to require a license for any encroachment and that unlicensed encroachments are a trespass. In order to better understand the scope of this issue, and to be able to better identify future encroachments, RFTA should proactively inventory the existing encroachments in the corridor.

RFTA Response: RFTA is required each year to inventory encroachments in the nine Conservation Covenant Areas, and report them to the Covenant Enforcement Commission and GOCO. According to the October 6, 2015 Roaring Fork Railroad Corridor Conservation Area Assessment prepared by Newland Project Resources, no new encroachments or violations of covenants were identified. Only two previous encroachments still exist and RFTA is working to resolve those. RFTA also maintains an inventory of encroachments in segments of the corridor that are not in the Conservation Covenant Areas, many of which existed at the time the corridor was acquired by RFHRA. RFTA has been gradually licensing or removing these encroachments.

County Specific Comment # 6: Section 10.B. The ACP requires that all public crossings are approved by RFTA and licensed. Accordingly, a license is revocable which is problematic for a local government that has the role of providing long-term public access. RFTA should consider providing permanent easements for public crossings.

RFTA Staff Response: Please see RFTA Staff Response to City [Comment 2. D.](#), and RFTA Staff Response to Town of [Carbondale](#) Comment # 1., above.

County Specific Comment # 7: Section 12.A.1 and 2. These sections provide that RFTA will determine when there is an "increase in traffic" and that is either trail or corridor improvements may be required. Regardless of who may bear the cost, it remains unclear as to what the level of increase in traffic that may predicate this type of improvement. In addition, the costs for these improvements are to be allocated equitably between RFTA and the owners. The process for how these costs may be allocated appears to favor RFTA and RFTA should consider the need for some kind of process for how these costs are to be both determined and allocated.

RFTA Staff Response: Please See RFTA Staff [Response](#) to City Comment 2. E., above.

County Specific Comment # 8: Section 12.B. This section indicates that RFTA retains the right to undertake supplemental maintenance for a crossing at the owner's expense. This section should include a provision for noticing the landowner of the maintenance requirements prior to RFTA proceeding with supplemental maintenance and then issuing an unexpected bill.

RFTA Staff Response: The language at Section 12. B., has been revised to state, "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."¹⁰

County Specific Comment # 9: Section 13.0. Similar to Section 10.B, this section notes that a change in use (that may include an increase in traffic) may require an upgrade to the crossing or

¹⁰ See Attachment A (below) for redline version of the proposed update to the ACP.

revocation/removal of the crossing and associated improvements. The Plan neither provides guidance on what will constitute a "change of use" or an "increase in traffic" that would necessitate these improvements. The plan should provide guidance on these thresholds.

RFTA Staff Response: Please See RFTA Staff [Response](#) to City Comment 2. E., above.

County Specific Comment # 10: 17.B.7-10. This section falls under the Approval Criteria heading but they are not approval criteria. This section would benefit from reorganization.

RFTA Staff Response: RFTA staff has reorganized this section under Section 17. C., "**RFTA Review Process for Railroad Crossings.**"¹¹

County Specific Comment # 11: 17.B.10.a - d. This section provides approval criteria for the RFTA Board to use in the case of an appeal. This criteria is different than the criteria to consider the original approval. Generally, the criteria used for the original decision-making process is the same as the criteria used by the Board in the appeal process. It is problematic in any process to have a different set of criteria for the RFTA staff then for the Board in a decision-making process. The approval criteria should be revised to be consistent.

RFTA Response: This language has been revised to state, "The RFTA Board will make a final determination on an appeal and provide the appellant with a written determination within 30 days of the date of the appeal. In all cases the decision must meet standards set forth in 17.B., 1 – 6, above." In addition, Section 17. C has been stricken because it is duplicative.¹²

Garfield County General Comment # 5 on the ACP: As noted in the County's previous letter, both RFTA and the County are aware, as stated in the original Intergovernmental Agreement entered into on December 31, 1994 concerned with the purchase and public ownership of the Aspen Branch of the Denver and Rio Grande Western Railroad Right-of-way ("1994 IGA"), the primary use for the property was to be as a public transportation corridor and the secondary use could include recreation. In addition, RFRHA (now RFTA) was to continue to evaluate all aspects of a freight operating agreement for reactivation of freight services on the Rail Corridor. Also during this period, the 1994 IGA was restated in a new Intergovernmental Agreement made on June 26, 1997 ("1997 IGA"). It is the failure of the draft ACP to recognize critical pieces of this agreement that continues to cause concern for the County. Of utmost relevance is Section 6.d.iii. paragraph 2 of the 1997 IGA:

"The Governments recognize the potential issues surrounding certain existing physical conditions of the property, in particular existing proposed at-grade crossings [being] public right-of-way and access. Placement, modification, improvement and /or relocation of at- grade crossings will be allowed provided that those improvements follow generally accepted standards, do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from various funding sources."

RFTA Staff Response to General County Comment: RFTA intends to comply with Section 6.d.iii. paragraph 2 of the 1997 IGA, so long as existing and proposed public at-grade crossings "do not

¹¹ See Attachment A (below) for redline version of the proposed update to the ACP.

¹² Ibid.

result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from various funding sources," i.e. GOCO, CDOT, State Trails, and Land and Water Conservation Fund grants.

Garfield County General Comment # 5 on the ACP: The County is concerned that the draft ACP does not recognize the allowance for modifications, improvements and/or relocations to existing public roadways. In addition, the County does not believe that "generally accepted standards" contemplated designing grade-separated crossing for a double catenary rail line.

RFTA Staff Response to General County Comment: Sections 12.0 and 17.0 of the ACP set forth the policies governing crossings, improvements and consolidations. RFTA's criteria for approving the foregoing are set forth at 17. B, 1 – 6. As stated in Section III of the ACP, "RFTA assures parties proposing public or private uses of the corridor that it will endeavor to work cooperatively with them to help them achieve their objectives in the most efficient and cost-effective manner feasible, insofar as RFTA can do so without putting in jeopardy the Corridor's Railbanked status, including collaborating with our sponsors during the planning and design process for their process (please also see Section 18)."¹³

RFTA staff has revised ACP Section 13. A. to add: "Most likely, grade-separated crossings will not be necessary or required until freight or commuter rail is imminent or active in the corridor. 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."

Garfield County General Comment # 6 on the ACP: In 1997, RFRHA also provided a list of Identified Accesses and Uses for the Roaring Fork Trail Corridor. It is this document, as List A, List B and List C, that provides assurance to the County that existing public right-of-ways can continue in use (and future modification) unhampered by the proposed draft ACP. As a solution to this omission, the County continues to request that this section of the IGA as well as Lists A, B and C be provided as exhibits to the ACP. In addition, all prior agreements in regard to use and rights need to be acknowledged and preserved.

RFTA Response to General County Comment: RFTA staff agrees to include the A, B, and C Lists and all prior agreements regarding uses and rights as Appendices to the ACP.

Garfield County General Comment # 7 on the ACP: Some in the County believe the rail corridor has already been severed and thus the adoption of *any* access control plan is superfluous. However, until this supposition is more widely accepted, the County asks that RFTA continue to strive to be good stewards of this corridor while working to prevent any new severances but by doing so in a manner that is less restrictive and less draconian than what is currently being proposed in this Access Control Plan.

RFTA Staff Response: RFTA does not believe that the corridor has been severed and it will continue to do its best to prevent any severances from occurring. To prevent severances, maintain the corridor's railbanked status, and preserve seven miles of federal land grant areas that keep the contiguous 34-mile corridor intact, RFTA must have adequate policies. The proposed update of the ACP is similar in most respects to the two previous versions of the ACP. However, the ACP has been revised several times as

¹³ See Attachment A (below) for redline copy of the proposed update to the ACP.

the result of public comment and feedback from the Staff Working Group. While some might feel that the ACP in its final draft form is still more restrictive than they believe it should be, RFTA pledges to work cooperatively with local governments and private property owners to design and construct their crossing and other projects in the most cost-effective manner possible, while minimizing unacceptable risks to the corridor's ongoing railbanked status.

**Roaring Fork Transportation Authority
Railroad Right of Way Corridor**

**ACCESS CONTROL PLAN
UPDATE**



January, 2016
RFTA ACCESS CONTROL PLAN
UPDATE ~~JANUARY~~APRIL, 2016
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~~III~~IV. Railroad Corridor Access Control Maps (will be added in the spring of 2016, this document is a complete list of all of the existing uses along the railroad corridor road, utility, encroachment, etc.)

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

W. Appendices:

Appendix A – Listing of All Utility Easements (List from initial acquisition documents attached. Up-date ~~currently in process~~ will be completed as funding becomes available)

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

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

Appendix D – Relevant RFRHA and RFTA Agreements Pertaining to the Rio Grande Railroad Corridor

DRAFT

I. OVERVIEW

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

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

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

II. ~~RAILBANKING~~

Under 16 U.S.C. 1247(d), otherwise-to-be abandoned railroad lines are preserved for future freight rail reactivation, possible consistent commuter or passenger rail uses, and interim

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

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

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

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

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reason, RFTA pledges that it will not unreasonably withhold approval of proposed public crossings and other Corridor uses that are consistent with RFTA’s ACP and DGS.

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

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

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

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, the Roaring Fork Railroad Holding Authority (RFRHA), a public entity created in 1993 by the towns and counties within the Roaring Fork Valley, purchased the Aspen Branch of the Denver & Rio Grande Western Railroad right-of-way from the Southern Pacific Transportation Company. The purchase was funded by a consortium of state and local interests. In exchange for financial participation of the property using some funding from Great Outdoors Colorado (GOCO), each of the funding participants agreed to the placement of a Conservation Easement on the Corridor to protect the “conservation values”

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of the property.

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

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

- It changed the Conservation Easement to a Conservation Covenant. The covenant on the deed of the property requires the owner to abide by its terms through self-regulation. (This is different from the previous conservation easement, which was an encumbrance that ran with the land and required an entity other than the owner to regulate compliance.)
- It reduced the size of the area covered by the conservation covenant to encompass only those areas of the Corridor that contain the “conservation values” described within the original conservation easement. The size was reduced from 33.4 miles (the full length of the Corridor from Glenwood Springs to Woody Creek) to 18.04 miles (slightly more than one-half of the Railroad Corridor).

On January 17, 2001, an Agreement was reached between RFRHA and GOCO that replaced the Conservation Easement with the Conservation Covenant. On November 15, 2001, the Roaring Fork Transportation Authority (RFTA) accepted ownership of the Railroad Corridor from RFRHA and RFRHA was dissolved. RFTA then replaced RFRHA as a party to the Conservation Covenant Agreement. RFTA created a Covenant Enforcement Commission

made up of representatives from each of the entities that the Authority serves. It is the responsibility of the Commission to meet annually to make an assessment of the Rail Corridor and to recommend to RFTA that it make any corrections necessary to ensure that the conservation values of the areas described within the Covenant Agreement are not compromised.

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.

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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. Uphold and preserve the Railroad Corridor’s railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB for future freight rail reactivation. So long as the Railroad Corridor is lawfully railbanked, it is protected from claims of state law easement extinguishment or base fee reversion under the express terms of 16 U.S.C. 1247(d). In order to ensure compliance with 16 U.S.C. 1247(d) as construed by the STB, RFTA in its ACP seeks to avoid any severance of the Corridor by not allowing any alterations in the alignment and/or elevation of the roadbed incompatible with freight rail reactivation, either by property sale or transfer, by physical obstruction with structures incompatible with freight rail reactivation or by burdening the Corridor with significant unfunded and/or unaccounted for financial obligations.
2. Preserve the Railroad Corridor for a future public transportation corridor, which is the primary purpose for which it was purchased.
3. Minimize and consolidate new or existing at-grade road crossings over the Railroad Corridor whenever feasible
4. Ensure the safe operation of existing Railroad Corridor crossings.
5. Ensure the safety of trail users of the Railroad Corridor at private and public at- grade crossings of the Railroad Corridor.
6. Implement the Conservation Covenant objectives, by avoiding adverse impacts to the open space, recreation, scenic and wildlife values of the Corridor, and adjacent lands that add to the scenic value and enjoyment of the

Corridor. When adverse impacts cannot be avoided, they shall be mitigated to the extent practicable.

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

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

The intended audiences for the ACP are:

1. The RFTA Board of Directors, RFTA's member jurisdictions, Garfield County, the Colorado Department of Transportation (CDOT), Great Outdoors Colorado (GOCO) and RFTA staff tasked with the management of the Railroad Corridor;
2. Adjacent property owners currently holding a Lease/License/Contract for access across or parallel (encroachment) to the Railroad Corridor or adjacent property owners requesting a Lease/License/Contract for access across or parallel (encroachment) to the Railroad Corridor; and
3. Local, State or Federal jurisdictions and/or Utility Companies currently Leased/Licensed/Contracted for access across or parallel (encroachment) to the RFTA Railroad Corridor or requesting new access across or parallel (encroachment) to the RFTA Railroad Corridor.

3.0 Authority

The RFTA Board of Directors, (the "Board") has the authority to review, approve, conditionally approve, and disapprove applications for construction, reconstruction, realignment, consolidation, and modification of Railroad Corridor crossings. The

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

4.0 Jurisdiction

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

5.0 Interpretation, Conflict, and Severability

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

B. Conflict.

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

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

guidelines or regulations than such 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.

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

6.0 Amendments

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

7.0 Owner Defined

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

8.0 Great Outdoors Colorado Requirements and Locations Defined

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

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

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

- **Conservation Area #1: Railroad (RR) Milepost 362.90 to 363.82 or RFTA Milepost 2.68 to 3.60 (0.96 miles)** - Running from the Glenwood Springs City limits south to the intersection of Highway 82 and Grand Avenue (old Highway 82), this area is well vegetated by native, scrub oak dominated mountain-shrub vegetation that offers excellent habitat for birds and small animals.
- **Conservation Area #2: RR Milepost 365.40 to 366.47 or RFTA Milepost 5.18 to 6.25 (1.39 miles)** - This section begins at the crossing of County Road 107 (known as Coryell Ranch Road) to a location about one-fourth-mile below the CMC Road/Highway 82 intersection. This area is well vegetated by mature native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals

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

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

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

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

Environmental Impacts/Mitigation: The overriding goal of trail design and management has been to protect the natural quality of the Railroad Corridor. This

was done through minimization of impacts to the natural environment through design, management and education. Sensitive areas were identified and mitigation measurements were and will continue to be implemented where appropriate.

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

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

10.0 Types of Crossings Defined

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

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

Private Utility Crossing – A “crossing” of the Railroad Corridor by a utility service for a single point service to serve an adjacent homeowner and/or a business. A private utility crossing must be approved and Leased/Licensed/Contracted by RFTA. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with the RFTA DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in

no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 17.0)**

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

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

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

Public Road Crossing – Means a crossing of the Railroad Corridor by a public street, trail, or similar facility that will serve more than one adjacent property and/or business. Failure to obtain approval from RFTA for the encroachment, failure to pay the Lease/License/Contract fee, or failure to comply with the RFTA

DGS guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. The design for a public crossing must be reviewed, approved and Leased/Licensed/Contracted by RFTA and to the extent the Colorado Public Utilities Commission (CPUC) has jurisdiction over railbanked crossings, require approval by the CPUC. **(Refer to process in section 17.0)**

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

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

Public Crossing Maintenance Responsibility - All public and utility crossings shall be maintained by the roadway authority or public utility in good condition, and in

a manner that does not conflict with freight rail reactivation and other uses for which RFTA has obligated itself, including trail use. The owner(s) of a public street or utility crossing shall be responsible for:

- (i) maintaining and repairing their respective crossing(s);
- (ii) obtaining approvals from RFTA and any other applicable permitting authority(ies) (e.g., local government or CDOT) prior to commencing work on an existing crossing or altering an existing crossing. (If creating a new crossing, RFTA will also require a signed maintenance and operating agreement prior to final approval for any such public or utility crossing of the Railroad Corridor); and
- (iii) to the extent the CPUC has jurisdiction over railbanked Corridor crossings, obtaining required approval for new public or utility crossings and/or alterations to existing public or utility crossings from the CPUC.

11.0 Crossings and Existing Crossings Defined

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

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

- B. Crossings that RFTA (previously RFRHA), CDOT, and GOCO approved as a “proposed new crossing” at the time of the Railroad Corridor purchase (List “B” on file with RFTA and attached as Appendix ??); 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.

12.0 Crossing Improvements and Maintenance for Existing Crossings

A. Improvements.

- Owner Initiated: When owners want to initiate improvements to their crossings, they will be responsible for improving their existing crossings in conformity with applicable standards/guidelines, so as to allow and not impede future freight rail reactivation:
- RFTA initiated: In the event of other general transit system improvements initiated by RFTA, RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.
 1. In the event that RFTA determines that increased traffic over an existing crossing warrants trail safety improvements, RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.
 2. In the event that RFTA determines that increased traffic over an existing crossing warrants rail safety improvements, when rail on the Corridor is imminent or active, RFTA will work cooperatively with owners to allocate the cost of improvements between the owners and RFTA as equitably as possible.
 3. In those instances where improvements have been agreed to under the terms of a Lease/License/Contract Agreement or by separate proceedings.

RFTA shall review and approve the design for conformance with RFTA’s DGS, and will also review and approve the materials to be used and specifications for all

construction, in accordance with this ACP. No improvements shall be made unless a permit therefore has been issued by RFTA in accordance with Section 17.0.

- B. **Maintenance.** Owners shall maintain their roadway approach in a state of good repair. Maintenance shall include, but not be limited to, removing rocks, soil, vegetation and other material that may fall, slide, wash, or be placed onto crossing areas; and maintaining the railroad or trail crossing free of other obstructions (e.g., snow storage, parked vehicles, equipment, etc.); maintaining the approach grades and acceptable pavement condition to the end of the ties; proper drainage in the crossing area; maintaining clear view, or site distances required in the DGS; and maintaining any gate crossing appurtenances. 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 ~~and Standards~~ (for Up-Grading Existing Crossings).

To the greatest extent feasible, all crossings shall meet the current minimum DGS- adopted by RFTA, included ~~as in the Appendices section~~ Appendix B of this Policy. The general types of crossings are listed in subsections A through E below. Pursuant to 12.1, above, a An owner may be required to upgrade an existing crossing that does not comply with the ~~design standards~~ DG. Pursuant to 12.2, above an existing crossing may require safety improvements. ~~When when~~ freight or commuter rail activation takes place, a subdivision or site development is proposed, or when the crossing itself is proposed to be improved, realigned, or reconstructed. RFTA shall coordinate with the crossing owner, local, state jurisdictions and the CPUC to determine when improvements are required and develop cost allocations for the improvements.

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

- A. **Grade-Separated Crossings.** A grade-separated crossing is a railroad or highway intersection consisting of an overpass or underpass structure that employs an elevation difference to avoid a direct connection of two physical alignments. A grade-separated crossing may require safety improvements in accordance with RFTA's DGS, as well as review and approval by RFTA and to the extent the CPUC has jurisdiction over railbanked corridors, require approval by the CPUC. It will also require a Lease/License/Contract agreement with RFTA. Grade-separated crossings will most likely not be necessary or required until freight or commuter rail is imminent or active in the corridor. 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.
- B. **Public At-Grade Street and Highway Crossings.** All public at-grade street and highway crossings that require improvements shall, to the greatest extent feasible, be constructed and maintained in conformance with the RFTA DGS; are subject to review and approval by RFTA; require a Lease/License/Contract Agreement with RFTA; and to the extent CPUC has jurisdiction over railbanked trails, require approval and an allocation of costs by the CPUC.
- C. **Private At-Grade Vehicle Crossings.** Private at-grade vehicular crossings may require safety improvements in accordance with the RFTA DGS; are subject to review and approval by RFTA; and also require a Lease/License/Contract Agreement with RFTA.
- D. **Trail Crossings.** Requests for new Trail crossings of the Railroad Corridor shall comply with the Recreational Trails Plan; RFTA's obligations under the 2001 GOCO Agreement on file with RFTA; the RFTA's DGS; and shall not create an obstruction to freight rail reactivation and other uses for which RFTA has obligated itself.
- E. **Utility Crossings.** All existing underground utility crossings shall continue to be underground. To the greatest extent feasible, all newly proposed underground utilities shall be designed, constructed and maintained in conformance with the RFTA DGS. Any above-ground utilities may continue to cross the Railroad Corridor above ground, but shall comply with RFTA's DGS; include vertical clearance standards per the CPUC, as a minimum; are subject to review and approval by

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

14.0 Crossing Repair Permits – Existing Crossings

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

15.0 New Crossings Defined.

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

16.0 Policy and Design ~~Standards~~ Guidelines for New Crossings

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

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

- Preserve the Railroad Corridor for rail reactivation, not simply for trail use, preserving the Railroad Corridor’s railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB for future freight rail reactivation;
- Implement the conservation requirements of the Great Outdoors Colorado Conservation Covenants and ensure the safety of recreational trail users.

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

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

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

B.

17.0 Process and Design ~~Standards~~ 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 an obstruction to freight rail reactivation, and thereby jeopardize the Corridor’s railbanked status. RFTA must also ensure that the crossings it approves would not adversely impact possible future commuter rail or trail and other uses for which RFTA has obligated itself.

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

Until freight or commuter rail is imminent or active in the corridor, RFTA will generally approve new public and private at-grade crossings that meet its DG, insofar as such

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crossings would not preclude or impair 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 permits required by CDOT, and to the extent the CPUC has jurisdiction over railbanked property, require approval and an allocation of costs by the CPUC. If a public crossing is constructed in conformance with RFTA's DG, RFTA may be willing to grant an easement to the project sponsor, subject to the approval of the RFTA Board of Directors. The easement, however, will be subject to such other terms and conditions as the RFTA Board, in its sole discretion, may determine at the time of issuance.

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Please note that all crossings are crossing a railroad that is railbanked for the preservation of the Corridor for reactivation of freight rail service and must be considered as such even though rail service may not be active on the Corridor at the time of submittal of applications for crossings.

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

- A. Applications.** Permit applications for Railroad Corridor crossings, encroachments/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 DGS and be designed as a crossing of a freight railroad. Applications shall list all materials to be used, and provide section details and construction specifications.

4. Applications for crossing consolidations shall include two sets of plans: one for the proposed Corridor crossing and one for the Corridor crossing to be closed, and shall be provided in both hard copy plot and electronic .pdf file format. Once approved, Digital CAD drawing files will be required in addition to the hard copy and .pdf, in accordance with the design guidelines.
 5. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall be responsible for determining when an application is deemed complete.
- B. **Approval Criteria.** Leases/Licenses/Contracts for Railroad Corridor crossing improvements and consolidations shall comply with the following approval criteria:

1. Improvements shall not create a significant future financial obligation or physical obstruction to freight rail reactivation, future commuter rail, trail use and other uses for which RFTA has obligated itself;
2. ~~To the extent feasible, a~~All of the applicable ~~standards-DG~~ of this policy, ~~including the DGS;~~
3. The State Highway Access Code, as applicable;
4. Any applicable local government land use and access permit requirements (e.g., permit to construct in the public way);
5. Conservation Covenant requirements, including: avoidance of adverse impacts to the open space, recreational, parks, and wildlife uses and values of the Railroad Corridor to the extent practicable. This shall be accomplished through careful consideration of alternative access alignments, consolidations,

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construction techniques, materials, and appropriate mitigation measures (e.g., erosion control, landscaping, screening, buffering, etc.);

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

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

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

1. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall review the applications submitted as per Section 17.0 (A) based on the approval criteria in Section 17.0 (B).
2. RFTA may refer the application to its engineering consultant for review of conformance with the DGS.
3. The RFTA Assistant Director, Project Management & Facilities Operations or his/her designee shall prepare an administrative determination recommending approval of or denying the application.
4. The determination is final unless the applicant timely files an appeal in accordance with this subparagraph. The applicant may appeal the decision of the RFTA Assistant Director, Project Management & Facilities Operations by filing an appeal of the administrative determination in writing to the RFTA Board of Directors within thirty (30) days of receipt of the determination by the Assistant Director and/or his designee. The thirty (30) days will begin upon receipt of an email determination and/or 30 days from the date of the postmark receipt of determination. Staff will forward the appeal to the RFTA

Board of Director's at the next scheduled RFTA of Director's meeting for its consideration or as soon as practicable, along with the determination by the staff as to why the application was denied.

5. The determination is final, notwithstanding a timely appeal, unless the RFTA Board agrees to hear the appeal. The applicant will be informed within five (5) business days of the appeal determination made by the RFTA Board of Director's. The applicant will be notified about the determination by email (if provided) or mail. If the Board agrees to hear the appeal, a hearing will be scheduled at a subsequent Board meeting, no later than ninety (90) days after the Board has notified the appellant that the appeal will be heard. The hearing will generally be limited to one hour. Both the Assistant Director and the applicant will be allowed to present his/her reasons for the upholding or overturning the staff determination.
6. The RFTA Board will make a final determination on an appeal and provide the appellant with a written determination within 30 days of the date of the appeal. In all cases the decision must meet ~~the following standards~~criteria set forth in 17.B., 1 – 6, above.
 - ~~a. The proposed crossing is consistent with freight rail reactivation and other uses for which RFTA has obligated itself.~~
 - ~~b. The proposed crossing will not interfere with or negatively impact the conservation or trail values; and~~
 - ~~c. The landowner/entity will be financially responsible for design and construction of the crossing to so as to be consistent with the intent and requirements of RFTA's DGS and, to the extent the CPUC has jurisdiction over railbanked Rail Corridors, require approval and an allocation of costs by the CPUC.~~

18.0 Coordination of Development Review with Local Jurisdictions

RFTA desires to participate in the review of planning, zoning, and development applications, as necessary, to safeguard the interests of the Railroad Corridor as noted above. RFTA will coordinate with property owners, local governments, CDOT, and

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

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Fact Sheet

Railbanking — What, Where, Why, When and How

In 1983, concerned by the rapid contraction of America's rail network, the U.S. Congress amended the National Trails System Act to create the railbanking program. Railbanking is a method by which lines proposed for abandonment can be preserved for future rail use through interim conversion to trail use.

Railbanking can be requested by either a public agency or a qualified private organization at the time that the railroad files for abandonment with the Surface Transportation Board (STB), formerly the Interstate Commerce Commission. The railbanking request must be sent to the STB in Washington, D.C., and must at the very minimum include a Statement of Willingness To Assume Financial Responsibility. Since the abandoning railroad company must agree to negotiate a railbanking agreement, a copy of the request for railbanking must be served on the railroad at the same time it is sent to the STB.

A Public Use Condition (PUC) request is a request that is complementary to a request for railbanking. If a PUC request is made to the STB, the STB will place a restriction on the abandonment that prevents the railroad company from selling off or otherwise disposing of any property or trail-related structures, such as bridges or culverts, for a period of 180 days after the abandonment is authorized. This PUC gives the prospective trail manager some breathing room for preparing an offer to the railroad. (The PUC is also a good backup device should the railroad not agree to railbanking since the STB will issue a PUC regardless of whether the railroad agrees.)

There are several other important points regarding railbanking:

1. A railbanking request is not a contract and does not commit the interested party to acquire any property or to accept any liability. It invites negotiation with the railroad company under the umbrella of railbanking.
2. A party filing a Statement of Willingness To Assume Financial Responsibility is not accepting any financial responsibility. It is merely expressing an interest in possibly doing so.
3. The tracks and ties on a railbanked line can be removed.

However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way.

4. Railbanking can only be requested for a rail line that is still under the authority of the STB. The STB has authority over the corridor until the railroad files a notice of consummation, which must be filed within one year of the abandonment decision (unless the railroad requests an extension). If no notice of consummation is filed by the railroad within one year, abandonment authorization lapses. Railbanking requests are due within the period specified in the applicable notice of abandonment. However, late-filed requests will be accepted for good cause so long as the STB retains authority to do so.
5. Some railroad rights-of-way contain easements that revert back to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.
6. Railbanking can be affected through a sale, a donation or a lease of the corridor. The details of which are subject to negotiation with the railroad.
7. A railbanked line is subject to possible future restoration of rail service. The abandoning railroad can apply to the STB to resume rail service on a railbanked corridor which will then vacate the trail use ordinance. The terms and conditions of a transfer back to rail service must be negotiated with the trail manager.

A more thorough discussion of railbanking and other legal issues related to rails-to-trails conversions can be found in *Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails*, available online at www.railstotrails.org.

On the back is a sample of a request for railbanking including a Statement of Willingness to Assume Financial Responsibility and a Public Use Condition. The items in italics are to be completed by the prospective trail agency or group.

RFTA Staff Responses to Comments Received
On the
Rio Grande Railroad Corridor Access Control Plan (ACP)

8/3/2105

City of Glenwood Springs Comments:

1. **ACP Comment:** Please inventory the segments of right-of-way obtained through the Federal Railroad Act in the 1800s and identify the adjoining property owners. This information would be valuable in evaluating alternatives to the rail banking approach to preserving the corridor.

Response: RFTA is in the process of identifying all of the adjoining property owners and evaluating whether there are any viable alternatives to "rail-banking." More information on this process will most likely be provided to the RFTA Board of Directors at the August 13th meeting

2. **ACP Comment:** Many culverts were placed by the Denver Rio Grande Railroad when the rail line was built. The City does not want to take jurisdiction or maintenance responsibility for any culvert constructed to benefit the railroad.

Response: RFTA would appreciate clarification of this comment. If the City is referencing specific culverts, it would be helpful if the City could provide a list of them to RFTA. If any of the culverts were installed as a part of an existing agreement, there should be a maintenance clause associated with the installation. For any new projects that require the installation of culverts for drainage, maintenance will be addressed and agreed upon as part of a maintenance agreement.

3. **ACP Comment:** The City does not believe that RFTA owns all of the land shown in the Ownership Atlas. In fact, the City holds the deed to the wye parcel in the downtown area. Other deeds grant the right of way for 7th Street. Other errors exist also.

Response: The survey of the railroad right of way performed by Farnsworth Group (FGI) depicts the boundaries of the Railroad Corridor conveyed to RFRHA. Limited ownership research was performed in a small number of select areas in an attempt to confirm the railroad's right of way boundaries. In the area of 7th Street, as well as other areas, there very well may be conflicting title interests that need further research and investigation; however, generally, the FGI survey established the boundaries of the Railroad Corridor that were included in the acquisition by RFRHA. In the 33 1/2 miles of railroad corridor right of way, FGI is only aware of one incorrect boundary portion of the survey, i.e. the portion of the boundary that mistakenly included the Garfield County Court House. RFTA requests that the City provide any information it has regarding the existence of other potential survey errors or ownership conflicts.

4. **ACP Comment:** As the ACP impacts local land use (just like the State's ACP), it would seem the policy should be approved by IGA by each member entity. This is the way CDOT's access control plan works.

Response: The proposed update of the ACP can only be adopted by a unanimous vote of the RFTA Board members that represent the original constituent governments of RFRHA: Glenwood Springs, Carbondale, Eagle County, Basalt, Snowmass Village, Pitkin County and Aspen. This very high threshold for adoption of the proposed update of the ACP will require total consensus and should generate considerable discussion, compromise, and collaboration, by and among all of the RFTA member governments. RFTA believes the current process for adoption of the proposed ACP, as well as the impending update of the Corridor Comprehensive Plan should suffice and that a separate and duplicative IGA process is unnecessary.

5. **ACP Comment:** Some of these policies dictate the ability of public agencies to approve and manage land development and zoning master plans that have been in place before this policy was developed. It also interferes with growth and future potential tax revenue that public agencies and property owners are entitled to under zoning regulations and property rights. This document is draconian in nature and does not create a proactive environment to promote the best interests of RFTA or the agencies that ultimately make up the RFTA Board. It could create lawsuits and years of litigation for which RFTA claims it is not obligated to and will eventually be passed onto the public agencies that make up the RFTA Board. In my opinion, this document is a litigation nightmare that does not consider obligations, historical documents, and prior obligations that need to be honored. It does not consider property rights of homeowners or private citizens, or the privileges afforded to those property owners under zoning laws and policies. It does not acknowledge prescribed rights, or pre-existing conditions that may reside within the easement and fee titles to land that may have existed before the railroad. It seems this document opens liability issues to RFTA and the public agencies that may have a detrimental effect to all the hard work that has gone into creating this transit agency.

Response: The railroad corridor is regulated by the federal Surface Transportation Board (STB) pursuant to 16 U.S.C. 1247(d) (interim trail use and preservation of corridor for possible future rail reactivation) and a series of STB decisions. STB jurisdiction preempts state and local law that is in conflict. See 16 U.S.C. 1247(d) and 49 U.S.C. 10501(b). STB in general requires that interim trail managers preserve railroad corridors for future rail reactivation. The agency also takes the position that "railbanking" under 16 U.S.C. 1247(d) requires that corridors not be "severed" for rail purposes. RFTA accordingly must manage the railroad corridor in order to preserve it not only for its current recreational uses but also for possible future public transportation uses. RFTA believes that the best way to ensure the protection of the contiguous railbanked corridor is to manage it as though it is an active freight rail corridor, or as a corridor on which service has been discontinued, but which is being kept intact with a bona fide intent to preserve it for future rail reactivation. RFTA's management approach is based on long standing recommendations from legal and engineering advisors. Therefore, RFTA does not agree that the ACP represents a litigation nightmare but, instead, views the ACP as simply restating commonly used principles in the railroad industry designed to protect the integrity of railroad corridors for railroad uses. RFTA justifiably wouldn't want to lose the contiguous Corridor because it underestimated the importance of protecting the Corridor for future freight rail reactivation. However, RFTA understands that opinions differ as to the level of management controls necessary (particularly as it pertains to public crossings) to adequately protect the corridor's railbanked status. For that reason, RFTA is supportive of engaging

in a collaborative effort with the City and Town of Carbondale to obtain guidance from the STB as to the level of management controls necessary to ensure preservation of the corridor's railbanked status. With respect to prescribed rights or pre-existing conditions, Federal case law appears clear that a railroad that acquires property under the 1875 Grant is entitled to exclusive possession of the entire width of the corridor and that no prescriptive rights can be acquired against such property.

6. **ACP Comment:** In a review of the Design Standards, it appears that RFTA is asking jurisdictions and private parties that cross the rail corridor to improve the Rail Classification from a Class III short line rail road to a Class I major carrier standard and Track Standard from a Class 2 standard (30 mph) to a Class 3 standard (60mph). This seems to conflict with RFTA's stated goals of corridor protection. It also would require RFTA or any new carrier that wanted to reestablish service on the line to re-grade and reconfigure the horizontal curvature of the existing corridor and perhaps replace existing structures to meet the new standards.

Response: In RFTA's view, the Design Guidelines don't conflict with RFTA's goal of corridor preservation. Instead, they are intended to help assure that reactivation of freight rail service is feasible. In addition to the standards governing the horizontal geometry and vertical clearances of the track alignment of freight railroad lines, the vertical geometry consists of two components, i.e. its profile and its vertical curves. This seems to be the cause of most of the confusion about various standards. The profile and vertical curve standards that the railroad industry uses for freight railroads, to this day, are the same as laid out by A.M Wellington in 1887, and remain largely unchanged. Depending on the various railroad standards being used currently by the UPRR, BNSF, and other major railroad companies, you will see modifications to the allowable rate of grade change separated into either main (heavy haul) line or branch line criteria (occasionally railroads added a relaxed low speed yard or backtrack standard for switching, industrial or hump yard applications). The RFTA railroad corridor was always considered as a branch line of the D&RGW Railroad, and that is what RFTA is maintaining as the standard. There is nothing in the profile standard that UPRR, BNSF or RFTA uses that specifies either FRA Track Class or Railroad size class. RFTA holds the rate of change to be the branch line rate of change (RFTA Section 8, Part 4.0 for Branch line or speed under 40mph) to the same standard as UPRR or BNSF for branch line use. There is a vertical curve standard in the AREMA Manual (first printed 2012) that is less restrictive, but it is intended for transit (uniform lightweight cars of a similar size and similar center of gravity). That standard has yet to be adopted by any Class 1, 2 or 3 (sized) railroad in the United States or Canada, to the best of FGI's knowledge. There has yet to be any rigorous dynamic testing or modelling for freight railroads using freight railroad dynamic forces with the 2012 AREMA vertical curve standard. Until that happens, and if the results are accepted by the major railroad companies, it is unlikely that that standard will be adopted for freight railroad use. Until such time, RFTA also has refrained from adopting that 2012 transit standard. RFTA Standards hold to the freight railroad standard as opposed to light rail or the higher speed passenger rail standards because of RFTA's NITU status for the corridor. This standard is a Branch Line freight standard, which is the same as was used by the D&RGW RR.

7. **ACP Comment: Page 4, paragraph 1** – RFTA states that parties seeking to cross RFTA's corridor are admonished to consider whether the crossing is compatible with freight rail reactivation and commuter rail uses.

Response: As previously noted, STB, a federal agency, preemptively regulates the railroad corridor, with a concern that it be kept intact compatible with rail reactivation, pursuant to 16 U.S.C. 1247(d).

RFTA will consider changing “admonish” to a term such as “advise” but all parties should recognize that RFTA must discharge its responsibility under the statute to preserve the Corridor for potential freight rail service reactivation. In addition, the Railroad corridor was originally acquired in part for a future public transportation system. RFTA is committed to working cooperatively with crossing sponsors to enable them to design and construct their crossings as economically as possible, while minimizing the potential for successful claims of severance, which could jeopardize the corridor’s railbanked status and thus its availability for trail, open space, and future public transportation needs.

8. **ACP Comment: Page 4** - "unencumbered by future financial burdens" In the event a rail carrier or shipper requests to have freight rail reactivated what is the criteria for reactivation by the STB and who pays for reactivation? Has there ever been a case decided by the STB where the corridor has been determined to be severed because of the expense associated with reactivation? A December 2014 STB Decision regarding a rail banked trail in Kirkland and King County Washington indicates that the railroad seeking to reestablish rail service on the trail must bear financial responsibility for reinstating rail service, replacing track, etc., not the trail manager or trail sponsor. This STB Decision is attached. If the STB has ever ruled that the trail manager or trail sponsor was responsible for upgrading the trail to a rail ready platform, RFTA should provide these STB decisions to demonstrate the risk.

Response: In response to the first question, i.e. (criteria for reactivation and who pays): If RFTA (which holds the reactivation rights) sought to reactivate, STB case law indicates that the reactivation would be allowed as a matter of course. If a hostile third party sought reactivation, then the King County case indicates that the third party must have financial responsibility to pay for the cost of restoring track, ties, and acquiring the property interests of RFTA necessary to operate a railroad. Please note, however, that STB precedent in OFA and Feeder Line forced sale scenarios tends to value rail easements at zero, and portions of this right of way appear to be based on the 1875 Act, which the Supreme Court recently held conveyed only an easement type interest. In response to the second question, i.e. (STB decisions on severance due to the cost of removal of obstructions placed by third parties with railbanker consent):

In Roaring Fork Railroad Holding Authority – Abandonment Exemption – in Garfield, Eagle and Pitkin Counties, AB 547X, served May 21, 1999, Garfield County argued that CDOT had severed the Aspen Branch at Wingo Junction and Offer of Financial Assistance applicants Kulmer and Schumacher argued on the same basis that STB should grant emergency relief against RFRHA over the alleged severance. STB stated that “RFRHA “has acted appropriately to protect its interests and responsibilities by negotiating with CDOT a commitment to restore the track and to indemnify RFRHA at the conclusion of the project.” Slip at 3-4. At p. 4 footnote 9, STB said that “[t]he project contemplates a grade-separated crossing, in conjunction with projected light rail service or, upon reasonable request, freight service.”

This decision indicates a means to defeat a claim of severance (i.e., a means to create a kind of “safe harbor” from a claim of severance). In particular, it suggests that if the railbanker requires the party proposing a highway project or other use to restore the rail line in the event rail use is properly requested, and to indemnify the railbanker, then there is no severance. The indemnifying entity here was CDOT, presumably not a judgment proof agency.

If the owner of a railroad allows an obstruction that bars or impedes supplying rail service to a bona fide shipper, and the shipper demands service, the railroad (a) must embargo the line or it is liable to pay the shipper's lost profits if it fails to provide the service, and (b) if it embargoes the line to avoid liability for lost profits, it is obligated to restore service or abandon the line (if STB is willing to authorize abandonment).

When RFRHA originally acquired the Aspen Branch, it was an operating line of railroad. In order to avoid liability for lost profits, RFRHA arranged to deliver a carload of beer for Orrison Distributing at Glenwood Springs. The significant expense of doing so precipitated RFRHA's effort to railbank the Aspen Branch. 16 USC 1247(d) treats railbanked corridors as equivalent to unabandoned corridors. It would follow that the rules applicable to inactive but unabandoned rail corridors apply to railbanked lines. Accordingly, if a shipper sought reactivation and was prepared to pay for track restoration and required property interests (assuming the King County case applies), RFTA could face the choice of removing a very expensive obstruction, or abandoning the corridor. This problem would appear to be alleviated if the proponent of the costly obstruction agreed to assume all liability to remove it in the event of reactivation for rail purposes and had adequate resources to do so (consistent with the 1999 Garfield County case).

9. **ACP Comment: Page 5** - Conservation Covenant- What happens when there are conflicts between the corridor preservation and conservation requirements?

Response: RFTA doesn't believe there is a conflict between Corridor Preservation and the GOCO Agreement conservation requirements. The Amended GOCO agreement in section 2.2 reads: "The parties agree and acknowledge that the Corridor was originally purchased and is held by RFRHA (now RFTA) in perpetuity not only for its Conservation Values and the construction and maintenance of a trail, but for the re-establishment of a mass transit system in the future." it continues later in the section to read "Accordingly, RFRHA (now RFTA) shall be permitted to take all actions necessary with the STB and the State of Colorado, Department of Transportation (CDOT) and the Public Utilities Commission (PUC), to ensure the continuing ability of RFRHA (now RFTA) to operate and manage the Corridor as a railroad. It is not the intent of the parties to interfere with the legal rights and obligations of RFRHA (now RFTA) attendant to the operation of a mass transit corridor or the legal rights and obligations of tenants or grantees of easements upon the Corridor, including the trail easement owned by the Board of County Commissioners of Pitkin County, Colorado, on the Corridor within Pitkin County, provided however, to the extent reasonable and practicable the design criteria and operation of mass transit improvements and rail alignments shall consider and respect the Conservation Values of the Property and trail uses of the Corridor."

10. **ACP Comment: Page 6** – “unfunded and/or unaccounted for financial obligations.” As stated above, in the event a rail carrier or shipper requests to have freight rail reactivated what is the criteria for reactivation by the STB and who pays for reactivation? Has there ever been a case decided by the STB where the corridor has been determined to be severed because of the expense associated with reactivation?

Response: Please see answer to number 8. In all events, the absence of a case does not mean absence of a problem. For example, it may mean that no one has yet created such a condition, much less brought such a condition to the agency's attention.

11. **ACP Comment: Pages 6 and 7**, purpose of the policy – RFTA states three things: “The policy seeks to ensure compliance with 16 U.S.C. 1247(d).” A copy is attached of what I believe is the most recent interpretation of this code by the STB (May 30, 2012). In reading the decision I believe RFTA takes a very conservative, “no risk to RFTA” stance to the preservation of the corridor. RFTA should be asked to provide evidence (STB decisions) to support their claim of the risk of “financial severance”. In research done on other rail banked corridors in the United States, no other corridors had such an extreme policy for crossings. This research is attached. The policy seeks to minimize new at grade crossings and consolidate existing at grade road crossings. The policy seeks to avoid any future financial liability and cost to RFTA arising from third party use, including the expense of upgrading any existing or approved crossings of the rail corridor.

Response: As to the bona fide concern of RFTA about “financial severance,” see response to 8. As noted there, Garfield County and OFA applicants argued exactly that as to Wingo Junction. STB did not say there was no legitimate concern. STB indicated that RFRHA had obligated Colorado DOT to restore the corridor at CDOT expense in the event of rail reactivation. It is appropriate for RFTA to act within the scope of existing decisions, for if STB determined the corridor to have been severed by an action in which RFTA was complicit, the public would lose the contiguous corridor for all the purposes for which it was acquired, including transportation, recreation, conservation and open space. The public investment would be lost, and RFTA might incur additional financial liabilities. As to the practices of other interim trail managers, it may be that due to local geography and population density, other railbanked corridors researched by the commenter simply do not have crossings or obstructions that raise potential severance issues. In other instances, the trail managers may be acting in ignorance or may be misadvised.

In addition, RFTA notes that a number of the interim trail managers researched by the commenter indicated that they granted licenses (as opposed to easements) for crossings, and made them subject to the reactivation of freight rail service. In the event of freight rail reactivation, these licenses contained language requiring the crossing sponsors to either remove or reconstruct the crossings if necessary. Permanent easements could be problematic if the proposed crossings are incompatible with freight rail reactivation. So far, the City has not indicated an ability to accept financial responsibility for rendering the crossing compatible with rail in the event of reactivation. RFTA has been advised by its legal counsel that the construction of crossings that are incompatible with freight rail reactivation, which result in the accumulation of deferred costs to restore the corridor to proper working order for a freight rail service, might lead to claims of severance which, if successful, could result in the loss of large segments of the contiguous corridor consisting of federal land grant areas.

In addition, the corridor was purchased in order to preserve it for a future public transportation system. It is important, therefore, for RFTA to keep the corridor as free as possible from obstacles that might impair the efficient and safe operation of a future public transportation system. RFTA is committed to doing all it can to work with crossing sponsors to minimize their crossing costs to the maximum extent feasible, while ensuring that their crossings won't jeopardize the corridor's railbanked status. RFTA urges all crossing sponsors to consider other means in which RFTA may work with it to equitably defray costs for all concerned.

12. **ACP Comment: Page 6**, “Purpose and Intent”: It is my understanding that the freight rail corridor may already be severed at Wingo Junction due to a bridge that cannot support freight rail activity. Isn't RFTA tasked with maintaining all infrastructures required to support rail operations in the event

that an entity wants to utilize this corridor for freight rail? This document should also discuss the existing condition of the freight rail corridor and what steps are in place now to maintain the current rail status.

Response: RFRHA (now RFTA) has an agreement in place with CDOT that obligates CDOT to reconstruct the Wingo Junction Railroad Crossing at the time that rail service is restored. CDOT, as an investor in the acquisition of the Railroad Corridor (\$3 million), has a financial interest in ensuring that the contiguous Railroad Corridor isn't lost due to a claim of severance. In AB 547X, served May 21, 1999, STB rejected Garfield County's claim that CDOT severed the corridor at Wingo Junction, and also rejected Kulmer/Shoemaker's request for emergency relief against CDOT, stating that RFRHA acted appropriately in requiring grade separation and indemnity by CDOT if rail service is restored. Without a written agreement with CDOT assuring that the rail corridor would be restored at Wingo Junction in the future, the STB might have ruled in favor of the County's claim. This example is instructive, because it indicates that claims of severance can arise when alterations to the Railroad Corridor are allowed that appear to be incompatible with freight rail reactivation.

13. **ACP Comment: Page 8, paragraph 4** - The statement "The Surface Transportation Board (STB) has exclusive jurisdiction over transportation by rail, including rail-banked right of ways such as the railroad corridor." In STB decision 49 CFR Part 1152, it says, " The STB's role under the Trails Act is largely ministerial....The STB plays no part in the negotiations between trail sponsors and railroads, nor does it analyze, approve or set the terms or rail banking/interim trail use agreements... The Board does not "regulate activities over the actual trail, and has no involvement in the type, level or condition of the trail..."

Response: RFTA agrees that to date, STB has not attempted to regulate trails on a railbanked rail corridor. Instead, STB focusses on rail reactivation. The STB tends to view railbanking as simply a means to keep railroad corridors intact for future rail reactivation. The agency's regulations provide that interim trail use is subject to being cut off at any time for the reinstatement of rail service. 49 C.F.R. §§1152.29(a)(3), (c)(2) & (d)(2). A railbanked line is not abandoned, but rather remains part of the national rail system, albeit temporarily unused for railroad operations. Consequently, if and when a railroad wishes to restore rail service on all or part of the property, it may request that the CITU/NITU be vacated to permit reactivation of the line for continued rail service. E.g., Georgia Great Southern Division – Abandonment – between Albany and Dawson, AB 389 (Sub-no. 1X), served Feb. 2, 2004 (reactivation over the objections of interim trail manager). Thus, although the STB does not regulate the trail, it does have power to require rail reactivation. As to rail reactivation, STB case law indicates that although there is always a holder of the right to reactivate (the original abandoning railroad or its lawful transferee, in this case RFTA), an agency or a shipper request may result in a STB order of reactivation. The STB in effect says it will monitor the discretion of those holding the right to reactivate and/or may order involuntary transfer of that right. In this case RFTA is not only the NITU holder but it also holds the certificate for reactivation of the rail line. This is unique to RFTA and (with approval of voters in the region to assure an appropriate level of funding) it would allow RFTA to reinstate a freight rail and/or a commuter rail system in the Roaring Fork Valley in an expeditious fashion.

14. **ACP Comment: Page 8** - The ACP applies to the entirety of the Corridor owned by RFTA. The City of Glenwood Springs owns a portion of the corridor as deeded to the City by RFTA. Does RFTA intend that the ACP apply to the portion the City owns?

Response: As long as the UPRR's exclusive freight rail easement exists in the Wye, RFTA believes this issue is moot. RFTA will otherwise administer the ACP on its right of way in the corridor.

15. **ACP Comment: Page 8 – Authority** - Does approval of this policy by RFTA affect member jurisdiction's ability to appear before the CPUC? Should this policy be approved by every member jurisdiction to be effective?

Response: This policy does not affect a member jurisdiction's ability to appear before the CPUC. RFTA, as the Railroad, would be notified by the CPUC of any applications affecting the Railroad Corridor and it would have an opportunity to support or oppose such applications. Regarding the need for the policy to be approved by every member jurisdiction, see RFTA's response to Comment #4, above.

16. **ACP Comment: Page 9, paragraph 2** – In this paragraph RFTA states that there is no intent to abrogate any easement, license, covenant or any other private agreement or restriction. This is contradicted by the following: Page 14, paragraph 1 – Failure to obtain approval from RFTA for a private crossing, failure to pay the license fee, or failure to comply with RFTA guidelines (requiring grade separation) may result in refusal to grant the license or termination of an existing license and removal of the crossing. Page 14, paragraph 4 – Licenses 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. In other words, landowners cannot sell their properties without risk of losing their access. Landowners will be forced to negotiate with RFTA for a new license (and be required to meet their grade separation standards), or negotiate with adjoining property owners to consolidate an access point. This policy could result in a taking of the private landowner's home or property rights, if they could not afford to construct a grade separation of their access, or if the adjoining landowner refused to cooperate in consolidating the access point. Page 17, paragraph 5 – "A change in use of an existing crossing may also result in the requirement to upgrade the crossing, or revocation/removal of the crossing and improvements." "A change in use" is not defined, and could be anything RFTA chooses. Closing of any crossing public or private should not be a decision made by RFTA staff.

Response: To the extent consistent with 49 USC 10501(b) and 16 USC 1247(d), this ACP is not intended to abrogate any existing easement. The licenses that RFTA has issued to adjacent property owners are the same agreements that the D&RGW, SPRR and the UPRR have used to license uses since the 1800's. Maintenance and Improvements are addressed in the licenses and the language is consistent throughout all of the license documents. If a rail service is restored in the Corridor, crossings along the entire corridor may need to be evaluated to determine whether there might be alternatives for consolidation in order to enhance the safety and efficiency of the system. RFTA would not have the ability to make needed modifications to crossings if it granted adjacent property owners easements instead of licenses and the easements did not contain language that allowed the modifications. It is with a view to a future public transportation system that RFTA intends to continue offering adjacent property owners revocable licenses, which are the standard in the railroad industry. RFTA will work cooperatively with adjacent property owners to ensure that they have access to their land, while maintaining the flexibility for RFTA to modify their crossings in the future, if necessary. Issuing licenses for crossings of the corridor is not considered a taking. If a property owner refuses to sign a license agreement; however, RFTA would then be forced to exercise its rights under Colorado law to compel them to do so consistent with its obligation to maintain the railbanked status of the corridor and comply with GOCO requirements. Although it

would be challenging to define or foresee every potential change of use that might trigger the requirement to upgrade a crossing, RFTA can attempt to provide some guidance in the proposed update of the ACP. For example, a change from ingress/egress for a single family home or owner occupied ranch to ingress/egress for a new housing development or a change from serving a residential use to a commercial use, may result in the requirement to upgrade the crossing. If a jurisdiction approved additional commercial activity on an adjacent property that would increase vehicular traffic over an existing licensed crossing, RFTA might require the license holder to provide additional safety measures for trail users.

17. **ACP Comment: Page 9, paragraph 4** – RFTA reserves the right to adopt amendments to this policy at any time. This policy has broad effect on land use throughout the valley. We suggest that this policy and all amendments have extensive public process and be adopted by the RFTA Board, as well as all member jurisdictions.

Response: RFTA will ensure that proposed amendments of the ACP are disseminated to the public, member jurisdictions, and CDOT, with sufficient time for review and comment. Similar to the adoption of updates to the ACP and Comprehensive Plan, all amendments to the ACP must be adopted by a unanimous vote of the seven RFTA member jurisdictions that were the constituent members of RFTA. Most likely, except in the event of an emergency, RFTA will provide for two readings of the proposed amendments prior to adoption.

18. **ACP Comment: Page 10**, Great Outdoor Colorado Requirements and locations defined. This section speaks of a spread sheet of violations or encroachments to the rail corridor. How have these encroachments been handled in the past? Have these encroachments been researched against case law involving prescribed rights? How does this affect encroachments that have been long standing without dispute? How are the encroachments written in areas where RFTA only has an easement? This seems like a very dangerous policy that may institute unnecessary litigation. Areas where RFTA only owns an easement, which does not adequately define the use of the land for a prescribed right such as rail, may not give RFTA the right to dictate encroachment. It does not reduce the right of the fee title holder to utilize that land for other uses that are not in conflict with the right of a single rail line.

Response: In 2001, RFTA assumed ownership of the Railroad Corridor from RFRHA, as well as the responsibility for managing the Conservation Covenant Areas included in the 2001 GOCO Agreement. To assist with this requirement, RFTA created a Covenant Enforcement Commission (CEC) consisting of representatives from each RFTA member government, a Pitkin County Open Space and Trails' representative, and two at-large representatives living within the boundaries of the two counties that make up the nine Conservation Covenant Areas. The CEC meets annually to assess RFTA's compliance with GOCO requirements and to make recommendations to the RFTA Board regarding corrective action needed to adhere to the conservation values set forth in the GOCO Agreement. RFTA retains a consultant to conduct a thorough annual inspection of the nine Conservation Covenant Areas to determine whether any potential violations exist. The nine Conservation Covenant Areas consist of approximately 50% of the 34-mile long Railroad Corridor owned by RFTA. RFTA also completes its own assessment of encroachments in the Conservation Covenant Areas and holds an annual meeting with the CEC to discuss the status of the previous year's violations, any new violations that have been identified, and any other concerns associated with the Railroad Corridor. The CEC makes recommendations to the RFTA Board of Directors regarding any remedial action that is needed and the Board directs staff to eliminate and/or license

the violations. Each year, RFTA provides GOCO with a letter outlining all violations and describing the plan for eliminating them. The GOCO covenants are very restrictive and, over the years, RFTA has eliminated or licensed multiple encroachment violations within the Railroad Corridor, both within and outside of the GOCO Conservation Covenant Areas.

Federal case law appears clear that a railroad that acquires property under the 1875 Grant is entitled to exclusive possession of the entire width of the corridor and that no prescriptive rights can be acquired against such property.

19. **ACP Comment: Page 14, Private Encroachment:** How will this be applicable if RFTA does not own the underlying fee of the property, and the easement is not specifically defined?

Response: To the extent the 1875 Grant Land is being referred to in this comment, the width of the railroad right of way is defined by the 1875 Act and the center line of the right of way is the track as originally constructed. Please see the response to Comment #13, above.

20. **ACP Comment: Page 14, Private Crossing Maintenance Responsibility:** How can the access not run with the land? If the owner dies or sells the land, then the access becomes null and void? If the access is denied, RFTA has just devalued the land and basically landlocked the land based on the sale. Is this legal in the State of Colorado? This could be looked at as a condemnation from a public agency and may not be a wise policy choice.

Response: Licenses by definition do not run with the land. RFTA intends to issue, terminate, and reissue licenses to adjacent property owners in accordance with Colorado law, while maintaining the railbanked status of the Railroad Corridor and complying with the GOCO requirements. RFTA possesses the ability, and sometimes has the need, to specify the location for accesses and to consolidate access points when feasible and reasonable. RFTA does not allow a license to automatically transfer to a new owner, but it will provide a new license for a new property owner as part of the closing documents for acquisition of a parcel. During the ACP comment period, a private property owner asked RFTA to add language to the ACP (regarding the issuance of crossing licenses to subsequent property owners) that reads "which approval will not be unreasonably withheld." RFTA will revise the proposed update of the ACP to include this language. Many properties adjacent to the Railroad Corridor have changed ownership since rail was introduced into the valley and RFTA does not believe they have been devalued due to the need to obtain licenses from the railroad for their accesses.

21. **ACP Comment: Page 15, paragraph 3 – Public Encroachment –** An “encroachment” is any use of any portion of the railroad corridor without the permission of RFTA. It is RFTA’s policy to treat any encroachment in a similar manner as a crossing and require a license for any encroachment. An unlicensed encroachment is a trespass and may be removed by the user, or it will be removed or blocked by RFTA at the user’s expense.” While RFTA has yet to publish lists of the approved crossings, we believe there are a number of unlicensed utility crossings and potentially a road crossing (23rd, 8th Street, South Bridge). With this language, RFTA has the ability through their license process to require the City to grade separate any crossing (licensed or not) or block the access point at the City’s expense.

Response: When RFRHA acquired the corridor in 1997, it developed lists of existing approved uses of the corridor (List A), tentatively approved new uses of the corridor (List B), and proposed new

uses of the corridor that were subject to approval in the future (List C). These lists will be incorporated as attachments to the updated ACP. An update to this list, which identifies all of the current uses in the Corridor, i.e. crossings, encroachments, utilities, etc. will be developed in the future as time and resources allow. Subsequently, RFTA will address removal of the encroachments that no longer serve a purpose, licensing of allowed encroachments, and requests for new uses of the Railroad Corridor. Until RFTA is able to compile a complete inventory of the Railroad Corridor, updating the list of approved uses may be challenging. However, if there are concerns about any potential current unlicensed City uses, RFTA can work with the City to inventory all of the existing uses and develop licenses for any uses that currently might not have licenses.

22. **ACP Comment: Page 15** - Does approval of this agreement preclude a member from going to hearing at the PUC? Should RFTA be requiring fully built rail crossings for a rail banked line when there is no plan for re-activation of any type or any funding in place? This seems to be a waste of public money and/or private money.

Response: RFTA's responsibility, as delegated by the jurisdictions that were the members of RFRHA, and that are now members of RFTA, is to preserve and protect the Railroad Corridor for a future public transportation system. Railbanking is the mechanism that is currently preserving and protecting the contiguous Corridor, which is an asset of inestimable value. Railbanking requires RFTA to maintain the Corridor's viability for future freight rail reactivation; therefore, RFTA must exercise caution in approving crossings or uses of the Corridor that could significantly impair, if not preclude, the Corridor's suitability for reactivation of freight rail service. RFTA has no intention of preventing CDOT or local jurisdictions from obtaining access over the Corridor, so long as such crossings don't jeopardize RFTA's ability to maintain the Corridor's railbanked status, inasmuch as railbanking is the mechanism that keeps the contiguous Railroad Corridor intact. The ACP does not preclude a jurisdiction from applying to the CPUC for a crossing; however, it would be best if these jurisdictions worked cooperatively with RFTA to design their crossings in a way that would be compatible with freight rail reactivation, so that RFTA can support their CPUC applications.

23. **ACP Comment: Page 15** - Public Encroachment- What enforcement authority does RFTA have? This policy will be very expensive to enforce.

Response: As a landowner, RFTA has the same rights to remove encroachments or sue for trespass as any other landowner and that is what it has done when it has faced this situation in the past. As to the expense for enforcement, like any other business decision – a cost-benefit analysis of bringing a lawsuit must be carefully evaluated before engaging in litigation.

24. **ACP Page 16, paragraph 1** – RFTA has not included in the document their lists of permitted crossings, List A and List B. These lists were not provided so the lists cannot be reconciled with the City's crossings. This should be done before any further consideration of the policy.

Response: The existing lists will be attached to the ACP and provided to the City and other interested parties.

25. **ACP Comment: Page 16, paragraph 2 – Improvements.** RFTA states here that "Owners shall be responsible to improve and maintain existing crossings in conformity to applicable standards so as to allow and not impede freight rail reactivation. (Improvements or maintenance can be triggered by the following): General transit system improvements initiated by RFTA, RFTA determines that

increased traffic over an existing crossing warrants improvements, Where improvements have been agreed to through RFTA's License Agreement process. This statement requires that RFTA be a part of the City's land use process. RFTA would need to review all new land use proposals to decide whether traffic had increased enough in their opinion to warrant imposing their grade separation standards on the City or the developer. In addition, any changes to a public crossing would require an updated application to the CPUC for review.

RFTA offers no standard at which that determination might be made. (CDOT requires the City to submit land use applications to them to determine an adverse effect on the State Highway system. CDOT's threshold is a 20% increase in volume at the intersection. CDOT can require new acceleration and deceleration lanes, a new signal or signal retiming. RFTA has stated that they would like to eliminate 50% of all existing at grade crossings (Design Standards – Section 5, paragraph 2). Grade separation of a roadway is a huge cost, roughly \$5-\$10 million in today's dollars. In addition, RFTA through this section would have the ability to require an existing crossing (licensed or not) to meet their design standards with a "general transit system improvement." It is unclear what this means, and could be as simple as adding a bus stop.

Response: Crossings in existence when active rail service existed on the corridor are presumably compatible with rail reactivation. RFTA's goal is to ensure that the condition of the Corridor at the time of the purchase is not allowed to deteriorate so that in the event freight or passenger service is reactivated, significant modifications to existing crossings won't be necessary. In the interim, conflicts between vehicles and trail users could prompt RFTA and jurisdictions to jointly modify crossings to improve safety. A change in use from a private crossing with minimal traffic, to a public crossing or a private crossing involving commercial uses and/or significantly higher volumes of traffic, might also prompt RFTA to seek safety improvements from crossing sponsors. However, changes to existing crossings or proposed new crossings that adversely impact RFTA's ability to maintain the corridor's railbanked status would engender significantly greater concern and reduce the likelihood that RFTA would be supportive of them. Particularly in the case of proposed new public crossings, project sponsors would need to also obtain permission from the CPUC, whether or not rail is active in the corridor. Generally, RFTA plans to continue to allow at-grade crossings of the corridor as long as there is no active rail service. The implementation of active rail service in the corridor could prompt RFTA to reevaluate the need for grade-separation of public crossings at certain locations. As far as establishing specific thresholds similar to CDOT's that would potentially trigger the need to upgrade an at-grade crossing to a grade-separated crossing, RFTA will attempt to develop such guidelines and incorporate them into the proposed update of the ACP Design Guidelines and Standards. Most likely these standards would be applied when rail is imminent or active. As it relates to proposed new public crossings, the CPUC will determine whether the crossing should be at-grade or grade-separated and it could allocate the costs of any proposed crossing between the sponsor and RFTA. There may be limits, though, on the amount, if any that could be properly be allocated to RFTA at this time under 16 U.S.C. 1247(d).

26. **ACP Comment: Page 16, Existing Public Crossing:** If a private crossing already exists, and does not have adequate safe crossing apparatus meeting current standards, and the replacement is not discussed in the current language of the crossing, it would stand to reason that RFTA may have a future financial obligation that it cannot write away in policy. What is RFTA considering regarding public roadways that already cross the corridor, but are not on the A, B, or C list? There does not seem to be a crossing listed for 23rd Street although the City has built and paid for a rail crossing at this location for South Grand Avenue. How will RFTA handle this type of situation? Some parcels of

land may have been platted or homesteaded and may predate the rights of the railroad. Has a list been compiled of such properties?

Response: It is likely that with the reintroduction of rail service in the Corridor that the rail project might need to bear a substantial portion of the cost to upgrade any public or private crossings. The 23rd Street crossing at MP 361.73 is DOT #253718R, D&RGW Contract #27326 and, therefore, is licensed. There is also a PUC Decision on this crossing; PUC Application #18466 (1961) plus Appl. 23872/71005 (1966). Because this is an at-grade crossing, and rail is not active, RFTA does not foresee this crossing being a problem as far as preserving the corridor's railbanked status.

Over time, as resources allow, RFTA will attempt to develop an inventory of adjacent property owners and, where uncertainty about ownership is identified, attempt to resolve these issues in a fair and equitable manner.

27. **ACP Comment: Page 16, paragraph 12 - Crossing improvements and Maintenance of Existing Crossings:** Has each agreement been researched to verify this policy? Is this a sound policy if existing crossing documents are not concise? If the language already exists for the crossing and predates this document, how will RFTA handle these issues?

Response: RFTA's crossing licenses contain language that was derived from licenses issued by the D&RGW and the Southern Pacific Transportation Company. Maintenance of and improvements to private crossings are addressed consistently in RFTA's licenses. It has been RFTA's experience that public crossings are typically maintained by the jurisdictions in which they are located. In some instances, when tracks have not already been removed and/or paved over, RFTA might be asked to share the expense of maintaining the tracks. Private crossings are a different matter. Currently, there is a recreational trail located within the corridor. Where private crossings intersect and cross the trail, owners of the crossings are required to maintain their crossings to ensure that they are safe and not causing unwanted damage to the corridor or the trail itself. RFTA has been managing the trail for nearly 15 years and has not found this requirement to be a problem for licensees. If rail becomes activate, changes to crossings may be required. Where tracks have been removed or paved over, RFTA might need to bear the cost of repairing the crossings. However, the cost of maintaining approaches to the crossings would typically be borne by jurisdictions if the crossings are public or by adjacent property owners if the crossings are private.

28. **ACP Comment: Page 17, paragraph 4 –** "All crossings shall meet the current minimum Design Guidelines and Standards adopted by RFTA... An owner may be required to upgrade an existing crossing that does not comply with the design standards, at no cost to RFTA, 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." As stated above, this statement requires RFTA to be included in the City's land use decisions. It also allows RFTA to impose very costly improvements to both private and public landowners. The policy will require the City to involve RFTA in every new project, public or private on the west side of the City.

Response: Staff will be revisiting this language as it pertains to impacts on private property owners. The proposed ACP language, as written, provides RFTA with flexibility to make or to require improvements to existing crossings when rail service is restored, or when crossing sponsors propose new uses or changes to existing license agreements. Regarding the Land Use comments, the Corridor Comprehensive Plans have envisioned that the City and other jurisdictions wishing to utilize

the Railroad Corridor would include RFTA in their land use processes. As it relates to the Corridor, RFTA should be considered a referral agency and impacts to the Railroad Corridor should be public transportation corridor. RFTA has no intention of usurping the sovereignty of local governments through which the Corridor passes, but as a landowner, RFTA should be consulted when it is anticipated that the Corridor will be impacted by projects proposed by others. In addition, the Corridor holds a unique status, in that it is regulated under 16 USC 1247(d), which preempts state and local law to the contrary, just as federal rail regulation preempts state and local law to the contrary.

29. **ACP Comment: Page 17** - Design Guidelines and Standards "at no cost to RFTA." This may not be consistent with State policy as ruled on by the CPUC where cost allocations can be determined.

Response: RFTA agrees with this comment and the language will be revised in the next version of the proposed ACP update to acknowledge the CPUC's role in allocating the cost of public crossings between the crossing sponsors and RFTA, within the limits of 16 U.S.C. 1247(d).

30. **ACP Comment Page 19** - This policy will likely cause lawsuits against RFTA at some point in the future. Has RFTA considered the costs and negative impact on entity?

Response: The Aspen Branch Corridor was subject to considerable litigation before and after RFRHA acquired it. RFTA believes that the way to avoid more litigation is to comply with 16 U.S.C. 1247(d) as interpreted by STB, and to comply with other applicable law. If RFTA complies with 16 U.S.C. 1247(d), then many claims against the corridor might be preempted. In addition, this approach preserves the contiguous Corridor intact for its current recreational uses and its future use as a public transportation corridor. The creation of unfunded obligations that might pose a significant impediment to freight rail reactivation could jeopardize RFTA's ability to maintain the corridor's railbanked status. Claims of severance could arise, which if upheld by the STB, could result in the potential loss of federal land grant areas that keep the contiguous corridor intact. The safest policy for RFTA, absent specific guidance about the types of actions that the STB would consider a severance of the corridor, is to not allow crossings that would pose a physical barrier to freight rail reactivation or which result in the accumulation of unfunded obligations to repair or restore the Corridor in the future. RFTA believes that it is instructive that In AB 547X, served May 21, 1999, the STB rejected Garfield County's claim that CDOT severed the corridor at Wingo Junction, and also rejected Kulmer/Shoemaker's request for emergency relief against CDOT, stating:

"In a third instance, it appears that a highway reconstruction project by CDOT has obstructed the rail line beyond Carbondale, CO, an obstruction that apparently will continue for some period of time. That portion of the railroad, however, has been under embargo for at least a decade, since before RFRHA acquired the line. RFRHA has no control over the highway project, **but has acted appropriately to protect its interests and responsibilities by negotiating with CDOT a commitment to restore the track and to indemnify RFRHA at the conclusion of the project.** We find that offerors have failed to allege any facts upon which emergency relief may be granted, and, therefore, deny such relief."

31. **ACP Comment: Page 19** - Does the STB look at the number of crossings to determine if a corridor has been severed, or is financial cost to reestablish rail service considered when assessing the possibility of severance? RFTA should demonstrate the threat of severance through current STB decisions regarding number of crossings or financial cost.

Response: As indicated in the response to #30, above, the STB intervenes when claims of severance are made. In the Wingo Junction example, the STB noted that the Railroad Corridor had been obstructed but it ruled against the claim of severance noting that “RFRHA had acted appropriately to protect its interests and responsibilities by negotiating with CDOT a commitment a commitment to restore the track and to indemnify RFRHA at the conclusion of the project.” It can be inferred from the STB ruling that RFRHA’s “responsibilities” were to not to allow an obstruction for which there was no provision for removal and restoration of the corridor so as to be compatible with freight rail reactivation.

32. **ACP Comment: Page 19, paragraph 4** – “No new at grade crossings will be considered or permitted to serve any new parcels or lots, without consolidation or eliminating existing crossings elsewhere so that there are NO NET NEW CROSSINGS” If this policy passes the RFTA Board, this statement would have a huge effect on future public projects. All crossings would need to be grade separated, at considerable cost. At this time the City is being required to grade separate South Bridge, at an additional cost of \$4.5 million dollars. 14th Street Bridge would also need to be proposed as a grade separation.

Response: The redesign of South Bridge project allows the roadway to cross the Railroad Corridor at-grade by raising Highway 82 in order to create an interchange system. RFTA will consider revising this language to make it clear that new at-grade crossings will be allowed. RFTA will, however, continue to have a goal of minimizing new at-grade crossings and reducing existing at-grade crossings (most likely through consolidation). Although RFTA will allow new public at-grade crossings, they must be safe for trail users, not jeopardize the Corridor’s railbanked status, and also be approved by the CPUC.

33. **ACP Comment: Page 19, paragraph 5** – Denial of Private Crossing. RFTA retains the right to deny a private crossing request. This provision does not affect the City as greatly as it does other jurisdictions. However, it does raise the same concerns mentioned above, in that this policy could be construed to be a taking of private property, and could subject RFTA and all of the member jurisdictions to lawsuit.

Response: RFTA has no intention of denying private crossings for frivolous reasons. Because the corridor has been in existence for over 100 years, the vast majority of properties adjacent to the corridor already have approved accesses. In the case of requests for new private crossings, RFTA should be able to establish the conditions surrounding such crossings, to ensure that they are safe and constructed to certain standards. If an existing property owner that already has a crossing requests a new crossing, RFTA may make the approval of the new crossing contingent upon the abandonment of the old crossing. If a property is subdivided and the owner requests a crossing for a new parcel, RFTA may require that the crossing be consolidated with an existing crossing in order to minimize the proliferation of crossings, which could impair the safe and efficient operation of a future rail system. RFTA has been involved in only one Corridor-related lawsuit during the past 15 years that it has managed the corridor. This lawsuit was brought by RFTA against an adjacent property owner concerning an encroachment on the corridor. Ultimately, this lawsuit was favorably settled and the encroachment was removed.

34. **ACP Comment: Page 20**, “No new crossing will be permitted that could ..., trail and other uses for which RFTA has obligated itself.” Reading this statement, it appears that RFTA is absolving itself

from prior agreements. These agreements may not afford RFTA the freedom of breaking without the agreement of both parties. Does this policy invite lawsuits for breaches in contracts for which RFTA and the public agencies that make up RFTA may be liable?

Response: RFTA does not intend to absolve itself from any prior agreements or commitments. To the contrary, it is because of agreements entered into by RFRHA and its member jurisdictions (that were assigned to and assumed by RFTA) that RFTA is doing its best to maintain the Corridor's railbanked status and to preserve the Corridor for a future public transportation system. If there are specific prior agreements to which the City refers, please specify and/or provide copies of such agreements.

35. **ACP Comment: Page 21, Approval Criteria, "1. Improvements shall not create a future financial obligation or physical obstruction to freight rail, commuter rail reactivation, trail use or other uses that RFTA has obligated itself;"** This language appears that RFTA is using this document to dissolve contractual obligations in previous agreements. If this is the case, this seems fiscally and managerially irresponsible to use this document to try and dissolve binding agreements.

Response: See response to comment #34, above.

36. **ACP Comment: Page 22, paragraph 5 – Appeal process.** Angela Kincade and Mike Hermes will determine whether the crossing will be approved. If the applicant disagrees, they have 10 days to file an appeal with the Board. RFTA staff will then send the appeal to the Board with their recommendation for denial. The Board will then determine whether or not the appeal will be heard. If the board chooses to hear the appeal, the applicant then only has 10 minutes to make the case for a different decision. This appeal process seems to be very limited for making large land use decisions.

Response: RFTA initially wished to ensure that there was an expeditious appeal process in order to avoid delay. However, RFTA will revise the ACP appeals' process to provide more time for appeals to be submitted and adjudicated.

37. **ACP Comment: Page 24, Paragraph 2 – "RFTA reserves the right to deny or condition any and all licenses, permits or contracts for use of RFTA property notwithstanding participation in a prior planning process."** Here the RFTA policy asserts that RFTA has a higher land use authority than the local jurisdictions.

Response: The agreements for management of the Railroad Corridor were put in place by all participating jurisdictions. RFTA has been delegated the responsibility for complying with agreements that it inherited from RFRHA and for managing the Railroad Corridor according to the terms and conditions of those agreements. The ACP asserts no land use authority over local jurisdictions. However, local jurisdictions should not assume that they can cause or allow impacts to the Railroad Corridor that might jeopardize its railbanked status. RFTA will work cooperatively with local jurisdictions to assist them in obtaining authorization for corridor crossings. The language in this paragraph is intended to inform others that merely because RFTA participates in planning meetings and processes involving other jurisdictions, it should not be assumed that RFTA has given its assent to proposed crossings and other uses of the corridor.

38. **ACP Comment: Page 24** - Financial responsibility. The CPUC allocations for crossings suggest the railroad may or should have partial responsibility for the cost of crossings.

Response: The allocation of crossing costs will be decided on a case-by-case basis by the CPUC; however, if a proposed crossing could affect the railbanked status of the corridor, the CPUC may not have jurisdiction either to grant the crossing or to allocate the costs of the crossing to the railroad.

39. **ACP Comment: Page 24**, Coordination and Development Review with Local Jurisdictions: In order for RFTA to be involved with the development review process, it would require adoption or an IGA with a local agency. The problem is that this policy prohibits development and in some cases may create reverse condemnation of properties based on the nature and wording of the document. If adopted, developers would spend a tremendous amount of money to get a project approved, and in the end, may not be able to develop because of the restrictive nature of the document.

Response: Nothing in this policy is intended to prohibit development or create inverse condemnation of properties. RFTA has a responsibility to adhere to the agreements it inherited from RFRHA; to maintain the Corridor's railbanked status and to preserve the Railroad Corridor for its primary use as a future public transportation corridor and its secondary recreational and other public uses. RFTA has an obligation to manage the rail corridor in a responsible fashion and agrees that it needs to work cooperatively with the jurisdictions to develop a joint land use review process for projects that impact the Railroad Corridor. Currently, RFTA is a referral agency for projects that impact the Railroad Corridor; however, RFTA doesn't always receive referrals in a timely manner and then it is forced to react after the fact instead of during the review process, which is not ideal. RFTA wants to work in harmony with its jurisdictional partners to ensure that crossing sponsors develop the best and most affordable projects for all concerned, including RFTA. Although the proposed update of the ACP may undergo additional revisions before it is adopted, RFTA believes that the updated ACP, when adopted, should help jurisdictions better understand RFTA's crossing guidelines and constraints and ultimately assist them in getting their crossings approved more rapidly.

40. **Design Guidelines and Standards Comment: Section 1.1, paragraph 8** – “There may be current third party uses of the RFTA property that do not conform to these guidelines and standards...On a case by case basis, RFTA will endeavor to remove or ameliorate the non-conforming uses to the extent consistent with applicable contracts and legal requirements.” The City has a number of crossings that do not meet the proposed RFTA standards. The City would be subject to removal or improvement of the crossings to meet RFTA standards, at the City's cost.

Response: The statement in this Section and paragraph is generally accurate, but it should be clarified that it is referring to the time when rail returns to the Valley. At that time, all of the existing crossings will need to be reviewed and some will undoubtedly need to be reconstructed, consolidated, or relocated, in order for rail to operate safely and efficiently. RFTA recognizes that most of the costs associated with the reintroduction of rail will likely need to be included as a part of a future rail system. In addition, the voters in the Valley will need to vote to support funding for a rail system. In order to have the greatest potential for success at the polls, it would seem wise to limit the accumulation of unfunded costs that would be required to repair damage created by crossings that aren't designed to be compatible with freight or commuter rail activation. Building and then having to remove a public crossing, instead of building it to accommodate a future rail system from the outset, could be considered wasteful and lead to an erosion of public support for the future commuter rail system.

41. **Design Guidelines and Standards Comment: Section 1.2, paragraph 2** – “Railroads do not recognize private crossings unless permitted under a written agreement between the land owner and RFTA. In this regard, to protect the Corridor, RFTA intends to act as if it were a railroad. No private crossings are permitted except pursuant to a written license agreement with RFTA, or a predecessor of RFTA.” As discussed above, this is another statement that will require private landowners to negotiate with RFTA for a 30 day revocable license agreement, and subject the property owner to the expense of a grade separated crossing. RFTA has also stated that no new private crossings will be allowed without consolidation.

Response: Because of its unique NITU/CITU status, and because the Corridor was purchased for a future public transportation corridor, RFTA manages the Corridor as a Railroad Corridor. The ACP promotes a standardized approach to the management of existing private crossings and to the development of new private crossings of the Railroad Corridor. If rail returned to the valley, RFTA would need to ensure that all crossings of the corridor, whether public or private, were safe. In some cases, RFTA would need to work with private property owners to consolidate or realign their crossings. As part of that process, RFTA anticipates that the majority of costs would be borne by the rail project; although the private property owner could incur some costs associated with approaches to the crossings. They might also need to agree to the relocation or consolidation of their crossings. The need to manage private crossings in this way is not new, nor was it created by RFTA but, rather, it was created by RFTA’s predecessor RFRHA. RFTA is a public agency and it will require public support in order to develop a future rail system; therefore, RFTA plans to continue working cooperatively with private property owners.

Having a 30-day revocable license, the standard that railroads use, has not been a problem in the past. This potential problem appears to be theoretical and contrary to history. While RFTA is amenable to extending the revocation time frame for legitimate cause, RFTA, as the owner of the Corridor, has the responsibility for preserving the potential for future rail operations, as well as protecting current and future trail users from safety issues created by others. The licensing process and Design Guidelines and Standards are tools that RFTA uses to help protect the public, the corridor, and RFTA. This system is similar to the ones railroads historically have employed as a means of managing safety and risk. Finally, it is RFTA understanding that the rail industry uses 30-day terminable licenses in order to ensure that federal regulatory authorities do not view some non-rail use an illegal de facto abandonment or unreasonable burden on rail service.

42. **Design Guidelines and Standards Comment: Section 1.2, paragraph 3** – “Railroads traditionally allowed private crossings with a 30 day terminable license. In order to protect the corridor in a fashion compatible with rail reactivation, RFTA intends to continue that practice.” Continued...“Adjoining landowners are admonished that sales of real property adjacent to the RFTA’s right of way corridor do not imply that the successor in interest to the adjoining landowner shall have a right to cross the railroad corridor. Failure to acquire a license agreement/contract/permit with RFTA may result in denial/revocation or removal of the private crossing. Change in use of the crossing may also result in the requirement to upgrade the crossing improvements, or revocation/removal of the crossing and improvements.” This provision is so onerous that it may be construed to be a taking of private property rights. As stated above, at a minimum, landowners seeking to establish or reestablish access to their homes and land would first be forced to negotiate with their neighbor for consolidation, and then second be forced to grade separate a crossing to freight rail standards.

Response: This language is standard language used by railroads to protect their ability to safely operate within their railroad corridors. This language already exists in the license agreements that RFTA has, for many years, had with the Corridor's adjacent property owners. For more information on this topic, please see RFTA responses to comments 16, 20, 28, 33, 37, and 41, above.

43. **Design Guidelines and Standards Comment: Section 1.3, general comment** – RFTA's policy implements a large and likely expensive application process. In it they reserve the right to act in the capacity of a NEPA reviewing agency. RFTA can request information on environmental issues, drainage issues, hazardous materials operations, health and safety, noise and or light pollution, traffic impact analysis and emergency and fire services mitigation. In the end, all private crossings (residential, commercial and utility), if granted, would be granted with a 30 day revocable contract or license. In Section 2.1, in the fourth paragraph, the policy states that RFTA will only permit crossings for a public agency in the form of a license agreement or contract, but not in the form of a permanent easement. This will likely to cause problems with Federal funding of projects. It seems unlikely that Federal funds would be allocated to a project that could be blocked or removed by RFTA. In addition, RFTA will need to hire additional staff for review of all of the land use applications and enforcement of this policy. Some or all of the cost could be funded through application fees, but costs to the developer would be very high. Finally, CDOT has made the City aware that in their negotiations with the Union Pacific Railroad for crossings, the UP grants CDOT permanent easements. In this document RFTA asks for a higher standard than an operating Class I railroad.

Response: Railroads use an application process for parties seeking to use their rail corridors for access or other purposes. Customarily, any uses permitted by railroads are permitted by a license. It is not "new" for developers to apply to owners of railroad corridors for various uses. It is not RFTA's intent to create an additional layer of process for developers but, rather, it hopes that it can work with its member jurisdictions to ensure that the public's assets and interests are protected. RFTA feels obligated to issue revocable licenses because they help to protect the Corridor's railbanked status and preserve the corridor for a future public transportation system. Nonetheless, RFTA will consider easements for public crossings, assuming that the crossings are approved by the CPUC and designed and constructed in a manner that won't jeopardize the Corridor's railbanked status. Given the complexity of managing a railbanked corridor, RFTA must accept the legal, engineering, and management costs associated with ensuring that the Corridor is adequately protected.

44. **Design Guidelines and Standards Comment: Section 2.1, paragraph 1** – "To this end RFTA seeks to avoid any obstructions to the corridor which might amount to an arguable "severance" precluding rail reactivation. This requires RFTA to be vigilant not only to avoid granting property interests that disrupt the continuity of the corridor, but also to avoid allowing changes in the elevation of the rail bed, or the installation of aerial, surface or subsurface structures that are incompatible with freight rail reactivation or commuter rail construction and operation." Here RFTA states that they would rather not allow crossings of the corridor. However, they may let a public entity or private individual cross if you do not disturb the rail bed. RFTA stated this position during the negotiations around the South Bridge crossing. The City initially proposed lowering the trail/ rail line to Federal AERMA standards. RFTA said that the grades were too steep. RFTA preferred that we keep a rail/ trail grade of less than 1.5% (AERMA standards allow 2%). This required very long transitions and excessive cost, roughly \$10 million to meet RFTA's preferences. In the end RFTA said that they would prefer South Bridge to cross their trail/rail corridor at grade in this location. This decision conflicts with this

proposed policy, and may not be allowed if this policy passes. The decision to allow the South Bridge project to cross the rail corridor at grade still requires that the City and County raise State Highway 82 by 8 feet at the intersection and install a grade separated interchange and a series of retaining walls. The cost for this solution is \$4.5 million.

Response: RFTA believes that the City's South Bridge project, as originally described in the Environmental Assessment, did not account for the cost of restoring the rail bed if freight or commuter rail were to be activated in the future. The estimated cost of repairing the corridor so that rail vehicles could pass under the City's road was approximately \$10 million. This is the type of unfunded obligation that RFTA is attempting to avoid in order to maintain the corridor's railbanked status and to preserve it as a viable future public transportation corridor. The additional \$5 million cost of the redesigned South Bridge project will avoid damage to the corridor and could possibly work better for traffic flows on Highway 82. Would RFTA prefer to have a grade-separated crossing of the corridor rather than an at-grade crossing at this location? Yes, but RFTA recognizes that the cost of grade- separating the roadway in a manner that wouldn't harm the rail bed would be considerably more expensive than the City's current at-grade crossing design. RFTA was clear from the inception of the South Bridge EA process, that the project should not negatively impact the railroad corridor and, potentially, jeopardize the corridor's railbanked status. In 2010, the City Engineer and the EA consultants represented to the RFTA Board that the project sponsors would put in escrow funds necessary to repair and restore the corridor in the future if freight rail became active. However, in the EA, no mention of this commitment was made and RFTA objected to this omission. Considerable additional time and expense have been incurred by the City and RFTA to find a compromise crossing design that is workable from RFTA's perspective. Perhaps this additional time and costs might have been avoided if the current proposed ACP and Design Guidelines and Standards had been adopted and available for reference at the outset of the South Bridge design and environmental process. While it is in the best interest of RFTA, trail users, and a future public transportation system, to limit the number of new at-grade crossings of the Railroad Corridor and to consolidate existing crossings where feasible and reasonable, RFTA will make allowances when necessary.

45. **Design Guidelines and Standards Comment: Section 2.1, paragraph 2** - "Consistent with general railroad policies, RFTA seeks to consolidate or to remove as many at grade motor vehicle crossings as possible. New motor vehicle crossings, especially at grade crossings, should be avoided, if at all possible. Such crossings should be grade separated to minimize risk of impairing future rail restoration." As stated above, grade separation for public and private entities requires a bridge or a tunnel, both of which are hugely expensive, in the range of \$5-\$10 million per crossing in today's dollars. Not many new developments are able to absorb this kind of cost. If passed, RFTA's policy may significantly slow or stop development on the west side of the Roaring Fork Valley.

Response: The cost of a grade separation may be overstated in this comment. The cost of a grade separation can vary widely and is very dependent on local site conditions, local geometry and safety needs. Often, costs of \$1.5 to \$2.5 million are more common for small local public road overpasses and underpasses. Full highway interchange costs are obviously much higher and also include many other improvements not directly associated with the road crossing of a railroad itself. Many public road crossings have alternatives that involve different cost and other considerations. Ideally, the costs of proposed crossing projects shouldn't be minimized to the detriment of the Railroad Corridor. RFTA will look at each crossing proposal on a case-by-case basis and work with crossing sponsors to develop crossings that are as affordable as possible for the sponsors while also avoiding

negative impacts on the Railroad Corridor. RFTA has no intention of hindering future developments or the transfer of real property.

46. **Design Guidelines and Standards Comment: Section 2.1, paragraph 4** – “Public crossings require a written license or other contract agreement with RFTA prior to construction, operation or alteration.....Failure to comply with the terms of the license or other agreement with RFTA will constitute a breach of contract and risk closure of the crossing.” In this statement RFTA claims the ability to close public crossings. Glenwood Springs only has two crossings of the Roaring Fork River, both of which cross the RFTA corridor. Closure of either one of these crossings would result in considerable traffic congestion and delay very similar to the closure of the Grand Avenue Bridge in 2017.

Response: Whether RFTA would ever force closure of a public crossing for breach of contract depends on the circumstances presented. Although unlikely, RFTA needs to maintain that right, even as a last resort, in the event of an inability or unwillingness of a jurisdiction to execute a license agreement with RFTA, possibly jeopardizing the Corridor’s rail-banked status. In the case of public crossings in the Railroad Corridor, the CPUC still has the final word on any potential closure and the PUC would determine how costs for improvements to existing or new crossings would be allocated between RFTA and the jurisdictions making the changes within whatever limits are imposed by regulation under 16 U.S.C. 1247(d). RFTA envisions this issue would generally pertain more to utility crossings than roadway crossings, since most public crossings have previously received decisions from the CPUC.

47. **Design Guidelines and Standards Comment: Section 2.1, paragraph 5** – “Private crossings require a prior written agreement in the form of a 30 day terminable license between a private individual or entity and RFTA consistent with RFTA’s ACP. New private at grade motor vehicle crossings shall be avoided.” As discussed previously with other statements, this policy statement could be construed to be a taking of private property rights. A 30 day terminable crossing license will not be viewed very favorably by many banks and financial institutions. In addition, the cost to construct the bridge or tunnel crossing will be too much for most private projects to bear.

Response: 30 day terminable licenses have been the standard since the Railroads began operating in the Roaring Fork Valley in the late 1800’s. To RFTA’s knowledge, this process hasn’t negatively impacted the property values or the transfer of real property adjacent to the Railroad Corridor. RFTA is routinely contacted by the title companies in the Valley when parcels are changing hands. In such instances, RFTA supplies a new license as a part of the closing documents. RFTA has no intention of hindering future developments or the transfer of real property where there is no negative impact to the corridor. As has been stated elsewhere, most private landowners already have licenses for accesses to their properties. In a number of cases, the crossings have already been consolidated. RFTA must preserve the ability to work with property owners to consolidate crossings, if possible and practical, when “new” crossings are requested.

48. **Design Guidelines and Standards Comment: Section 2.1, paragraph 6** – “Private crossing licenses may not be sold, subdivided or otherwise assigned. All private crossing rights are personal to the individual private licensee and do not run with the land.” Again, this statement could be construed to be a taking of private property rights. With the sale of private land, the owner is forced through this policy to consolidate the private access and bear the cost of grade separating the access point.

Response: In general, licenses are personal to the licensee and do not run with the land. This is not a taking. The process of terminating the licenses of previous property owners and reissuing them to new property owners happens with regularity. When property sales happen, RFTA is notified and issues a new license to the new owner for the existing crossing of the Railroad Corridor. Licenses are not transferrable. This is a management tool that RFTA uses to ensure notification of changes in ownership of the parcels requiring access across the RFTA Railroad Corridor. This policy provides RFTA with the flexibility to work with property owners to realign and consolidate private crossings when necessary, desirable, and practical. Normally, the transfer of a crossing license from one owner to the next occurs without any changes to the crossing itself. There is no mandatory requirement for a private owner to grade-separate a crossing.

Design Guidelines and Standards Comment: Section 2.1, paragraph 7 – “ Private parties contemplating subdivision and redevelopment are hereby on notice that RFTA’s policy prohibits additional new private motor vehicle crossings of the RFTA’s corridor without consolidation, or otherwise eliminating existing crossings elsewhere.” See statement above.

Response: RFTA must have the ability to work with private property owners to consolidate crossings when it is possible and practical. During the period that it has been managing the Railroad Corridor, RFTA has been asked to approve very few new private crossings of the Corridor. RFTA does not anticipate a tremendous number of new private crossing requests in the future. Consolidation may be considered when private property owners that have multiple licensed crossing already in existence agree to eliminate one or more crossings in order to be approved for a new crossing. Since RFTA acquired the Corridor, it has been working cooperatively with private property owners and has experienced minimal disputes. ACP provisions about which the City expresses concern have, to a large degree, been included in previous versions of the ACP. RFTA believes that the biggest ACP issue that needs to be addressed is how to facilitate affordable public crossings of the corridor without jeopardizing the railbanked status of the corridor.

49. **Design Guidelines and Standards Comment: Section 2.1, paragraph 8** – “For all private crossings licensed after the date of adoption of this ACP, the minimum insurance requirement for RFTA’s protection from personal liability or property damage arising from the crossing shall be the greater of (a) \$2,000,000 per incident /\$6,000,000 aggregate or (b) the coverage limits of the relevant liability policy of the private individual or company owning the adjacent land served by the crossing.” This provision adds an additional cost to the already outrageous cost to grade separate a crossing of the RFTA corridor for a private individual.

Response: Current licenses, which RFTA patterned after the railroad, require the licensee to assume all liability arising from their crossings and indemnify RFTA. As a result of the ACP comment and review process, it is likely that the proposed insurance provision will be modified in the final draft of the proposed update of the ACP. RFTA has no desire to add unnecessary financial burdens on license holders; however, RFTA must ensure that it is protected from potential liabilities that could result from accidents involving trail users or others that are caused by the licensees. An insurance requirement will likely be added to the ACP for situations in which private property owners are performing work in the Corridor. There is no mandatory requirement for a private owner to grade-separate a crossing.

50. **Design Guidelines and Standards Comment: Section 2.1, paragraph 10** – “ To the extent possible, it is RFTA’s policy that all crossings must have an assigned FRA/DOT number and must be entered into the Federal Database (administered locally by CDOT). Any crossing without a valid DOT number is

subject to closure and may be removed.” This is yet another mechanism for RFTA to close an existing crossing, with huge consequences to the local jurisdiction or private property owner.

Response: This is a federal requirement. Crossing numbers are issued by any one of the following: RFTA, CDOT (Intermodal), or FRA. In most cases RFTA and CDOT would jointly issue the number. The DOT number is for Safety recordkeeping & inventory purposes. This is not a system put in place to eliminate crossings, its purpose is to manage and monitor existing crossings and provide for management of new crossings. Closure of a crossing would be a last resort measure. RFTA believes it is unlikely that a property owner or a local government would refuse to take the relatively minimal steps necessary to obtain a valid DOT number for their crossings in order to comply with this policy. RFTA will assist everyone with getting their crossings the required FRA/DOT numbers if they don't have them already.

51. **Design Guidelines and Standards Comment: Section 2.1, paragraph 11** – “RFTA shall treat the Rio Grande Trail Corridor as if it were an operating freight rail corridor. Bridges (overpasses and underpasses) constructed on the corridor shall be designed and constructed in accordance with applicable railroad clearances.....Any crossing of the RFTA corridor must be designed to meet current freight rail standards when constructed. Pledges to conform to rail standards at some future date are not an acceptable substitute because of future financial uncertainties as well as uncertainties in estimating construction and compliance costs.” It seems unfair and well beyond the original purpose of RFTA to treat this corridor as an operating rail corridor. It adds huge costs to all crossings, and may well significantly slow or eliminate development on the west side of the Roaring Fork River from Glenwood Springs to Woody Creek. In addition, the UPRR does allow at grade crossings of their rail corridor. Why should RFTA's standards for a rail banked line be more stringent than the UPRR's requirements for an active line?

Response: The Railroad Corridor was acquired by RFRHA and its constituent governments. The City of Glenwood Springs was a signatory to a 1997 Intergovernmental Agreement that approved the purchase of the corridor. The IGA states as follows:

If any one Government wishes to utilize all or a portion of the Property for a new or different use not enumerated in the Comprehensive Plan and within the jurisdiction of that Government, it may do so provided that such a use is approved by the Board of Directors of the Roaring Fork Railroad Holding Authority, does not preclude the desired future uses as determined by the Board of Directors, as is consistent with the obligations imposed by the funding sources referenced at Section 5, above. It is the responsibility of the Government proposing this new or different use to prove and otherwise insure that the use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing and proposed at-grade crossings by public rights-of-way and accesses. **Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from the various funding sources described above.** Attached as Exhibit “H” is an inventory of the Property identifying certain crossings, accesses, and uses along the Property (the

“Access Plan”). This Access Plan shall assist the Roaring Fork Railroad Holding Authority in identifying current uses of the corridor, and in the adoption of the Comprehensive Plan. Notwithstanding any language to the contrary herein, nothing in this Agreement shall be construed or interpreted to mean that any illegal crossings, trespass, uses, unauthorized encroachments or homesteads upon the Property are being legalized or approved by the adoption of this Agreement.”

In addition, the IGA states:

Development of a Comprehensive Plan. A Comprehensive Plan for the property (hereinafter the “Plan”) shall be developed and approved by the RFRHA Board of Directors prior to improvement of the Property for public transportation uses. The parties hereto acknowledge that the Property is currently being used for certain purposes (rail transportation, utility easement, crossings for access to adjacent properties and related purposes.) Consistent with the Purpose section of this Agreement, it is **not the intent of the parties hereto to interfere with the legal obligations attendant to the operation of a rail transportation corridor** or the legal rights of tenants or grantees of easements upon the Property. The Plan shall include the following:

- i. **A listing and description of possible uses for the property, including but not limited to such improvements necessary to place and operate a public transportation system, public trail and/or access to public lands;**
- ii. A detailed improvements and operations plan for the ultimate preferred use(s) on the property, including a recommended management and funding strategy; and
- iii. An interim plan which incorporates the interim use of the rail corridor for a temporary trail following approval from the Surface Transportation Board of a certificate of interim trail use pending the re-establishment of rail service.

A review of the founding RFRHA IGA’s and the 2000 Comprehensive Plan, as well as the provisions of the GOCO agreement, indicates that RFRHA intended to allow public at-grade crossings so long as the project sponsors demonstrated to the satisfaction of the Board of RFRHA that such crossings would not preclude or negatively impact the primary use of the corridor for a public transportation system. The members of RFRHA also agreed not “to interfere with the legal obligations of RFRHA attendant to the operation of a rail transportation corridor.” RFTA is doing its best to comply with the responsibility for protecting and preserving the Railroad Corridor that was conferred upon RFRHA by its constituent governments, including Glenwood Springs, and assigned to RFTA in 2001.

52. **Design Guidelines and Standards Comment: Section 2.1, paragraph 14** – “RFTA will treat any opening or gate in a right of way fence on the corridor as a crossing. Unless the crossing has a license, RFTA will treat it as undocumented. Undocumented crossings are prohibited. RFTA shall reserve the right to fence, lock or otherwise permanently obstruct the crossing, without liability to RFTA, and will require that all costs, including attorney’s fees, be borne by the user of the undocumented crossing.” This statement seems over the top and very unreasonable. Why pedestrian gates are a danger to the rail banked status of the line?

Response: Pedestrian gates are a safety issue for a Railroad Corridor. If the gates are public and

involve a crossing, they require CPUC approval. If they are private, they must be licensed so that, if a rail system begins operating in the corridor in the future, the gate can be removed, if necessary, to protect the public from accidents involving pedestrians and trains. Licensing gates is merely a management tool that enables RFTA to identify all uses of the corridor and potential current and future safety and liability concerns.

Design Guidelines and Standards Comment: Section 4.1, paragraph 2 – “If an underpass structure is required, the project must temporarily reroute train traffic around the construction site by utilizing a shoofly track subject to local operating review and approval. Shoofly tracks will be designed per Section 4.1.1.” The City examined a shoofly track for the 8th Street project. It was deemed infeasible there. This expense is inappropriate for a corridor where there is no active service.

Response: Shoofly tracks are a safety measure used for construction on an active Railroad Corridor. RFTA is managing this corridor as a Railroad Corridor and as such has created a policy to account for all potential future uses of the Railroad Corridor. This policy will be applied when rail returns to the Railroad Corridor and if shoofly tracks are deemed necessary and appropriate for the situation at that time.

Design Guidelines and Standards Comment: Section 5, paragraph 2 – “As stated in Parts 1 and 2 of this document, Federal guidance laid out in the 2008 Railway Safety Improvement Act and 23 -USC - 130 to reduce the total number of at grade crossings by 50% by elimination or consolidation of at grade crossings in order to preserve RFTA’s corridor for future rail reactivation and for commuter rail use, RFTA believes it is prudent to apply the Federal guidance to management of the rail-banked corridor.” Again, this policy is too extreme for a corridor which was purchased and rail-banked by the local jurisdictions with the intent of managing a recreational trail through the Valley. The existing crossings and any proposed new crossings enable better access to our cities and provide economic development in our valley. The idea of eliminating crossings and making new crossings so expensive as to be cost prohibitive will slow, and perhaps eliminate economic development in the Valley, and will also provide ample fodder for law suits against RFTA and all of the supporting member jurisdictions.

Response: Please note that RFRHA originally purchased the Railroad Corridor as an operating line of railroad. It was railbanked only when actual provision of low volume freight rail service seemed prohibitively expensive. In any event, the Corridor was purchased for its primary use as a public transportation corridor and its secondary recreational and other public uses. Railroad Corridors are difficult to assemble and easy to lose but, with proper management, the Railroad Corridor should support good land use planning and help to preserve many of the Valley's long range transportation goals. To date, RFTA has not found the process to be litigious. If the corridor is going to be preserved, it must be protected. If the growth and development that the City envisions occur, a viable, unencumbered, public transportation corridor will be even more necessary and valuable than it is today.

Garfield County Comments:

1. **ACP Comment:** Foremost, the Board believes this document to be draconian in nature and does not create a proactive environment to promote the best interests of RFTA and the citizens of Garfield County.

Response: The proposed 2014 ACP is an update to the 2000 and 2005 versions of the Access Control Plan (ACP) that have been previously adopted either by RFTA or all of the constituent jurisdictions of the Roaring Fork Railroad Holding Authority (RFRHA) that currently comprise RFTA. The proposed 2014 update was written to include design Guidelines & Standards for all requested uses of the Corridor. Except for the inclusion of the proposed Guidelines & Standards, the proposed 2014 update is very similar in substance to the previous 2000 and 2005 versions. For informational purposes going forward, the 2014 update also includes non-substantive but important information regarding the history of the Corridor, the fundamental elements and concepts inherent in railbanking and a definitive explanation of the Great Outdoors Colorado (GOCO) Conservation Covenant areas and RFTA's management requirements associated with them.

While the proposed ACP emphasizes the need to protect the Corridor's railbanked status by disallowing barriers to the reactivation of freight rail service (a Surface Transportation Board railbanking requirement) to a greater extent than its predecessors, many of the provisions of the previous ACP's have been incorporated verbatim. To address concerns that have been expressed about the overly restrictive nature of the proposed ACP, RFTA has formed a collaborative ACP Work Group, consisting of staff members of jurisdictions throughout the region. The goal of the Work Group is to improve the ACP in a way that doesn't jeopardize the Corridor's railbanked status, so as to keep the contiguous Corridor intact.

2. **ACP Comment:** The County also believes that some of these policies dictate the ability of public agencies to approve and manage land development and zoning master plans that have been in place before this policy was developed.

Response: The inclusion of Design Standards and historical information in the proposed 2014 update ACP was not intended for the purpose of dictating land use policies. Rather, the focus has been to comply with the updating process that is required by the GOCO agreement and assure that the railbanked status of the Corridor is maintained. RFTA's fiduciary responsibility to preserve and protect the valuable Corridor asset requires it to manage it in a way that doesn't jeopardize its railbanked status. When land use issues arise, local governments and RFTA will need to work closely together to find workable solutions that enable all of the parties to achieve their respective goals to the greatest extent feasible.

3. **ACP Comment:** The County believes this ACP is an excessive means to protecting the "rail banked" status of said corridor. Alternatives for protecting the corridor such as converting the corridor to a right of way for trail use instead of preserving it for future rail under the railbanking legislation may be more appropriate.

Response: The Corridor's railbanked status provides strong and unique Federal protections for many citizens and guests of the Roaring Fork Valley who enjoy and use of the Corridor today, while also preserving it for its intended use as a future public transportation corridor. Although it is in process of researching other ways to manage the Corridor, RFTA isn't optimistic that it will be able to find suitable and/or affordable options that provide the same level of protection that railbanking affords. Conversion of the Corridor from a Rail Corridor to a trail corridor will require the acquisition of the federally granted lands comprising the Corridor. In light of the holding of the recent United States Supreme Court case of MARVIN M. BRANDT REVOCABLE TRUST ET AL. v. UNITED STATES -01-2014), whereby landowners prevailed in their argument as adjacent owners that they were entitled to ownership of abandoned Federal easements, railbanking both protects the Corridor from

intrusion by private interests and preserves it for use in the future as a public transportation corridor for the entire region.

ACP Comment: In reviewing this plan, the County would like to ensure that private landowners are protected and that, if necessary, adjustments are made to impacted property boundaries and areas of encroachment. Garfield County has received correspondence from concerned constituents in regard to fee titles to land that may have existed before the railroad. The County encourages RFTA to resolve these issues proactively with respective property owners.

Response: RFTA is in the process of identifying all potentially impacted adjacent property owners and developing a strategy for cleaning up any and all boundary issues related to the Railroad Corridor. Meetings have already been held with potentially impacted adjacent property owners for the purpose of resolving legal boundary issues.

ACP Comment: The specific provisions for the proposed appeal process are extremely limited, are inappropriate for the complexity of the issues at hand and may not allow for an appellant to be heard. The County believes the appeal process should be reconsidered to allow for more than 10 days to appeal, and not limit the time of argument to be made within a short 10 minutes. The County is also concerned that the plan provides for inappropriate duties assigned to the Assistant Director of Project Management, such as the unilateral ability to approve new accesses.

Response: Revisions that will hopefully address these concerns will be explored and discussed with the ACP Working Group and the RFTA Board.

ACP Comment: As both RFTA and the County are aware, as stated in the original Intergovernmental Agreement entered into on December 31, 1994 concerned with the purchase and public ownership of the Aspen Branch of the Denver and Rio Grande Western Railroad Right-of-way ("1994 IGA"), the primary use for the property was to be as a public transportation corridor and the secondary use could include recreation. RFRHA (now RFTA) was to continue to evaluate all aspects of a freight operating agreement for reactivation of freight services on the Rail Corridor.

Response: RFTA has been delegated the responsibility for preserving and protecting the Corridor for a future public transportation system. In addition, the Corridor has been railbanked through the Surface Transportation Board; therefore, RFTA is required to manage the Corridor in the same fashion as an operational commuter train or freight train.

ACP Comment: The 1994 IGA was restated in a new Intergovernmental Agreement made on June 26, 1997 ("1997 IGA"). It is the failure of the draft ACP to recognize critical pieces of this IGA. The Governments recognize the potential issues surrounding certain existing physical conditions of the property, in particular an existing proposed at-grade crossings agreement that causes concern for the County. Of utmost relevance is Section 6.d.iii.paragraph 2 of the 1997 IGA [being] public right-of-way and access. Placement, modification, improvement and /or relocation of at grade crossings will be allowed provided that those improvements follow generally accepted standards, do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from various funding sources."

Response: References to all agreements related to the acquisition and management of the Railroad Corridor should be included in the ACP and copies made readily available.

ACP Comment: The County is concerned that the draft ACP does not recognize the allowance for modifications, improvements and/or relocations to existing public roadways. In 1997, RFRHA also provided a list of Identified Accesses and Uses for the Roaring Fork Trail Corridor. It is in this document, as list A, List B and List C, that provides assurance to the County that existing public right-of-ways can continue in use (and future modification) unhampered by the proposed draft ACP. As a solution to this omission, the County requests that this section of the IGA as well as Lists A, B and C be both referenced in the ACP as clear exceptions to the application of the plan as well as provided as an exhibit to the draft document. In addition, all prior agreements in regard to use and rights need to be acknowledged and preserved.

Response: Generally, RFTA agrees with this statement and will be including the original list of 1997 identified existing, future proposed and approved, and future proposed but not yet approved accesses, as well as an updated list of new uses as a part of the final accepted version of the updated ACP. Future modifications to existed uses will require a review by RFTA.

Colorado Department of Transportation Comments:

ACP Comment: CDOT is extremely concerned that interpretation of requirement imposed by 16 USC 1247(d) by the Roaring Fork Transportation Authority (RFTA) and their implementation through this ACP will place unnecessary requirements on entities seeking to modify or install new crossings of the Rio Grande Trail. The Colorado State Highway Access Code provides authority to and authorizes the CDOT to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining a public highway for the health, welfare and safety of the traveling public.

Response: Please take note of STB's 1999 Garfield County decision involving Garfield County's claim that the corridor was severed due to a CDOT project at Wingo Junction. STB disallowed Garfield County's claim on the ground that RFRHA appropriately required CDOT to restore the corridor in the event of rail reactivation. That decision suggests that public projects on the corridor should be consistent with rail reactivation, or the proponent of the project should agree to bear the costs of restoration in the event of reactivation. RFTA is simply following the precedent set by CDOT's prior actions. In any event, RFTA's responsibility, as delegated by the jurisdictions that were the members of RFRHA, and that are now members of RFTA, is to preserve and protect the Railroad Corridor for a future public transportation system. Railbanking is the mechanism that is currently preserving and protecting the Corridor, which is an asset of inestimable value. Railbanking requires RFTA to maintain the Corridor's viability for future freight rail reactivation, therefore, RFTA must exercise caution in approving crossings or uses of the Corridor that could significantly impair, if not preclude, its ability to reactivate freight rail service. RFTA has no intention of preventing CDOT or local jurisdictions from obtaining access over the Corridor so long as such crossings don't jeopardize RFTA's ability to maintain the Corridor's railbanked status. Failure to maintain the Corridor's railbanked status would result in the loss of significant segments of Federal land grant areas that keep the contiguous corridor intact.

ACP Comment: The draft ACP does not balance the interests of the traveling public and has the potential to impede CDOTs administration of the Colorado State Highway Access Code. In recent coordination for a proposed new connection between SH 82 and the new South Bridge in Glenwood Springs we learned that RFTA defines avoiding "obstruction to freight rail reactivation" to mean that any new crossing must be designed as if freight rail were in existing operation on the corridor or financial assurances provided such as sufficient escrowed funds to make future changes. Freight rail operation in

the corridor seems highly unlikely; however, such requirements were imposed and will lead to a substantial cost increase for the project.

Response: Regulatory authorities and industry groups have devised standards and principles for management of railroads in a fashion compatible with the interests of the traveling public, and insofar as possible, RFTA is simply seeking to apply those same standards and principles to the Rail Corridor. The Rail Corridor was purchased to preserve it as a future public transportation corridor. The original South Bridge design, which may be precipitating this CDOT comment, would have adversely impacted the ability to use the Corridor not only for freight rail but, also, passenger rail. Also, as proposed in the Environmental Assessment, the original South Bridge project did not address how, in the event of freight rail or commuter rail reactivation, the estimated \$10 million in cost to restore the Corridor to would be paid. The subsequent redesign of the South Bridge project may cost more to construct initially, but it may work better for motorists on Highway 82 than the original design, it will save tax payers money if rail service is ever reestablished, and it will not jeopardize the Corridor's railbanked status. In addition, the CPUC could allocate a portion of this crossing cost to RFTA.

ACP Comment: This is evidence the draft Access Control Plan could easily place costly restrictions on governments and private landowners seeking access between their local streets and the State Highway System. We understand the need to protect the RFTA interests; however, it is our opinion this is overly restrictive and does not anticipate inevitable economic growth or related changes in land use.

Response: RFTA's interests are also the interests of its constituent governments, the citizens living in the region, tourists, Great Outdoors Colorado, and CDOT. The Corridor is an asset of inestimable value, not only for its current use as a recreational trail but, also, for its potential future use as corridor for a public transportation system. If the economic and population growth to which CDOT refers materializes, corridor preservation should be one of CDOT's highest priorities. CDOT, itself, of necessity, limits and consolidates access onto the State highway system in order to make it operate more efficiently and to preserve its capacity. The limited availability and high cost of a contiguous corridor right of way in developing areas is one of the greatest hurdles that must be overcome in order to increase transportation system capacity. RFTA, quite frankly, is surprised that CDOT is not more supportive of its efforts to preserve and protect the Corridor so that a future public transportation system can efficiently serve the growth in density that CDOT envisions. While the amount of growth and development that will occur in the future, and the pace at which it will happen, are highly speculative, RFTA has been delegated the responsibility for preserving and protecting the Corridor in case it is needed to make traveling in the Roaring Fork Valley more convenient in the years ahead. Regrettably, corridor preservation is not a mission that is universally embraced; however, CDOT, too, is often required to make hard decisions that are in the best long-term interest of the public, even when they conflict with the wishes of the local communities with whom they are partners.

ACP Comment: The current transportation infrastructure cannot accommodate increases in local access without crossing the RFTA right of way and eliminating existing access points or constructing crossings to freight rail design standards places a substantial and unexpected burden on your neighbors.

Response: RFRHA originally purchased the Aspen Branch as an operating line of railroad, and all members of the organization presumably were aware that crossings would need to meet freight rail standards when the corridor was originally purchased. The decision to railbank the corridor under 16 U.S.C. 1247(d) was not precipitated by any intention to facilitate crossings, but instead was to avoid the costs of sporadic common carrier requests. CDOT was a party to the purchase of the Corridor and, on

June 3, 1998, provided a letter of support to RFRHA supporting the railbanking of the Corridor (see Attachment A). In this letter, CDOT indicated that it had been working closely with RFRHA to develop a Corridor Investment Study, Environmental Impact Statement, and Comprehensive Plan which would identify transit and trail uses in the Roaring Fork Valley. The 2000 Corridor Comprehensive Plan and the Access Control Plan included in it stated the following with respect to new crossings of the Railroad Corridor:¹⁴

Policy for New Crossings: New crossings of the railroad corridor shall be generally prohibited. There are exceptions to this policy, including:

- A new public street or road crossing, which is administered through the CPUC;
- A need for a new crossing to provide access to a private property that otherwise cannot be reasonably provided by an existing permitted crossing or another route (i.e. connection to an existing public road).

Parties interested in pursuing a new crossing under the exceptions stated above must apply for such a crossing through either the CPUC procedures or through the permitting procedure administered by RFRHA. It is the burden of the party proposing a new crossing is necessary under the hardships described above.

If a new crossing of the corridor is pursued, the following standards shall be followed:

- A grade-separated crossing will be preferred;
- The new crossing must be shown to have no adverse impact to rail operations or to the trails and open space values of the corridor.
- Consolidation of existing crossings may be required as a part of any approval of a new crossing;
- Coordination with local agencies will be a part of the review/approval process.

The Corridor Comprehensive Plan required concurrence by CDOT, Great Outdoors Colorado, and it had to be unanimously approved by each of the seven constituent governments of RFRHA. Admittedly, there has been considerable turnover at CDOT, on local Boards and Commissions, and among jurisdiction staffs since 2000, when the original Corridor Comprehensive Plan was jointly developed and approved. This may explain why CDOT and RFTA's local partners believe that designing crossings to freight rail standards imposes a substantial and unexpected burden on them, but this burden was assumed by their predecessors who assigned the responsibility for preserving the corridor and adhering to their policies to RFTA. Currently, RFTA is in the unenviable position of reminding its partners that the Corridor was railbanked by them and that there are requirements that should be met in order to ensure continued public ownership of the contiguous Corridor. In any event, the ACP for the Railroad Corridor does not prevent a jurisdiction or CDOT from increasing local access points. It does define the standards that must be met so that crossings will not undermine RFTA's ability to protect the Corridor's railbanked

¹⁴ 2000 RFRHA Comprehensive Plan, Summary of Key Findings of the Access Control Plan, page 12

status and, by extension, its ability to preserve the contiguous Corridor for the primary purpose for which it was acquired; namely, a future public transportation system. Stewardship of the Corridor was conferred upon RFTA by means of Intergovernmental Agreements, a vote of the citizens that created RFTA, and as a result of Agreements that its predecessor, RFRHA, entered into with GOCO. While RFTA will do everything it can to work with crossing sponsors, so as to minimize their crossing costs to the maximum extent feasible, it cannot allow crossings that could jeopardize the corridor's railbanked status. RFTA may, however, help to mitigate increases in crossing costs caused by adherence to the ACP's Design Guidelines and Standards by considering and from time to time participating in innovative funding arrangements, consistent with its obligations and fiscal means.

ACP Comment: CDOT considers stakeholder input to be vital and requests that implementation of the RFTA Railroad Right of Way Corridor Access Control Plan be put on hold until meaningful collaboration occurs that balances the interests of all affected stakeholders.

Response: At the direction of the RFTA Board of Director's, RFTA undertook a 120 day public comment period for the proposed update of the ACP, RFTA held 8 open houses to explain the proposed ACP update, and made numerous presentations to elected officials throughout the region. In preparation for the open houses RFTA mailed out approximately 3000 postcards to property owners within 500' of each side of the centerline of the Railroad Corridor notifying them of the upcoming open houses. In addition RFTA formed a collaborative ACP Work Group consisting of staff members from jurisdictions throughout the region that are assisting RFTA with the finalization of the proposed update of the ACP. A unanimous vote of the seven RFTA member jurisdictions that were the original members of RFRHA will be required in order to adopt the proposed update of the ACP. Consequently, RFTA believes that meaningful collaboration that balances the interested of all affected stakeholders must occur before adoption of the proposed ACP update. In the meantime, the 2005 ACP, which is similar in many respects, remains in effect.

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

4201 East Arkansas Avenue
Denver, Colorado 80222
(303) 757-9011



June 3, 1998

Executive Director
RFRHA
P.O. Box 1270
Carbondale, CO 81623

Dear Mr. Ray Lloyd:

The Colorado Department of Transportation (CDOT) would like to support RFRHA's request to railbank the Aspen Branch Line from Glenwood Springs to Woody Creek, a distance of approximately 33 miles. CDOT has been working very closely with RFRHA to prepare a Corridor Investment Study/Environmental Impact Statement/Comprehensive Plan which will identify transit and trail improvements in the Roaring Fork Valley. Railbanking the Aspen Branch Line gives us the greatest degree of flexibility to utilize the railroad right-of-way in a manner that improves mobility in the Valley to the greatest extent.

If you have any questions with regard to our endorsement of railbanking the Aspen Branch Line, please call me at 757-9819.

Sincerely,


Dave Ruble
Intermodal Branch Manager

City of Glenwood Springs Research Regarding Railbanked Railroad Corridor Crossing Policies

Trail	Policy
Katy Trail State Park	License: Railbanked and Licensee must remove improvements if railroad comes back or negotiate with railroad company for a new agreement.
Pine County Minnesota	Unauthorized Uses: As a permanent public transportation route for normal highway traffic. As a permanent driveway or access to non-county administered lands.
Paul Bunyan State Trail	Continue to say no with no net gain policy. Maintaining corridor for future transportation so the corridor would be intact. Utilities are licensed. When formal requests, do deny crossings.
OC&E Woods Line-Oregon State Parks	Permittee shall not take or permit any action that is in any way prohibited by the OC&E Agreement or would prejudice the exercise of the right reserved by OC&E to construct, operate and maintain future railway tracks and facilities. Permit subject to future reconstruction and reactivation of the right of way for rail service. Permittee shall indemnify and hold the State harmless from and against any liability of whatever kind.
Mackeson Trail	Half railbanked and half owned by State. Allow crossings at 90 degree angle.
Kanzu Rail-Trails Conservancy	All existing crossing remain in effect, reasonable requests for new crossings accommodated.
Cowboy Trail-Nebraska Game and Parks	Railbanked: Any crossing or easement must be done to railroad standard. Can grant a crossing, but to knowledge have never done so. Private crossing granted with stipulation that they can be revoked at any time due to inactive use, change in ownership, or railbanking provisions.

Trail	Policy
Wild River State Trail- Wisconsin	<p>Purpose of standard is to establish guidelines to control motor vehicle crossings of trail corridors. It is the Department's desire not to create any new road crossings of trail corridors. Making use of existing road crossings via frontage roads or other methods is preferred. Existing crossings honored. Non-Grade Crossings preferred. Short-term temporary crossings may be permitted.</p>
Washington State Parks	<p>Railbanking. Notwithstanding any other provision of this Agreement, Grantee recognizes that State's rights with respect to the use area were obtained through railbanking pursuant to 16 USC 1247(d). Grant shall ensure that its activities are consistent with State's interim trail use, acknowledges possible future rail use and/or activation, and understands that it may be required to relocate its facilities to accommodate any such use or activation at the sole expense of Grantee.</p>



May 15, 2015

Mr. Michael Gamba, Mayor
City of Glenwood Springs
101 West 8th Street
Glenwood Springs, CO 81601

Re: Draft Access Control Plan: Letter from former Mayor Leo McKinney, dated 3/6/15

Dear Mayor Gamba:

After consultation with the RFTA Board at its meeting on May 14, 2015, this is to respond to the letter of former Mayor McKinney, dated March 6, 2015, that was addressed to Stacey Bernot, Chair of the RFTA Board of Directors, and me, a copy of which can be found as Attachment A. I apologize for the delay in responding to Mr. McKinney's letter; however, the RFTA Board did not have a meeting in April; therefore, I was not able to discuss RFTA's response to Mr. McKinney's letter with the Board until the meeting held on May 14th.

Mr. McKinney's letter stated that he was authorized by a unanimous vote of the City Council members present at the March 5, 2015 City Council meeting to send the letter. As such, I believe that it would be best to meet with the newly seated City Council and applicable staff at the Council's earliest convenience to discuss and evaluate the City's expressed concerns. The RFTA's General Counsel and I have made several attempts to arrange meetings with City staff and you to discuss the City's concerns about the ACP and to hear your ideas about how RFTA could work more collaboratively with the City; however, your schedules have not permitted such meetings to take place so far.

Mr. McKinney's letter set forth five actions that the City Council strongly encouraged RFTA to consider, as indicated below. RFTA's responses are provided as follows:

1. Adopt a "purpose and need" statement at the board level, and use that as a driving force to derive policy.

Response: The RFTA Board has adopted End Statement 1.1, A-B, which states:

1.2 The Rio Grande Corridor is Appropriately Protected and Utilized

- D. The valley-wide trail is completed by 2010 (completed)
- E. Rio Grande Corridor open space is protected
- F. Rio Grande Corridor is preserved for transit use

Please also refer to Attachments B and C for additional background regarding agreements made by the constituent governments of the Roaring Fork Railroad Holding Authority (RFRHA) and RFTA, which support the purpose and need embodied in the RFTA Board's End Statement.

2. Start over and utilize a broader public process (similar to one CDOT has employed in their ACP) to evaluate all possible solutions to satisfy the board derived "purpose and need."

Response: RFTA has invested considerable time and resources to develop the proposed update of the Access Control Plan (ACP). In addition, RFTA has made numerous presentations on the ACP to local governments that have requested them, it has conducted eight Public Open Houses attend by 46 people (some of whom were staff), and has provided a 120-day Public Comment period, which has resulted in relatively few comments. RFTA has also formed an ACP Work Group, consisting of staff from jurisdictions throughout the region (including Garfield County), to collaboratively review and recommend revisions to the ACP. The ACP Work Group will also refer policy questions identified by this process to the RFTA Board for its consideration. The proposed update of the ACP incorporates many provisions from both the 2005 and 2000 versions of the ACP, and RFTA believes that it would not be a good use of time or resources to eliminate all of these provisions and start over, but does agree that the process of finalizing the update of the ACP should become more collaborative from this point forward.

3. Obtain a 2nd outside legal opinion with respect to preserving the rail banked status of the corridor, or alternatively publicly release the legal opinion you do have that justifies the heavy-handed, economically oppressive nature of the existing draft proposal.

Response: Over the years, RFTA has relied upon the advice of Charles Montange, Esq., who has extensive experience with Rails-to-Trails programs and Railbanking. Mr. Montange assisted RFRHA with the railbanking of the corridor in 2008 and helped RFRHA maintain its ownership when an effort was made by a private entity to seize control of the corridor at that time. Mr. Montange has stated his opinion about what he believes is necessary to maintain the corridor's railbanked status several times in public meetings at which the City Council has either been present or has been represented. The proposed update of the ACP and the proposed Design Guidelines and Standards have been developed with the intention of helping RFTA maintain the

corridor's railbanked status, which is the legal mechanism that currently preserves the corridor intact. Preservation of the corridor is not only RFTA's goal, it is a fiduciary responsibility. This requires RFTA to have adequate policies and procedures in place to ensure that ongoing preservation of the corridor is not left to chance. Given the value of the corridor asset, RFTA is required to take a conservative approach to its preservation, but it is willing to consider alternative approaches, so long as they are adequate. To that end, RFTA is open to seeking other legal opinions about the policies necessary to preserve and protect the corridor. As a first step in this process, RFTA requests that the City authorize Eric Hocky, Esq. to speak with Mr. Montange about the opinion he has already provided to the City on this matter.

4. Make the policy adoptable by IGA with each member jurisdiction.

Response: The proposed update of the ACP can only be adopted by a unanimous vote of the RFTA Board members that represent the constituent governments of RFRHA; namely, Glenwood Springs, Carbondale, Eagle County, Basalt, Snowmass Village, Pitkin County, and Aspen. This very high threshold for adoption of the proposed update of the ACP will require total consensus and should generate considerable discussion, compromise, and collaboration, by and among all of the RFTA member governments. RFTA believes the current process for adoption of the proposed ACP update, as well as the impending update of the Corridor Comprehensive Plan (which was agreed to by the constituent governments of RFRHA and RFTA), should suffice and that a separate and duplicative IGA process is not necessary.

5. If restoring freight rail service as opposed to maintaining the corridor to not preclude the future reactivation of freight rail is truly the justification for the DACP as proposed:
 - a. Present to the public a purpose, plan and timeline for the restoration of freight rail, and
 - b. Ask the public if it wants freight rail service restored.

Response: As is set forth in agreements summarized in Attachment B, the corridor is being preserved for its primary use as a public transportation corridor. The corridor's railbanked status preserves the corridor for not only its primary use, but it is also preserving it for its secondary recreational, open space, and conservation uses. Currently, to preserve the corridor intact for any and all uses, it is essential for RFTA to maintain the corridor's railbanked status. This requires RFTA to avoid taking actions affecting the corridor that could impair or preclude the ability to reactivate freight rail service. Although there may be alternative approaches for preserving the corridor intact other than railbanking, these will take time to evaluate and establish. Until then, RFTA must do its best to preserve the corridor's railbanked status or risk losing approximately seven miles of Federal land grant areas.

In 2000, voters in Glenwood Springs, Carbondale, Basalt, Eagle County, Snowmass Village, Pitkin County and Aspen, created RFTA pursuant to an IGA which, in addition to other provisions, included the following:

“Section 8.03. Reorganization of RFRHA. RFRHA will be reorganized in accordance with this Section. During the period from the date the Authority is formed until the reorganization of RFRHA is complete (the “RFRHA Transition Period”):

- (a) All regional transportation functions (excluding access issues), including management of the ongoing Corridor Investment Study, will be transferred to the Authority and the RFRHA Board of Directors will no longer have policy control of these planning functions.
- (b) The Authority shall have approval rights over the RFRHA annual operating budget and shall remit Authority funds to RFRHA to meet the obligations in the approved budget.
- (c) RFRHA will continue to provide access to, administration of and physical maintenance for the Denver Rio Grande Right-of-Way, maintenance of the conservation value of the right-of-way, pursue construction of regional trails through the right-of-way and **protect public ownership of the right-of-way.**
- (d) Other financial obligations and assets of RFRHA related to acquisition of the Denver Rio Grande Right-of-Way shall remain with RFRHA unless and until the Denver Rio Grande Right-of-Way may be transferred to the Authority.
- (e) The Denver Rio Grande Right-of-Way shall, subject to compliance with contractual, legal and other requirements applicable thereto, transfer from RFRHA to the Authority, and the reorganization of RFRHA will be deemed to be complete, if and when the Authority notifies RFRHA that the Authority intends to use the right-of-way for an Authorized Transportation Project other than trails for which funding has been approved by the electors as required by Section 6.03(d) hereof and section 612 of the Act.
- (f) Provisions concerning access contained in the Roaring Fork Railroad Holding Authority Intergovernmental Agreement shall be honored by the Authority.”

On June 21, 2001, the RFTA formation IGA was amended to allow the immediate assignment of RFRHA's asset, liabilities, obligations and responsibilities to RFTA, as follows:

Section 1.03. Amendment of Section 6.02(d) of Agreement. Section 6.02(d) of the Agreement is amended to read as follows:

(d). Protection and management of the Denver Rio Grande Right of Way.

The ***Authority shall be responsible for the protection and management of the Denver Rio Grande Right-of-Way***, including the preservation, maintenance, and enhancement of the conservation values of the Denver Rio Grande Right-of-Way, and including the obligations of RFRHA under that certain agreement dated January 17, 2001 between RFRHA and GOCO, and shall provide funding for and monitoring of enforcement of these conservation values, subject to compliance with the Act.

Section 1.04. Amendment of Section 6.02(e) of Agreement.

Section 6.02(e) of the Agreement is amended to read as follows:

(e). Funding, Construction and Maintenance of Regional Trails. The Authority shall provide funding for and be responsible for construction and maintenance of regional trails in cooperation with Members or other Persons.

Section 1.05. Amendment of Section 8.03 of Agreement. Section 8.03 of the Agreement is amended to read as follows:

Section 8.03. Reorganization of RFRHA. RFRHA shall be reorganized in accordance with the Assignment and Assumption Agreement between the Authority and RFRHA executed by the Authority and the members of RFRHA.

Irrespective of whether RFTA or the public favors reactivation of freight rail service, by voting to approve the RFTA formation IGA, the public entrusted RFRHA with the responsibility for protecting public ownership of the corridor. Subsequently this responsibility was assigned to and assumed by RFTA.

Protecting public ownership by maintaining the corridor's railbanked status does not mean that RFTA must have an immediate plan to reactivate freight rail service, because the primary purpose for acquiring the corridor was to preserve it as a public transportation corridor. Consistent with that purpose, a recent unscientific public opinion poll conducted by the Post Independent indicated that, of 824 total respondents, 78% favored preserving the corridor for a future passenger rail system, 14% favored doing whatever it takes to maintain the trail, and 4% thought the corridor might be useful for coal trains in the future. Only 4% indicated that the corridor should be developed instead of preserved.

In the RFTA formation IGA, **Section 6.03. (b) Limitations on Powers of the Authority** states, “The Authority shall not finance rail construction unless and until the electors of the Authority, or of the area of the Authority in which the funding is to be generated, specifically approve such financing.” This provision was added to the RFTA formation IGA to assure the public that a rail system that relied upon public funding would not be constructed without a vote. Because the primary purpose for which the corridor was purchased was to preserve it as a public transportation corridor, RFTA believes that a vote should be reserved specifically for a public transportation system at such time in the future when highway congestion, population density, technological advances, and financing, make it feasible. RFTA cannot predict if or when it will become feasible for commuter rail, light rail, or another public transportation system to operate on the corridor. Nonetheless, the corridor was acquired primarily to preserve it for that possibility and railbanking is the current mechanism that is maintaining it intact.

While reasonable people may differ about the means, what is evident from the vast majority of public comments RFTA has receive recently and over the years, is that the community supports the preservation of the corridor. RFTA wants to work cooperatively with the City and other jurisdictions to identify the best approach for preserving the corridor in the hope that a solution can be found that enables all of the parties to achieve their respective goals to the greatest extent possible.

In closing, I believe it would be beneficial to meet with the Glenwood City Council, when convenient, to discuss the letter from Mr. McKinney and opportunities for collaboration.

Sincerely,

Dan Blankenship
Chief Executive Officer

ATTACHMENT A (To Letter from Mayor Leo McKinney)

CITY OF GLENWOOD SPRINGS

CITY COUNCIL
101 WEST 8TH STREET
GLENWOOD SPRINGS, COLORADO 81601
PHONE: (970) 384-6408 FAX: (970) 928-0980



March 6, 2015

Ms. Stacey Bernot, Chair
RFTA Board of Directors

Mr. Dan Blankenship, CEO
Roaring Fork Transportation Authority

(sent via e-mail)

RE: Draft Access Control Plan

Dear Stacey and Dan:

I have been authorized by a unanimous vote of the members present at the March 5 Council meeting to write to you today to request that the RFTA Board take the following 5 actions with regards to the Draft Access Control Plan (DACP) for the Rio Grande corridor.

While the Council acknowledges there are policy needs the draft DACP attempts to address, the Council questions the auspices of what we consider a far reaching, heavy-handed approach to establishing the draft policy.

The five actions we strongly encourage you to consider are as follows:

1. Adopt a "purpose and need" statement at the board level, and use that as a driving force to derive policy.
2. Start over and utilize a broader public process (similar to one CDOT has employed in their ACP) to evaluate all possible solutions to satisfy the board derived "purpose and need."
3. Obtain a 2nd outside legal opinion with respect to preserving the rail banked status of the corridor, or alternatively publically release the legal opinion you do have that justifies the heavy-handed, economically oppressive nature of the existing draft proposal.
4. Make the policy adoptable by IGA with each member jurisdiction.
5. If restoring freight rail service as opposed to maintaining the corridor to not preclude the future reactivation of freight rail is truly the justification for the DACP as proposed:
 - a. Present to the public a purpose, plan and timeline for the restoration of freight rail, and
 - b. Ask the public if it wants freight rail service restored.

page 2 of 2

We thank you for your service as RFTA board members and for the service as elected officials in your respective communities. We believe these five actions are in the best interest of everyone within the RFTA boundaries and hope you will change the current direction and follow them.

Thank you for your consideration.

Sincerely,



Leo McKinney
Mayor

CC: City Council

ATTACHMENT B (To Letter to Leo McKinney)

1. RFRHA INTERGOVERNMENTAL AGREEMENT, AS AMENDED, MADE THE 31ST DAY OF DECEMBER, 1994

- * The second whereas clause of the original RFRHA Intergovernmental Agreement provides:

“WHEREAS, the governments are desirous of cooperating in the purchase and ownership of a portion of what is known as the Aspen Branch of the Denver and Rio Grande Western Railroad right-of-way (the “Property”). Said purchase will satisfy the mutual immediate goal of retaining the Property for the good of the general public and will allow for the development of a comprehensive plan for the highest and best public use of the Property. The primary use for the Property under this future plan shall be as a public transportation corridor. Secondary uses can include recreational opportunities and access to adjacent public lands, provided that these secondary uses do not preclude the primary use as a public transportation corridor.”

- * Section 6.d of the original RFRHA Intergovernmental Agreement addresses the stewardship of the Property as follows:

“The overall goals of the management of the Property are three-fold:

- i. To negotiate for the purchase of the Property on behalf of the Governments and to act as the Owner of the Property until the termination of this Agreement:
- ii. To operate the Property in its existing condition until a comprehensive plan of action is developed to implement a transportation use or uses appropriate and agreeable to all of the Governments, and
- iii. To develop and have approved such a comprehensive plan.

The Governments shall continue to recognize any and all existing easements and licenses granted to any of the participating Governments by the existing Owner upon purchase of the Property. If any one Government wishes to utilize all or a portion of the Property for a new or different use within the jurisdiction of that Government, it may do so provided that such a use does not preclude the desired future uses as determined by the Board of Directors. It is the responsibility of the Government proposing this new or different use to prove

and otherwise ensure that the use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing and proposed at-grade crossings by public rights-of-way and accesses. Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property. Attached as Exhibit "B" is an inventory of the Property identifying and locating these at-grade crossings and specific standards to be required of possible improvement."

Exhibit "B" to the original RFRHA Intergovernmental Agreement provides as follows:

- * In addition, Section 6.e provides that a Comprehensive Plan for the property must be developed and approved by the Board prior to improvement of the property for public transportation uses. Also set forth is a formula to split financial and ownership participation as follows:

Aspen	23%
Snowmass Village	13%
Pitkin County	20%
Basalt	1%
Eagle County	6%
Carbondale	4%
Glenwood Springs	16%
Garfield County	17%

2. FIRST AMENDED AND RESTATED RFRHA INTERGOVERNMENTAL AGREEMENT DATED JUNE 26, 1997.

- * The second whereas clause of this First Amended and Restated RFRHA Intergovernmental Agreement provides as follows:

"WHEREAS, the Governments, desirous of cooperating in the purchase and ownership of a portion of what is known as the Aspen Branch of the Denver and Rio Grande Western Railroad right-of-way (the "Property"), did enter into an Intergovernmental Agreement dated December 31, 1994, to create the Roaring Fork Railroad Holding Authority. The purchase will satisfy the mutual, immediate goal of retaining the Property for the good of the general public, and will allow for the development of a comprehensive plan for the highest and best public use of the Property. The primary use for the Property under this future plan shall be as a public transportation corridor. Secondary uses can include recreational

opportunities and access to adjacent public lands, provided that these secondary uses do not preclude the primary use as a public transportation corridor.”

- * Paragraph 1 of this First Amended and Restated RFRHA Intergovernmental Agreement provides as follows:

“1. Purpose. The purpose of the original Intergovernmental Agreement and this First Amended Intergovernmental Agreement is to establish a cooperative agreement between the Governments that establishes an entity known as the Roaring Fork Railroad Holding Authority (RFRHA). The purpose of the RFRHA is to pursue the successful purchase of the Property from the current owner, and, to the extent permitted by the Constitution and the Laws of the State of Colorado, to hold title to the Property and to manage and plan for the use of the Property for the benefit of the general public. RFRHA shall have the authority to sue and to be sued. Notwithstanding anything to the contrary contained in this Agreement, upon the purchase of the Property, the Property will continue to be managed as necessary to carry out existing uses and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the federal Surface Transportation Board, and to maintain the Property in a reasonable and prudent fashion. In addition, the Property shall be maintained and operated so as to not prejudice any rights to the receipt of additional federal funding which may require as a condition of its receipt compliance with the National Environmental Protection Act or similar federal environmental statutes and regulations. To the extent provided by Colorado law, RFRHA shall maintain, operate and keep open a public trail within the Property that meets the definition of a “public highway legally established” as used in 43 U.S.C. Section 912 and all regulation promulgated thereunder and within the meaning of a “public highway” as defined in C.R.S. Section 43-2-201. Notwithstanding any language to the contrary contained in this Agreement or appended exhibits incorporated by reference shall be read or understood to mean that any portion of the Property shall be altered, changed or designated as a “park” within the meaning of Section 4(f) of the Department of Transportation Act or Section 138 of the Federal-Aid Highway Act, until such time as the Comprehensive Plan contemplated herein is completed and the RFRHA Board of Directors passes a resolution designating portions of the Property as “parklands.”

- * Paragraph 4 of this First Amended and Restated RFRHA Intergovernmental Agreement pertains to the ownership of the Property and provides as follows:

“4. Ownership of the Property. The Roaring Fork Railroad Holding Authority shall purchase the Property from the current owner based on the level of participation defined above. The Roaring Fork Railroad Holding Authority shall not sell, liquidate, transfer or encumber the Property without the consent of all the governments who are its voting members at the time, except to the extent

that the Property needs to be encumbered to comply with the grant conditions referenced at Section 5, below.”

* Paragraph 5 of this First Amended and Restated RFRHA Intergovernmental Agreement authorized the receipt of funding grants for the purchase price, with conditions set forth, as appended to the Agreement (Legacy Project Grant Agreement appended as Exhibit “B;” Intergovernmental Agreement between the State of Colorado (“CDOT Intergovernmental Agreement”); appended as Exhibit “C” and Agreement between the County of Eagle and County of Pitkin dated January 8, 1997 appended as Exhibit “D”; Ordinance 97-7 appended as Exhibit “E;” and Agreement between the County of Garfield and the Roaring Fork Railroad Holding Authority dated 6/30/97 appended as Exhibit “F.”

* Section 6.d of the First Amended and Restated RFRHA Intergovernmental Agreement reiterates the stewardship of the Property as follows:

“The overall goals of the management of the Property are three fold:

- i. To cooperate with the Governments to ensure compliance with the grant conditions from the various funding sources described above.
- ii. To operate the Property in its existing condition until a Comprehensive Plan of action is developed to implement a transportation use or uses appropriate and agreeable to all of the Governments, and
- iii. To develop and have approved such a Comprehensive Plan.

The Governments shall continue to recognize any and all existing easements and licenses granted to any of the participating Governments and third parties by the existing Owner upon purchase of the Property. If any one Government wishes to utilize all or a portion of the Property for a new or different use not enumerated in the Comprehensive Plan and within the jurisdiction of that Government, it may do so provided that such a use is approved by the Board of Directors of the Roaring Fork Railroad Holding Authority, does not preclude the desired future uses as determined by the Board of Directors, as is consistent with the obligations imposed by the funding sources referenced at Section 5, above. It is the responsibility of the Government proposing this new or different use to prove and otherwise insure that the use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing [and]¹ proposed at-grade crossings by public rights-of-way and accesses. Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from the various funding sources described above. Attached as Exhibit “H” is an inventory of the Property identifying certain crossings, accesses, and uses along the Property (the “Access Plan”). This Access Plan shall assist the Roaring Fork Railroad Holding Authority in identifying current uses of the corridor, and in the adoption of the Comprehensive Plan. Notwithstanding any language to the contrary herein, nothing in this Agreement shall be construed or interpreted to mean that any illegal crossings, trespass, uses, unauthorized encroachments or homesteads upon the Property are being legalized or approved by the adoption of this Agreement.”

* Section 6.e of the First Amended and Restated RFRHA Intergovernmental Agreement provides for the development of a comprehensive plan as follows:

“e. Development of a Comprehensive Plan. A Comprehensive Plan for the property (hereinafter the “Plan”) shall be developed and approved by the RFRHA Board of Directors prior to improvement of the Property for public transportation uses. The parties hereto acknowledge that the Property is currently being used for certain purposes (rail transportation, utility easement, crossings for access to adjacent properties and related purposes.) Consistent with the Purpose section of this Agreement, it is not the intent of the parties hereto to interfere with the legal obligations attendant to the operation of a rail transportation corridor or the legal rights of tenants or grantees of easements upon the Property. The Plan shall include the following:

- i. A listing and description of possible uses for the property, including but not limited to such improvements necessary to place and operate a public transportation system, public trail and/or access to public lands;
- ii. A detailed improvements and operations plan for the ultimate preferred use(s) on the property, including a recommended management and funding strategy; and

¹ The word “and” appears here in the text of the Intergovernmental Agreement but does not appear in the text of the First Amended and Restated Intergovernmental Agreement.

iii. An interim plan which incorporates the interim use of the rail corridor for a temporary trail following approval from the Surface Transportation Board of a certificate of interim trail use pending the re-establishment of rail service.

The Plan shall be integrated and developed in conjunction with other, existing or contemplated planning processes evolving in the valley, including but not limited to the Basalt to Buttermilk Environmental Impact Statement Transit Feasibility Study, the Snowmass to Aspen Transportation Plan, the Mount Sopris Transportation Project, the Buttermilk to Aspen Environmental Impact Statement, the Glenwood Springs Alternate Route Environmental Assessment, and any environmental clearances required by current or future funding sources.

The Governments further recognize the Pitkin County presently owns approximately eight (8) miles of the Property as described within Exhibit "1". Currently, this portion of the Property is used by the public as a trail and for recreational access, and has been preserved by Pitkin County as a potential transportation corridor. Pitkin County agrees to bind this portion of the Property to the conditions of this Agreement provided that the existing conditions and policies concerning this portion of the Property are kept in force until such a time that the Agreement expires or a Comprehensive Plan for the Property is approved. Notwithstanding anything to the contrary in the preceding paragraph, this Amended Intergovernmental Agreement shall not be construed or interpreted as a conveyance of the Pitkin County property described above to the Roaring Fork Railroad Holding Authority.

The Governments shall develop, consider and approve the Comprehensive Plan for the Property within twenty-four (24) months of the date this Amended Agreement is signed, unless the Governments mutually agree to extend the time period for the formulation and adoption of such a Plan. The adoption of a Comprehensive Plan and any amendments thereto shall be consistent with the grant conditions set forth in the grant documents referenced at section 5, above. It is anticipated that when the Comprehensive Plan for the Property is approved by all participating Governments, a new Intergovernmental Agreement will be negotiated and become effective to implement the Comprehensive Plan."

- * Paragraph 15 of the First Amended and Restated RFRHA Intergovernmental Agreement provides upon full execution of this Agreement, the Agreement shall be placed of record in the real property records of the Clerk and Recorder of Pitkin County, Eagle County and Garfield County, Colorado.

This Agreement is signed by Marc Adler as Mayor of the City of Glenwood Springs, Colorado.

[The agreements referenced to actual attachments to this First Amended and Restated RFRHA Intergovernmental Amendment, although they are not identified as such. For example, the Legacy Project Grant Agreement dated 6/30/1997 may be an attachment and also the Intergovernmental Agreement with Pitkin County.]

3. AGREEMENT BETWEEN THE ROARING FORK RAILROAD HOLDING AUTHORITY AND THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND DATED JANUARY 17, 2001 (hereinafter referred to as "the GOCO Agreement"). (Document has been recorded in Pitkin County, Eagle County and Garfield County.) This document contains very important provisions, generally as follows:

- * Section 1.3 of the GOCO Agreement references the Comprehensive Plan for the Aspen Branch of the Denver & Rio Grande Western Railroad Corridor adopted by RFRHA and approved by all voting members of RFRHA effective April 26, 2000 ("Comprehensive Plan") which is stated that the parties agree provide an accurate representation of the Property on the date of the recording of this Agreement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.
- * A reference in Section 1.6 of the GOCO Agreement that in consideration of the Board's agreement to amend the Grant, RFRHA agrees to grant to the Board the right to monitor and enforce RFRHA's obligation to preserve and protect the Conservation Values of the Property in perpetuity, as well as RFRHA's right and obligation to develop a trail the length of the Corridor outside of Pitkin County and to provide access to public lands adjacent to the Corridor and access to the Roaring Fork River, as described herein (collectively "Conservation and Trail Obligations").
- * Section 1.7 of the GOCO Agreement states that the performance of the Conservation and Trail Obligations shall be a covenant running with the land, held by the Board in gross in perpetuity.
- * Section 1.8 of the GOCO Agreement provides that RFRHA agrees to cause the preservation and protection in perpetuity of the Conservation Values of the Property for the benefit of this generation and generations to come, and to cause the construction and maintenance of a trail on the Corridor.
- * Section 2.1 of the GOCO Agreement states as follows:

"2.1 It is the purpose of this Agreement to ensure that the Corridor will be maintained as a linear, open space corridor, appropriate for trails, recreation, wildlife, environmental, and educational purposes, while also permitting the construction of trails and trail head facilities and the continuation, construction and/or operation of mass transit services and facilities, but preventing any other

use of the Corridor that will significantly impair or interfere with any trail on the Corridor or the Conservation Values of the Property. RFRHA intends that unless and until terminated in accordance with the terms of this Agreement, the restrictions herein will constitute a perpetual covenant running with the land held by the Board in gross, which restrictions will confine the use of the Corridor and the Property to the activities enumerated herein and RFRHA shall enforce these use limitations against all other individuals and government entities.”

* Section 2.2 of the GOCO Agreement states as follows:

“2.2 The parties acknowledge and agree that the Corridor was originally purchased and is held by RFRHA in perpetuity not only for its Conservation Values and the construction and maintenance of a trail, but for the re-establishment of a mass transit system in the future. The Corridor was purchased by RFRHA from the Southern Pacific Transportation Company and its successors as a railroad subject to the jurisdiction of the federal Surface Transportation Board (“STB”). In addition, the Corridor was purchased subject to certain existing access easements, trails and trails facilities, easements, licenses, leases, operating agreements and utility easements. Accordingly, RFRHA shall be permitted to take all actions necessary with STB and the State of Colorado, Department of Transportation (“CDOT”) and the Public Utilities Commission (“PUC”), to ensure the continuing ability of RFRHA to operate and manage the Corridor as a railroad. It is not the intent of the parties to interfere with the legal rights and obligations of RFRHA attendant to the operation of a mass transit corridor or the legal rights and obligations of tenants or grantees of easements upon the Corridor, including the trail easement owned by the Board of County Commissioners of Pitkin County, Colorado, on the Corridor within Pitkin County; provided, however, that to the extent reasonable and practicable the design criteria and operation of mass transit improvements and rail alignments shall consider and respect the Conservation Values of the Property and trail uses of the Corridor.”

* Section 2.3 of the GOCO Agreement states as follows:

“2.3 Notwithstanding any language to the contrary contained in this Agreement or appended exhibits incorporated herein by reference, nothing in this Agreement shall be read or understood to mean that any portion of the Corridor shall be altered, changed or designated as a ‘park’ within the meaning of Section 4(f) of the Department of Transportation Act or Section 138 of the Federal-Aid Highway Act, until such time as any Updated Comprehensive Plan (as described in Section 5.1, below) is adopted by RFRHA and approved in accordance with this Agreement and RFRHA passes a resolution designating any portion of the Property as ‘parklands.’ Except as necessary to carry out existing uses of the Corridor and to implement requirements imposed under the ICC Termination

Act, related statutes, regulations and orders of the Surface Transportation Board, and to maintain the Corridor in a reasonable and prudent fashion, no physical use and/or construction impacts to the Corridor shall occur unless and until appropriate National Environmental Policy Act (NEPA) documentation is completed, including satisfying the provisions of Section 4(f) of the Department of Transportation Act and Section 106 of the Federal Aid Highway Act, as appropriate, with agreement from the State Historic Preservation Officer and the Advisory Council on Historic Preservation, in accordance with the terms of the Comprehensive Plan. Notwithstanding the foregoing, the construction of an interim trail on the Corridor, which is exempt from the foregoing requirements, existing public uses of the Corridor, and those crossings and other uses planned by various governmental entities (as described in the Comprehensive Plan) shall be permitted.”

- * Section 5.0 of the GOCO Agreement, which is set forth below in its entirety, requires the implementation of the Comprehensive Plan and provides as follows:

“5.1 The Corridor shall be developed and operated in accordance with the terms of the Comprehensive Plan. The Comprehensive Plan will be updated and reapproved by RFRHA, all voting members of RFRHA, and the Board no less frequently than every five (5) years thereafter until such time as the mass transit and trail uses are implemented throughout the Corridor (the “Updated Comprehensive Plan”). The parties hereto acknowledge and understand that approval of any Updated Comprehensive Plan by the Board shall be in accordance with Section 5.2, below.

5.2 The Board shall not unreasonably withhold its approval of any Updated Comprehensive Plan. In deciding whether to approve an Updated Comprehensive Plan, the Board shall consider the updated plan’s impact on use of the Corridor for rail, trail, open space, wildlife, and parks purposes. Specifically, the following factors will be evaluated:

5.2.1 Whether the Updated Comprehensive Plan is consistent with the purpose and intent section (Section 2.0, above) of this Agreement and the guiding principles set forth below in Section 5.4;

5.2.1 Whether the Updated Comprehensive Plan is generally consistent with the project as initially described in the original Legacy Grant Application; and

5.2.3 Whether the Updated Comprehensive Plan includes the items that the Board has agreed it will contain (access plan, trail plan, etc.) listed in Section 5.3, below.

5.2.4 In the event that the Board does not approve an Updated Comprehensive Plan, RFRHA and/or the Board shall have the right to terminate this Agreement and all of RFRHA's obligations with respect to the Board, RFRHA's obligations to the Board may only be terminated upon the repayment of the funds granted by the Board plus interest on such sum at the rate earned by the Board's funds invested by the Treasurer of the State of Colorado from the date of this Agreement until repayment, provided that repayment is made within six (6) months of the Board's disapproval of any Updated Comprehensive Plan. In the event of RFRHA's timely repayment, the parties will cooperate in the execution and recording of such documents as either party may in its discretion deem appropriate to accomplish the formal termination of this Agreement; provided that this Agreement will not be terminated until the Grant is repaid in full as provided in this Section.

5.3 Any Updated Comprehensive Plan shall include, but is not limited to: (1) location of both a permanent continuous public recreation trail running along the entire length of the Corridor and the location of a continuous interim trail within the Pitkin County portion of the Corridor, all in accordance with Ordinance 97-26 of the Board of County Commissioners of Pitkin County and the location of an interim trail outside of Pitkin County; (2) location and description of trail head facilities; (3) identification of public access points over the Corridor for the purpose of gaining access to the Roaring Fork River and other public lands along the Corridor for public recreation; (4) description of proposed wildlife and environmental education programs on the Property; (5) a signage plan for all activities to be developed within the Property; (6) location and existence of historic structure or areas; (7) a biologic inventory of the Property to amend and update the Comprehensive Plan; (8) identification of criteria to be considered in implementing any Updated Comprehensive Plan to protect and preserve the Conservation Values of the Property to the extent reasonable and practicable; (9) description of structures and facilities necessary to place and operate a mass transit system and their location within the Corridor; (10) the identification of all areas, other than Pitkin County, where the Corridor will not support both trail and mass transit uses (in these areas the Updated Comprehensive Plan will identify alternate routes for trails); (11) identification of all utility easements and facilities, both underground and above surface, including, but not limited to, telecommunication facilities; and (12) a detailed improvements and operations plan for all uses, including a management and funding strategy.

5.4 The principles that will guide any Updated Comprehensive Plan (including an access management plan) and optimizes the Corridor's trail, mass transit, open space, recreational, parks and wildlife uses and values are as follows:

5.4.1 The Corridor shall be managed to protect the health and safety of those using the Corridor;

5.4.2 New road crossings over the Corridor shall be minimized;

5.4.3 Existing crossings shall be consolidated so long as the trail, mass transit, open space, recreational, parks and wildlife uses and values will not be impaired by so doing; and

5.4.4 Any development permitted in the Corridor (including, but not limited to mass transit facilities, trails, road crossings, etc.) shall be located, designed, constructed and managed in a manner that avoids, minimizes or mitigates adverse impacts to the open space, recreation, scenic and wildlife values of both the Corridor and adjacent lands that add to the scenic value and enjoyment of the Corridor.

5.5 Except as necessary to carry out existing uses of the Corridor and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STB, no facilities or structures related to mass transit uses shall occur on the Corridor that are inconsistent with the Comprehensive Plan or any Updated Comprehensive Plan, which plans shall limit and control the development, location, size and use of such mass transit facilities and structures allowed on the Corridor as well as all other uses allowed on the Corridor.”

* Section 6.0 of the GOCO Agreement, which is set forth below in its entirety, discusses uses and activities that are prohibited, restricted and permitted on the Property as follows:

“6.0 Prohibited, Restricted and Permitted Uses and Activities Upon the Property. The parties hereto acknowledge and agree that certain uses of and activities upon the Property would be inconsistent with the purpose and intent of the Agreement. Accordingly, the parties agree that except to the extent permitted in this Section 6, any activity on or use of the Property inconsistent with the purposes or intent of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or permitted as specifically indicated and RFRHA agrees it shall not engage in any activities or uses nor shall it permit third parties to engage in any activities or uses on the Property that are inconsistent with the purposes and intent of the Agreement.

6.1 Construction of Buildings and/or Other Structures. The construction or reconstruction of any building or other structure or improvement, except those existing on the date of this Agreement and except as necessary to implement

other approved uses set forth in the Comprehensive Plan (such as mass transit, signage for trails and trailheads, and existing licenses and easements), is prohibited except as may be permitted below.

6.2 Fences. RFRHA may repair or replace existing fences, and new fences may be built by RFRHA for purposes of reasonable and customary management of livestock and wildlife, and for separation of ownership and uses along trails to protect trail users; provided that any fences must be consistent with the Comprehensive Plan, providing for passage of the public and wildlife, where appropriate. With regard to fences for livestock or that may effect wildlife purposes only, such fences shall comply with the regulations and/or advice of the Colorado Division of Wildlife.

6.3 New Crossings, Structures and/or Improvements. New crossings, structures and/or improvements that RFRHA desires to construct which are directly related to mass transit, trails, outdoor recreation, open space, wildlife, parks, or trails, and access points shall be consistent with the Comprehensive Plan and any updated Comprehensive Plan. Those crossings, structures and improvements consistent with the Comprehensive Plan or any Updated Comprehensive Plan may be constructed by RFRHA without the consent of the Board, but RFRHA must provide prior notice as set forth under Section 8 herein. In addition, RFRHA shall be entitled to construct without the Board's approval any crossings, structures and/or improvements necessary to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STD; however, RFRHA must provide notice to the Board as set forth under Section 8 herein, which notice shall include reference to the act or statutes requiring such improvement construction. The parties hereto acknowledge that the Property is burdened by a telecommunications easement owned by Qwest Communications Corporation ("Qwest") which authorizes the easement owner certain rights to construct certain ancillary facilities on the Property. The Property is also burdened by a subeasement agreement from Qwest to U.S. West Communications, Inc. (U.S. West). Said facilities shall not be prohibited provided they are consistent with the terms of that certain Third Amendment to Easement Agreement (Aspen Branch) between Southern Pacific Transportation Company, Qwest and RFRHA, or the First Amendment to the Subeasement Agreement between Qwest, U.S. West and RFRHA, memoranda of which are of record.

6.4 Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process shall be prohibited.

6.5 Harvesting Timber. Cutting of tress shall be prohibited, except that trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and to enable construction and

maintenance of permitted uses allowed to be developed within the Property. Dead trees may also be cut for firewood and other uses on the Property; however, at least three (3) dead trees per acre shall remain uncut. Commercial timber harvesting on the Property shall be prohibited. The Board shall be provided with notice prior to the cutting of trees pursuant to this provision.

6.6 Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance shall be prohibited on the Property except as permitted hereunder for the purpose of mass transit and trail improvements.

6.7 Paving and Road and Trail Construction. Except as permitted in this Agreement and as set forth in the Comprehensive Plan or any Updated Comprehensive Plan (including the proposed extension of Industry Place in the Town of Carbondale and the Glenwood By-pass), no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material, nor shall any road crossings or trails be constructed, except that RFRHA shall be entitled to construct any road necessary for the Property to be categorized a “public highway” under 43 U.S.C. § 912 and Colorado law, in the event that the Corridor could not otherwise be maintained as a continuous linear corridor. Trails for non-motorized uses as provided in the Comprehensive Plan or any Updated Comprehensive Plan may be paved. Notice of any such paving or road or trail construction shall be provided to the Board in accordance with Section 8, herein.

6.8 Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property shall be prohibited.

6.9 Water Rights. RFRHA shall retain and reserve the right to use such water rights as may be appurtenant to the Property in order to maintain and improve the conservation Values of the Property, and shall not transfer, encumber, lease, sell or otherwise separate any such appurtenant water rights from title to the Property itself.

6.10 Commercial or Industrial Activity. No commercial or industrial uses unrelated to mass transit and associated uses shall be allowed on the Property except as provided in this section 6 or the Comprehensive Plan and except that RFRHA shall be entitled to grant underground easements; provided that (i) the utility provider’s usage does not substantially diminish the Conservation Values or interfere with the purposes of this Agreement and the utility provider is required to revegetate and restore the surface of the Property to its former condition to the extent possible, and (ii) the Board first approves the form of easement agreement in accordance with the notice provisions of Section 8, herein. No part of the Property shall be used as a parking lot.

6.11 Mass Transit and Trail Improvements. It is agreed and acknowledged that the principal purpose for the preservation of the Corridor is to allow it to be used for the development of a public recreation trail, to allow public access to other public lands, to preserve open space and wildlife habitat, to provide access to the Roaring Fork River, and to allow for the development of mass transit uses. Accordingly, construction of mass transit and trail improvements shall be allowed as follows:

6.11.1 Mass Transit. The construction and maintenance of improvements on the Property directly related to and necessary for the operation of mass transit shall be permitted, provided that:

6.11.1.1 No improvements shall be made unless and until they have been provided for in the Comprehensive Plan or any Updated Comprehensive Plan, except as necessary to carry out existing uses of the Property and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STB.

6.11.1.2 The improvements must be directly related to and necessary for the operation of the mass transit. By way of example, but not limitation, such improvements on the Property would include tracks, switching stations, boarding platforms and terminal stations, and would not include ancillary uses such as shops, restaurants, and lodging facilities.

6.11.1.3 The improvements must be designed and constructed in a way so as not to interfere materially in the use of the entire length of the Corridor for trail, open space, wildlife, parks and any other recreational uses or interfere with access points to public lands.

6.11.1.4 Upon the implementation of mass transit on the Corridor, or December 31, 2020, whichever occurs first, the trail shall be grade separated by RFRHA; provided, however, that prior to December 31, 2020, RFRHA shall be required to grade separate the trail only at those points of intersection between the trail and actual mass transit operations, it being understood that mass transit may be implemented upon different segments of the Corridor and at different times prior to December 31, 2020.

6.12. Trail. The construction and maintenance of improvements directly related to and necessary for the operation of the RFRHA Trail and for access points to public lands and related recreational uses shall be permitted without the Board's

approval, but upon notice as set forth in Section 8, herein. Such uses may include, but shall not be limited to: trail construction, including the paving and re-paving of a trail, trail head facilities and trail connection, between RFRHA Trail and other trails connecting to the Corridor. Trail development shall be planned and developed to avoid adverse impacts to riparian areas and other sensitive natural areas, unless there is no acceptable alternative, in which case impacts shall be mitigated.”

* Paragraphs 10 and 11 of the GOCO Agreement provide for enforcement and cost of enforcement as follows:

“10.0 Enforcement. Except as provided herein, the Board shall have the right to cause the prevention or require the correction of violations of the terms and purposes of this Agreement. The Board may enter the appropriate portion of the Corridor for the purpose of inspecting for violations. If the Board finds what it believes is a violation, it shall immediately notify RFRHA in writing of the nature of the alleged violation and what steps are necessary to correct the violation. Within not more than ten (10) days following receipt of this written notice, RFRHA shall either (a) restore the Corridor to its condition prior to the violation, (b) provide a written explanation to the Board of the reason why the alleged violation should be permitted, or (c) take action to prevent any third party violations of this Agreement and cause restoration of the Corridor following notice to the Board of the actions it intends to pursue. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute at the mediation session. When, in the Board’s opinion, an ongoing or imminent violation could materially diminish or impair the trail on the Corridor or Conservation Values of the Property, the Board may, at its discretion, take appropriate legal action. RFRHA shall discontinue any activity which gave rise to the Board’s notice of violation from the date of receipt of such notice until the matter is decided. If there is no resolution of the dispute by the end of the mediation session, the Board may, at its discretion, take appropriate legal or equitable action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, the Board may seek any relief permitted at law or in equity, including a temporary or permanent injunction. The Board may also request a court issue an injunction to require RFRHA to restore the Corridor to its condition prior to the violation by either RFRHA or a third party.

11.0 Cost of Enforcement. Except as provided in the following sentence, any costs incurred by the Board in enforcing the terms of this Easement against RFRHA or any third party, including, without limitation, mediation fees, costs of suit and reasonable attorneys’ fees, and any costs of restoration necessitated by

RFRHA's violation of the terms of this Easement, shall be borne by RFRHA whether or not the Board prevails. However, if a court of competent jurisdiction rules that any action brought by the Board is frivolous in nature or was vexatious or brought in bad faith, RFRHA's and the Board's costs of suit, including, without limitation, reasonable attorneys' fees, shall be borne by the Board."

* Paragraph 15 of the GOCO Agreement pertains to access as follows:

"15.0 Access. Notwithstanding anything else in this Agreement to the contrary, RFRHA shall provide the public access to and along the Corridor to the extent necessary to facilitate the Corridor's use for recreational, trail, open space, wildlife, parks and mass transit uses. To the extent provided by Colorado law, RFRHA shall maintain, operate and keep open a public trail with the Corridor that meets the definition of a "public highway legally established" as used in 43 U.S.C. § 912 and all regulations promulgated thereunder. However, with respect to public or private access laterally across the Corridor not consistent with the Comprehensive Plan or any Updated Comprehensive Plan, access shall be restricted so as to: (i) allow for the possible resumption of rail use along the Corridor as is contemplated by 16 U.S.C. § 1247(d) and the regulations promulgated thereunder; (ii) protect the health and safety of those using the Corridor for recreational purposes; and (iii) discourage the occurrence of increased vehicular traffic over the Corridor which is inconsistent with the Conservation Values, the Comprehensive Plan and any Updated Comprehensive Plan."

* Paragraph 20 provides for termination and extinguishment as follows:

"20.0 Termination and Extinguishment. In addition to RFRHA's right of termination under the circumstances and pursuant to the terms set forth in Section 5.2.4, above, which method of termination shall not require judicial proceedings, if other circumstances arise in the future such as render any purpose of this Agreement impossible to accomplish, this Agreement may be terminated and extinguished pursuant to the terms of this Section 20.0, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other when it first learns of such circumstances. If this Agreement is terminated and extinguished in part, it shall remain valid as to the portion deemed not to be terminated and extinguished. In the event of condemnation, involuntary conversion, sale or exchange of any portion of the Corridor subsequent to such termination and extinguishment, the amount of the net proceeds to which **each party shall entitled, after the satisfaction all outstanding RFRHA obligations** and prior claims, shall be determined, unless otherwise provided by Colorado law at the time, as follows:

The Board, in its sole discretion, shall be entitled to receive the greater of:

(i) the gross proceeds multiplied by eighteen percent (18%), which figure represents the percentage of the original purchase price of the Corridor paid by RFRHA (\$8,500,000) which was provided by the Board (\$1,500,000), or

(ii) the amount of the Grant, as amended, from the Board which was used to acquire the Corridor multiplied by a fraction, the denominator of which shall be the Consumer Price Index ("CPI") figure published for the month immediately preceding the month in which the Grant was given (June, 1997), and the numerator of which shall be the CPI figure published for the month in which the sale, exchange or involuntary conversion occurs. As used herein, the term "Consumer Price Index" or "CPI" shall mean the U.S. Department of Labor's Bureau of Labor Statistics' Consumer Price Index All Urban Consumers All Items, Denver, Colorado (1982-1984 equals 100), or the successor of such index as determined by the Board.

4. RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY AMENDING THE ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT ADOPTED ON JUNE 25, 2001. This Resolution references an Assignment and Assumption Agreement attached as Appendix "A."

- * The sixth whereas clause of this RFTA Resolution dated June 25, 2001 provides that the Authority and RFRHA have agreed to reorganize RFRHA assigning all of its assets, rights and privileges to the Authority and the Authority assuming all of the obligations and liabilities of RFRHA pursuant to the Assignment and Assumption Agreement.
- * The seventh whereas clause of this RFTA Resolution dated June 25, 2001 refers to the Denver Rio Grande Right of Way GOCO Covenant Enforcement Commission to facilitate compliance with and Agreement dated as of January 17, 2001 between RFRHA and the State Board of the Great Outdoors Colorado Trust Fund, a copy of which is attached as Appendix "B," the First Amendment to the Legacy Grant Agreement for the Roaring Fork Railroad Legacy Project dated January 3, 2001 between the State Board of the Great Outdoors Colorado Trust Fund and all voting members of RFRHA, a copy of which is attached as Appendix "C," and the policy adopted by RFRHA on July 5, 2000 defining the types of uses that may be permitted within the Denver Rio Grande Right-of-Way for the purpose of determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the Denver Rio Grande Right-of-Way, attached as Appendix "D."

5. RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY RESOLUTION NO. 2002-11 FINDING THAT ALL REQUIREMENTS OF THE TRANSITION PLAN MERGING THE ROARING FORK RAILROAD HOLDING AUTHORITY AND THE ROARING FORK TRANSIT AGENCY ARE COMPLETE.

6. ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT (hereinafter "Original RFTA IGA") dated September 12, 2000.

* The Original RFTA IGA document references in Section 2.01 that the Agreement has been approved by a majority of the registered electors residing within the Initial Boundaries of the Authority.

* Section 6.02(c) of the Original RFTA IGA discusses regional transportation planning as follows:

“(c) Regional Transportation Planning. The Authority shall provide regional transportation planning services needed to Plan and direct the Authorized Transportation Projects, pursue federal funding and coordinate overall transportation policy within the area in which it provides Regional Transit Services. Regional transportation planning shall, as determined by the Board, include short range service planning as well as long range planning, corridor investment studies and related environmental impact analysis.

(d) Funding for Maintenance of the Denver Rio Grande Right-of-Way. The Authority shall provide funding for the maintenance of the Denver Rio Grande Right-of-Way until it is transferred to the Authority.

(e) Funding for Construction and Maintenance of Regional Trails. The Authority shall provide funding for the construction of regional trails in cooperation with Members, RFRHA and other Persons.”

* Section 8.03 of the Original RFTA IGA provides as follows:

“Section 8.03. Reorganization of RFRHA. RFRHA will be reorganized in accordance with this Section. During the period from the date the Authority is formed until the reorganization of RFRHA is complete (the “RFRHA Transition Period”):

(a) All regional transportation functions (excluding access issues), including management of the ongoing Corridor Investment Study, will be

transferred to the Authority and the RFRHA Board of Directors will no longer have policy control of these planning functions.

(b) The Authority shall have approval rights over the RFRHA annual operating budget and shall remit Authority funds to RFRHA to meet the obligations in the approved budget.

(c) RFRHA will continue to provide access to, administration of and physical maintenance for the Denver Rio Grande Right-of-Way, maintenance of the conservation value of the right-of-way, pursue construction of regional trails through the right-of-way and protect public ownership of the right-of-way.

(d) Other financial obligations and assets of RFRHA related to acquisition of the Denver Rio Grande Right-of-Way shall remain with RFRHA unless and until the Denver Rio Grande Right-of-Way may be transferred to the Authority.

(e) The Denver Rio Grande Right-of-Way shall, subject to compliance with contractual, legal and other requirements applicable thereto, transfer from RFRHA to the Authority, and the reorganization of RFRHA will be deemed to be complete, if and when the Authority notifies RFRHA that the Authority intends to use the right-of-way for an Authorized Transportation Project other than trails for which funding has been approved by the electors as required by Section 6.03(d) hereof and section 612 of the Act.

(f) Provisions concerning access contained in the Roaring Fork Railroad Holding Authority Intergovernmental Agreement shall be honored by the Authority.”

* Section 8.04 of the Original RFTA IGA pertaining to Maintenance of Effort provides as follows:

“Section 8.04. Maintenance of Effort. The Authority shall, regardless of the reorganization process, terms of the RFTA Transition Period or RFRHA Transition Period or any other event, use its best efforts to assure continuity of existing regional and local transit service and ongoing transportation planning efforts, including, but not limited to, the following:

(a) Continuation of (i) the existing transit services provided by RFTA within the territory of the Initial Members as set forth in RFTA’s 2000 budget without any significant change in routes, schedules or equipment during the RFTA Transition Period and (ii) additional or new services

negotiated during the RFTA Transition Period pursuant to Section 8.02(c)(ii) hereof. For purposes of clause (i), a significant change in a route or schedule shall mean a 5% reduction in service hours for service provided between two locations.

(b) Local funding for regional transportation planning, specifically the completion of the Corridor Investment Study, shall be provided by the Authority in an amount needed to complete the same in an expeditious manner in concert with the federal and State sponsors of and participants in the effort.

(c) Funding of trunk service up the Brush Creek Road corridor pursuant to a contract between the Authority and the Town of Snowmass Village.

(d) Continuation of senior van service in Pitkin County and transit service to Woody Creek and the Maroon Bells, with service provided at the current levels unless Pitkin County agrees to a change in such service. Pitkin County and the City of Aspen (acting jointly) also may decide to provide such services directly. If they do so decide, the payments to be made by Pitkin County pursuant to Section 7.01(c) hereof shall be reduced as described in that subsection.

(e) Financial assistance for paratransit services in the area within the Boundaries of the Authority (such as the Traveler or equivalent service) in addition to the senior van service in Pitkin County at a level of at least \$25,000 per year or a higher level determined by the Board from time-to-time based on available resources and implementation of the Authority's overall service plan.

(f) As required by the terms of the ballot question of November 7, 1995 approving the Eagle County 0.5% Transportation Sales Tax, a minimum of 10% of the proceeds of the Eagle County 0.5% Transportation Sales Tax paid to the Authority pursuant to Section 7.01(b) hereof shall be used for trails construction and maintenance within Eagle County election precincts 7, 8, 24 and 25."

6. RESOLUTION 2001-6 (AS AMENDED) RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY AMENDING ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT dated September 19, 2001. Pertinent portions of the Resolution provide as follows:

"WHEREAS, the Authority and RFRHA and have agreed to reorganize RFRHA by RFRHA assigning all of its assets, right and privileges to the Authority and the Authority assuming all of the obligations and liabilities of RFRHA pursuant to an Assignment and

Assumption Agreement between RFRHA and the Authority, consistent with the terms of the form agreement attached hereto as Appendix A (the 'RFRHA Assignment and Assumption Agreement'); and

WHEREAS, the Authority has agreed to create a Denver Rio Grande Right-of-Way GOCO Covenant Enforcement Commission to facilitate compliance with an Agreement dated as of January 17, 2001 between RFRHA and the State Board of the Great Outdoors Colorado Trust Fund, a copy of which is attached hereto as Appendix B, the First Amendment to the Legacy Grant Agreement for the Roaring Fork Railroad Legacy Project dated January 3, 2001 between the State Board of the Great Outdoors Colorado Trust Fund and all of the voting members of RFRHA, a copy of which is attached hereto as Appendix C, and the policy adopted by RFRHA on July 5, 2000 defining the types of uses that may be permitted within the Denver Rio Grande Right-of-Way for the purpose of determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the Denver Rio Grande Right-of-Way, a copy of which is attached hereto as Appendix D.

Section 1.03. Amendment of Section 6.02(d) of Agreement. Section 6.02(d) of the Agreement is amended to read as follows:

(d). Protection and management of the Denver Rio Grande Right-of-Way. The Authority shall be responsible for the protection and management of the Denver Rio Grande Right-of-Way, including the preservation, maintenance, and enhancement of the conservation values of the Denver Rio Grande Right-of-Way, and including the obligations of RFRHA under that certain agreement dated January 17, 2001 between RFRHA and GOCO, and shall provide funding for and monitoring of enforcement of these conservation values, subject to compliance with the Act.

ARTICLE II

AUTHORIZATION OF OFFICERS AND EMPLOYEES

The officers and employees of the Authority are hereby authorized and directed to take all actions that are necessary, convenient and in conformity with the Agreement (as amended by this Resolution), the Act and the Constitution and laws of the State, to carry out the provisions of the Agreement (as amended by this Resolution), the RFRHA Assignment and Assumption Agreement and the Environmental Covenants, including, but not limited to, the execution and delivery of a RFRHA Assignment and Assumption Agreement consistent with the terms of the form agreement attached hereto as Appendix A and agreements and instruments necessary or convenient to implement the terms hereof.

7. POLICY MEMORANDUM from Tom Newland, Executive Director Re: Corridor Encroachment Policy. A copy of the Policy Memorandum is attached below.

ATTACHMENT C

POLICY
MEMORANDUM

TO: RFRHA Board of Directors

FROM: Tom Newland, Executive Director

RE: Corridor Encroachment Policy

DATE: July 5, 2000

PURPOSE: The purpose of this policy is to define the uses that can be considered in the railroad corridor under the Encroachment Permit process.

BACKGROUND: The RFRHA Comprehensive Plan allows private interests, adjacent property owners, public utilities and state and local governments to encroach upon a portion or portions of the railroad corridor. However, the Comprehensive Plan is not specific towards which types of uses would be allowed under this encroachment policy. An encroachment is defined as a use or uses by individuals or entities other than RFRHA that are consistent with and do not impact the transportation, recreation and conservation values of the corridor.

POLICY: RFRHA will consider allowing private interests, adjacent landowners, public utilities and state or local government entities to apply for use of a portion or portions of the rail corridor through the adopted encroachment permit procedures. If an encroachment is approved through this process, it will be formalized under a recorded license or lease that is revocable by RFRHA at any time within 60 days. The local jurisdiction where the encroachment is proposed will be notified and invited to submit comments prior to consideration by the RFRHA Board. Pre-existing encroachments along the corridor will be continued provided that they are formalized through a written lease agreement between the owner and RFRHA. Any and all transit and recreation facilities described under the RFRHA Comprehensive Plan will not be considered as encroachments under this policy. New encroachments will not be allowed within the Conservation Restriction Areas (see Exhibit "A"). Sale of any portion of the right-of-way to private interests is prohibited.

The following listings will be considered when determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the corridor:

Allowed Encroachment Uses

1. Landscaping (earthwork, vegetation)
2. Underground Utilities (public and private)
3. Agricultural Storage (hay, vegetation, uncovered)
4. Agricultural field extensions
5. Trails and trail crossings
6. Road crossings (as per Access Plan)
7. Irrigation Improvements (ditches, ponds, dividing boxes)
8. Recreational Fields (no structures)
9. Recreational Implement Storage (uncovered)
10. Passive Open Space
11. Drainage facilities (culverts, retaining ponds or irrigation facilities)
12. Emergency response staging and/or access (flooding, wild fire and other disasters)
13. Traffic Control Devices

Prohibited Encroachment Uses:

1. Paved Roadways (other than to consolidate crossings as per Access Plan)
2. Public or Private Buildings and Covered Structures
3. Aviation take-off or landings (planes, gliders, motorized gliders, hot-air balloons)
4. Concessions, temporary or permanent (i.e. open-air markets, food stands, flea markets, farmer markets)
5. Shooting Ranges
6. Camping
7. Controlled Fires
8. Waste Deposition (i.e. yard wastes, dirt/rock, other solid waste, liquid waste)
9. Human Habitation
10. Fencing or livestock yards/kennels
11. Motorized vehicle races (or associated staging)
12. Hunting on the RFRHA Property
13. All Commercial Signage
14. Signage larger than 3' x 2'
15. Raves

Encroachment Uses Considered Under Special Review. The use must show a potential overall benefit to the corridor and/or a hardship that can only be overcome by its placement on the corridor.

14. Telecommunication/Radio/Television Facilities (uncovered)
15. Chemical, mineral or petroleum storage (uncovered)
16. Public or Private Vehicle Storage
17. Signage (traffic, directional, and informational, no greater than 3' x 2')

18. Low-Impact or beneficial gatherings or events (i.e. running or biking races, Access to river boating, weed pulling, educational tours, biological studies, small memorial gatherings)
19. High-Impact gatherings or events outside of Conservation Restriction Areas (i.e. music concerts, political rallies, parades, fairs, large memorial services)
20. Transit Facilities in station locations designated by the Comprehensive Plan or adjacent to public road crossings (park-and-rides, bus shelters, etc.)
21. Commercial Recreational Staging
22. Weather or Traffic Observation Devices
23. Outdoor Lighting of any kind
24. Any use proposed that is not defined above or that is prohibited by law or jurisdictional policy
25. Storage of Agricultural Implements
26. Utility Storage (uncovered)
27. Implements Associated with Recreational Fields or Uses
28. Commercial Storage (uncovered)
29. Memorials

Attachment F

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2014 RFTA RAILROAD CORRIDOR ~~MINIMUM DESIGN GUIDELINES & STANDARDS~~

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- Part 4 – Plans, Approvals and Procedures
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4. Guideline for Railroad Grade Separation Projects

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2. Agreements
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- 12.0 Track Construction Specifications
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1. Policy Introduction and Overview

1.1 INTRODUCTION AND PURPOSE

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

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RFTA acknowledges that no plans, policies, or guidelines, or ~~standards~~ can foresee every condition or situation that could potentially arise with respect to all proposed future uses of the Corridor. To the extent feasible, therefore, RFTA’s intends that its application of these DGS 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 design their projects in the most cost effective manner that is feasible, so long as in the view of RFTA, its legal counsel, and railroad engineers, the preservation of the Corridor’s Railbanked status would not be put in jeopardy. Many of these guidelines primarily pertain to a time when rail is active in the corridor. RFTA staff will endeavor to apply these guidelines in a manner that is consistent with whether rail is active or not.

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

The Roaring Fork Transportation Authority’s (RFTA’s) Rio Grande Trail is the former Aspen Branch of the Denver & Rio Grande Western Railroad. RFTA owns the Trail pursuant to a Notice of Interim Trail Use (NITU) issued by the Surface Transportation Board (STB), a federal agency, in STB Docket AB 547X. Under the NITU, the Trail corridor remains under the jurisdiction of STB for possible freight railroad reactivation in accordance with 16 U.S.C. 1247(d). RFTA acquired the property from the Roaring Fork Railroad Holding Authority (RFRHA). RFRHA acquired the property for rail, including both freight and commuter rail use, and “railbanked” the property pursuant to 16 U.S.C. 1247(d). Under this statute, the property is preserved intact for possible freight (and commuter) rail reactivation, and may be used as a trail and for other purposes compatible with rail and trail operation. Consistent with the foregoing, RFTA’s Access Control Policy (ACP), including guidelines, ~~standards~~ and procedures set forth therein, are designed to ensure that RFTA keeps the corridor intact for possible future freight rail reactivation (thus ensuring the continued

applicability of 16 U.S.C. 1247(d)), as well as ensuring that the corridor can be used for future commuter rail and current and future trail and open space purposes.

So long as the corridor remains regulated under 16 U.S.C. 1247(d), it may not be treated as abandoned for rail purposes under state or local law. See also 49 U.S.C. 10501(b) (federal railroad regulatory law preempts state law and state law remedies). This precludes application of state or local laws or regulations which might sever or otherwise impair use of the corridor for rail or trail purposes. Ultimately, RFTA's ACP is to be applied and construed to ensure compliance with 16 U.S.C. 1247(d), and to keep the Corridor intact for possible future freight and commuter rail use, and for current and future trail and open space uses.

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.

In order to ensure compliance with 16 U.S.C. 1247(d), RFTA views itself as obligated to ensure that the Corridor is kept intact, continuous, unencumbered by future financial burdens and unobstructed by significant structures that would impede or impair freight rail reactivation. This obligation is a kind of minimum condition to which all proposed uses (including crossings) of the Corridor must adhere.

Maintaining the property intact for future freight rail reactivation requires that RFTA avoid any sales or transfers of interests in the corridor which cause a severance (e.g., absence of a reasonable route for restored trackage). In addition, this goal requires RFTA to avoid allowing uses of the property for structures that amount to de facto severances of the corridor (e.g., bridges, tunnels, depressions or elevations of the railbed grade) that are inconsistent with restored freight (or commuter) rail uses.

Because rail reactivation needs are generally more stringent than trail operation needs, these guidelines ~~and standards~~ focus on requirements for rail reactivation.

Relevant ~~standards guidelines~~ are set forth herein. ~~Without waiver of any of these standards, but instead~~ ~~as~~ As an indication of a crossing that is more likely to be allowed, applicants for a crossing are advised that they (a) should avoid proposals that alter the elevation of the original railbed, (b) should avoid proposals that involve placing obstructions in the corridor that are higher than the roadbed (and, in order to protect sufficient property for a two track commuter system, as a minimum avoid placing obstructions closer than 23 feet from the centerline of the former roadbed), (c) should avoid placing any obstructions closer than 23 feet from the top rail of hypothetical tracks on the original roadbed, (d) should avoid damage to any existing subsurface uses of the property (including but not limited to fiber optics easements and uses) (e) should consolidate crossings rather than propose new at-grade motor vehicular crossings, (f) should include safety measures to protect trail users, both during construction (e.g., flaggers or warning devices) and during operation (e.g., protection of sight distances, warning signs), and (g) should hold RFTA harmless from increased costs or liabilities arising from a proposed third party use of the property.

To the maximum extent feasible, a All proposed uses should be rail-compatible, and ~~any third party user shall be responsible for all~~ project sponsors will generally be responsible for the cost of their proposed uses unless the CPUC allocates a portion to RFTA or RFTA agrees to share them. ~~ests to conform its use to rail standards applicable at the time of any rail reactivation.~~ At the time of any rail reactivation RFTA also reserves the right to terminate/modify third party uses of the corridor upon rail reactivation, but will

~~endeavor to do so in a manner that is fair and equitable, without penalty or cost to RFTA.~~ Finally, any third party user is responsible for all damages arising from its use either to the trail, to users of the trail, or to any other permitted use on RFTA's property.

There may be certain current third party uses of the RFTA property that do not conform to these guidelines ~~and standards.~~ These non-conforming uses are not precedent for deviation from the policies embodied in these guidelines ~~and standards.~~ On a case by case basis, RFTA will endeavor to remove or to ameliorate the non-conforming uses to the extent consistent with applicable contracts and legal requirements.

1.2 DEFINITIONS

The following definitions and concepts apply to this document:

PUBLIC ROAD CROSSING: For a public crossing, the roadway must be part of the general system of public roads, and under the jurisdiction of and maintained by a public road authority, and open to the general traveling public. For a public at-grade crossings, usually both roadway approaches are maintained by a public road authority. The statutory definition of a public crossing is defined in 49 CFR Part 234.5(a), in 23 CFR Part 460.2, and in the Rail Safety Improvement Act (RSIA) of 2008, Section 204. It is also defined in Section 1.0 of the "Highway-Rail Crossing Inventory Instructions and Procedures Manual," dated December 1996, and can be found on the Inventory Program Website at <http://www.fra.dot.gov/us/content/801> . New public crossings and changes to existing public crossings require approval by RFTA consistent with RFTA's ACP and these guidelines ~~and standards~~ and to the extent the Colorado Public Utilities Commission (CPUC) has jurisdiction over railbanked trails, require approval by the CPUC, and be licensed by RFTA.

PRIVATE ROAD CROSSING: All intersections of railroad tracks with roadways that are not public crossings are considered private crossings. Private highway-rail grade crossings are on roadways not open to use by the public nor maintained by a public entity. The Trail corridor is a railbanked rail corridor. Railroads require control of crossings for safety reasons. Railroads do not recognize private crossings unless permitted under a written agreement between the land owner and RFTA. ~~In this regard, RFTA to protect the corridor intends to act as if it were a railroad.~~ No private crossings are permitted except pursuant to a written license agreement with RFTA, or a predecessor of RFTA. Typical types of private crossings are as follows:

- Farm crossings that provide access between tracts of land lying on both sides of the railroad (trail) right of way.
- Industrial plant crossings that provide access between plant facilities on both sides of the railroad (trail) right of way.
- Residential access crossings over which the occupants and their invitees reach private residences from another road, frequently a public road paralleling and adjacent to the railroad (trail) right of way.
- Temporary crossings established for the duration of a public or private construction project or other seasonal activity.

Railroads traditionally allowed private crossings only by 30-day terminable licenses. In order to protect

the corridor in a fashion compatible with rail reactivation, RFTA intends to continue that practice.

Adjoining landowners are ~~admonished~~ advised that sales of real property adjacent to the RFTA right of way corridor do not imply that the successor in interest to the adjoining landowner shall have a right to cross the Railroad Corridor. Failure to acquire a license agreement/contract/permit with RFTA may result

	Name	Date	Comment	Response/Resolution
1	Robert Schultz	19-Jan	Please Send me a copy of List A & B of Crossings Grandfathered in	1/20 Sent documentation Mr. Schultz Requested
			Comments from BOCC Meeting 1-20-15	
2	John Wyatt Martin	20-Jan	<p>Agreement with Garfield County needs to remember that the 2012 powers are in place and they do not need to call us for approval on anything.</p> <p>Garfield County is not a member of RFTA</p> <p>They view this as land use control for RFTA</p> <p>If CDOT wants them to change the intersection at CTY RD 154, they will contact us; if CDOT does not want them too they do not need to call us. Same with Cattle Creek intersection</p> <p>Are we aware of what the Agreement says about current crossings and what they can and cannot do for these crossings</p> <p>There are currently 100 crossings, all permanent crossings. The Aspen Glen crossings are irrevocable and safe.</p> <p>RFTA must accept any crossings as they are, if there are any changes to the crossings they must be reviewed by RFTA.</p> <p>The arguments are still there from 1998 when this all started.</p> <p>Garfield County was out voted when they wanted to bring Rail to this area instead of the Trail, he no longer sees a Train going into Aspen from Glenwood Springs.</p> <p>Garfield County will work with RFTA they just need to remember the agreements that were made and that they have given us money and assistance in the past.</p>	RFTA advised that we have the agreement and have read it. We utilize the agreement whenever we are discussing issues in Garfield County.
3	Tom Jankovsky		<p>Is the trail in Glenwood Springs owned by RFTA? Does the Railbanking start in South Glenwood or at the WYE area?</p> <p>Tom concurs with Mr. Martin on concerns with taking of land near corridor.</p> <p>What you are doing is a concern. I am outraged by what is happening at Southbridge. This has set the project back 10 years because of Railbanking and raising the highway. I would like to challenge this railbanking in court.</p> <p>RFTA has had a hand in the land use in Garfield County.</p>	<p>The Riverwalk Trail in Glenwood was built and is owned and maintained from downtown Glenwood Springs to 23rd Street by the City of Glenwood Springs. RFTA's ownership of the Railroad Corridor property advised it begins at the WYE area. RFTA owns the underlying Railroad property from the Wye in Glenwood Springs to Woody Creek.</p> <p>Glenwood Springs owns a small portion of the Railroad Corridor in the downtown section of the WYE as well.</p> <p>The Riverwalk goes from 23rd to the Mainline</p>
4	Terri		<p>City of Glenwood Springs is concerned about the ACP in regard to existing crossings. Changing of the crossing is unclear in the documents. Change of use status is unclear RFTA needs comments on it.</p> <p>This document prohibits at grade crossings and meeting rail standards is expensive. It may be doable for a jurisdiction but not for a private owner.</p> <p>Private crossings only run with the current owner, RFTA could reissue the license when a new owner comes or they could decide not to reissue the license for that crossing.</p> <p>RFTA is not a Railroad, they are not Union Pacific. It should not be as difficult to deal with them as it is with UP.</p>	<p>Angela advised that RFTA cannot land lock someone. We cannot take a crossing away, but could consolidate the crossings is what the documents state. Mr. Martin confirmed this as well.</p> <p>Mr. Martin Responded: We need to understand that railroad is railroad. They have more power than CDOT does when it comes to these things. Take your issues with the WYE and Union Pacific for example.</p> <p>Mr. Martin Responded: But they are the railroad, you dug yourself into a hole by being on the board and with the WYE situation. There are provisions to get out of the board but you need 2/3 vote and you do not have it.</p> <p>Terri responded by saying they might have the 2/3 super majority vote.</p>
5	Mike Hermes		Advised to send all your comments to us. We will try to balance all the concerns as best we can. We cannot land lock people and we look forward to working with everyone during this process.	
6	John Wyatt Martin		We also all need to be willing to agree to disagree.	
7	Tom Jankovsky		<p>I am concerned that this will cause future expenses for the county in order to have crossing over the rail corridor.</p> <p>The expenses of Southbridge do not sit well with me.</p> <p>Cattle Creek (Rivers Edge) will never be developed because of the guidelines by RFTA.</p> <p>Down Valley has issues with Traffic and you have an Up Valley Board killing all the projects.</p>	<p>Mr. Martin advised it can be developed they just have to pay in order for the crossing to meet the RR standards.</p> <p>Angela advised the details of SouthBridge and how they arrived at the design they are now at.</p> <p>Mike Hermes advised that if this was UP you would be doing the same thing RFTA is.</p> <p>Mr. Martin concurred with Mike that the standards would be the same as what we are asking.</p>
			Comments	
8	Holly McLain	24-Jan	<p>I am sending my comment in support of RFTA putting a soft track, 8 feet wide trail with safe footing for horses from Aspen, (some already existing) to Glenwood Springs.</p> <p>Some existing soft track sections are too narrow with drop, off, side shoulders, which are not safe. I am on the Board of the Roaring Fork Valley Horse council (RFVHC), and our mission is to make all equestrian trails safe, especially where multi use with bicycles will occur. The busy asphalt Rio Grande bike paths are not compatible for metal horseshoes, and are dangerously slippery. Add the bike traffic, and disaster ensues. The horse community is now galvanized, with a strong membership base. All of the green pastures that you see while driving down Valley, are most likely, kept open and undeveloped by land owners for their horses. This equestrian community is asking RFTA for equal consideration, along with the bicycles and hikers.</p>	emailed to confirm we received comment and it has been added
9	Carol Dopin	25-Jan	<p>I am so happy to see your planning open to Public Comments</p> <p>I am the President of the Roaring Fork Valley Horse Council and also a founder of this organization. We are a nonprofit organization representing the interests of Equestrians and their horses with our main objectives being preserving trails and education of the public, the government and other users about safety when sharing trails and trailheads with horses.</p> <p>This great country of ours was built by pioneers on horseback.</p> <p>I know there are many sections of the Rio Grande under RFTA care that would be relatively easy to add a separate soft track or at least a wider adjoining soft track. Pitkin County has been open to our needs and had already developed wonderful soft tracks with more being considered. For an equestrian, who loves to ride the Rio Grande Trail, it has been a huge success. The bikers whizzing by on the separate trail have big smile as well when they see us. From the first time I used the newer soft tracks I was smiling from ear to ear, as I could ride my horse with my friends and their horses in a friendly environment.</p> <p>The Horse Council would love to meet with your board and be proactive and helpful in this endeavor. We are a strong group of public users that would like to be included in your planning.</p>	emailed to confirm we received comment and it has been added
10	Alexandra Anwyll-Davies	26-Jan	I would really like to request the expansion of the Rio Grande Trail to include as much soft surface trail running alongside the Tarmac wherever room permits.	emailed to confirm we received comment and it has been added
11	Steph Brown	26-Jan	<p>My name is Stephanie Brown and I've been a valley resident for 35 years. I'm thrilled that Pitkin County is considering equestrians as they continue to build public trail systems. Specifically, I hope you will plan for a soft track on the Rio Grande trail from Emma to Glenwood. There are so many horse owners in this valley that would love to have a usable track on which to ride that is safe and user-friendly. We're a large group, ever-growing and we appreciate your consideration.</p>	emailed to confirm we received comment and it has been added
12	Susan Gibbs	27-Jan	<p>I am making an appeal that the bike path have footing and space created for horse and walking traffic that can let the bikers race the path as they wish. Which is often as if they own it. I have had bikers wish by with no warning and no consideration. I have also experienced some very conscious and respectful bike traffic. It was originally proposed as a path would be horse and foot traffic friendly. This would be terrific.</p>	emailed to confirm we received comment and it has been added
			Comments from the TOC Meeting from the RFTA Presentation on the ACP & DG	
13	Alvin Harvey	27-Jan	<p>Is there a plan to have future discussion with RFTA and Town of Carbondale on how this affects Carbondale?</p> <p>Are all the documents available on the website for comments?</p>	<p>Jay Harington Advised yes, there will be further discussion between RFTA and the Town</p> <p>Angie Advised all documents are on the site and we need all comments by end of February</p>

14	AJ Hobbs	Who owns the entire trail?	Advised we do, the 18 miles we just mentioned are in regard to the Covenant Enforcement Conservation areas
15	Pam Zentmyer	Are these updates for all crossings, or only new crossings?	Advised these updates are for all crossing, any existing crossing is ok unless they undergo change of use then they are subject to changes.
		If Rail banking is lost, who does the property belong to?	Jay advised they would need to change existing crossing if Rail was Reactivated. Advised it would revert back to adjacent property owners in Federal land areas
16	Alvin	Wasn't there a severance case down on Lower River Road?	Advised that is the Phillips case. There was no severance but there was a taking of land. They are going through settlement now.
17	Jay Harrington	When the documents refer to RFTA avoiding future costs, does that mean if someone wants to reactivate the rail they are liable for the costs?	Yes, if a third party wants to reactivate rail they must pay to have the rail re-installed and are responsible for costs of crossings.
18	AJ	Why does light rail not work?	Mike then explained economic severance, Angie advised they can claim economic severance now and we would have to go to Federal Court. If reactivated must allow freight and commuter rail.
		Was the corridor built for one line of track?	Angie advised it runs on a different track. Advised no, it is big enough for two.
19	Attorney's	Asked who the State and Federal Rail Road attorneys are that helped with this.	Advised Walter Downing, and Charles Montange.
20	Jay	Is there a model we're following in order to create these guide lines and ACP?	Yes, there were 6 or 7 used in the creation of ours and the commuter rail guidelines as well.
21	Pam	If we stopped railbanking the corridor, would we risk losing it for the future?	Mike explained we would have lost it and why we did railbanking for the corridor. Angie advised yes, we would lose the corridor to adjacent property owners and it would not be contiguous.
		It makes no feasible sense to put freight and commuter rail instead of light rail. What other hurdles have you come across?	Angie advised unless they change the statute we have to build to commuter and freight rail standards. Angie advised in 2003 there was a study done on light rail in the valley.
		Why are we building the ACP on a rail that will not come back in the future?	Mike advised we cannot predict the future, but we own a rail road and must manage the corridor as such.
22	Alvin	Light rail in the valley has been imagined, they did thorough studies on it. This is a land use document that may help with 8th street, industry way, and satank.	Angie advised that process was already in place for public access. They must go to the PUC for approval.
23	Pam	Are there standards in the current ACP that we use?	There are, but they are very minimal. People were building crossings for whatever they wanted. Now they have to build for Freight Rail standards.
		Will the standards be different for public and private accesses?	Yes, because public accesses must be approved by the PUC and private may be consolidated. We have no way of doing that, it will depend on where the crossing is located and what type of crossing they are proposing that will determine the cost.
24	AJ	Has there been a financial study done to see the difference in cost on new crossings with these standards?	The STB (Surface Transportation Board) makes that decision.
		Who is the authority figure that determines if we have freight or light rail?	We tried to make that happen, but could not receive grants. Instead they offered funds for BRT system so we built that instead.
25	Pam	It would be nice if light rail could happen in the valley.	Jay advised we're currently working on it. Angie advised Brett Meredith put in an edible garden and we have applied for grants to help beautify that section of the trail.
		The trail section in Carbondale is ugly. Can we do something to clean that up?	Pam advised she may be able to help round up volunteers to clean out that area before we begin planting more items.
		Comments	
26	Rosemary Strong	30-Jan I would like to suggest that any trails throughout the roaring fork valley have a soft surface of at least six feet. Three feet is not wide enough if a bike comes up from behind on a horse. A rider can see a bike coming at them but the danger does not become less for either the rider or the biker. I have been riding the RFTA trails for over fifteen years but recently I feel my experience is a life or death ride. This is so sad and doesn't need to be. The best answer is to Separate the paved from the soft surface as has been done in the upper valley . It would be Wonderful to see that happen where it can in the lower valley.	emailed to confirm we received comment and it has been added
27	Jec Parker- Andrew Saltonsta	3-Feb I live on Hooks Spur road and cross RFTA's bike path every day. In my point of view RFTA and its employees have already way over-stepped its powers. One of your employees found it necessary to rip out a boundary fence. While I was in the process of trying to protect the fence from being torn out, your employee stuck me with sledge hammer. I should have sued RFTA, however, I can't see the point of trying to get more money out of tax-payers to cover your lawsuits. So with my rant out of the way, I believe you are over reaching again with this plan. I cannot see any good from it. I just look like you are trying to exercise your power.	emailed to confirm we received comment and it has been added
28	Nina Ware	4-Feb I would like to add my voice to those who really want to see a soft track next to the trail from Aspen to Glenwood. The unpaved trail on the Lower Rio Grande is such a delight for dog walkers, joggers, and people like me on a horse. It is imperative that The Rio Grande Trail be all inclusive and encourages all sorts of transportation and recreation alternatives.	emailed to confirm we received comment and it has been added
29	Valarie & Alfred Braun	4-Feb To Whom it May Concern, Below is a copy of the letter we sent to the Pitkin County Commissioners and Pitkin County Manager, John Peacock. It represents our deep concern with an outrageous attempt to usurp private landowner's rights. We will continue to monitor this attempt. Dear Commissioners and Mr. Peacock, Please add our opposition to RFTA's latest land grab, that is trying to require a license for us to use our private drive which we have used for more than forty years. It's been tried before, but there will be NO support for this attempt either. We who live along the Rio Grande Trail already put up with dog poop, people who think anywhere along the trail is a bathroom (I see people peeing and worse often), bikers who are sure that the trail is for their use only, and very little upkeep and safety patrolling. As a daily user of the trail I pick up trash left behind by bikers and trash that blows down from the road as a public service. I walk way to the side of the trail praying bikers will let me know they are coming (only about 25% of bikers do) and I thank the people who walk their dogs on the trail on a leash (not the majority for sure). I do compliment the snow maintenance of the trail this winter. The person doing it has done an excellent job with tough conditions and he has kept the driveway crossings at a reasonable and skiable height. We can honestly not think a of a single reason that Pitkin County should allow such an outrageous government takeover.	emailed to confirm we received comment and it has been added
30	Nancy MacKenzie- to Pitkin C	4-Feb We saw the below 'letter to the editor' in Monday's Aspen Times. Is Pitkin County going to voice opposition to this plan that would require licensing and fees for all our private drives that cross the Rio Grande Trail. The driveways in my community along Upper and Lower River Roads and down valley from us have been here well before RFTA developed the Rio Grande Trail. (RFTA has extended the public comment deadline to February 12.) We wonder if this is related to the fact that the Phillips (Phillips Trailer Park on Lower River Road) are winning their lawsuit to gain ownership of the railroad property adjacent to their land.	Received from George Newman, Pitkin County
31	Jennifer Bennett	5-Feb Having been a horse owner for more than twenty years in the Roaring Fork Valley, I feel that Rio Grande Trail should be a multi-use trail to include horses and create a new soft track. My horse currently resides in Woody Creek and could easily benefit from a safe equestrian trail. As it currently exists, I feel it dangerous for riders. We are asking RFTA to consider the horse community in our valley along with the cyclists and pedestrians.	emailed to confirm we received comment and it has been added

32	Micky Hohl	<p>I have been an equestrian in the valley for 10 years and used to ride on the Rio Grande Trail all the time. When it got paved, there was next to no room left for my horse to fit so we had to stop using it. It seemed very unfair and preferential to bikers. I went to all of those meetings back then but our (equestrian) voice wasn't heard. Please restore a sufficient soft space to the side of the trail so that we can use and enjoy it too. Thank you!</p>	<p>emailed to confirm we received comment and it has been added</p>
	Gary Feldman	<p>Nearly a year ago I and three properties owners whose land is impacted by the former Railroad Corridor met with officials of RFTA to discuss the future of the Rio Grande Trail in light of the Supreme Court ruling in Brandt v. United States. At that meeting, we were promised a written position from RFTA explaining why the Rio Grande Right of Way should not be extinguished with the property reverting to the landowners. We have not received any communication from RFTA. The stated purpose of the Update to the Access Control Plan for management of the RFTA Owned Railroad Corridor has shifted from "managing the Rio Grande Trail" to "management of the Railroad Corridor as a whole in order to uphold and preserve the Railroad Corridor's 'rail-banked' and 'designated trail' status..." For many of the impacted property owners, this 'shift' represents an attempt by RFTA to avoid the negative ramifications of the court's ruling. There are more than forty miles of private property owners negatively impacted by this right of way who deserve a written explanation of why RFTA is exempt from this Supreme Court ruling. Respectfully, I request that RFTA keep its' promise and submit their written explanation that is now almost a year old. I also request that RFTA provide a list of owners and their contact information whose properties are impacted by the right of way. An excel spreadsheet should only take a few minutes to send.</p>	<p>Angela emailed advised our attornies would respond to Brandt case comments and how to get property owners from the counties GIS system</p>
33	Bill & Nancy MacKenzie	<p>We are outraged that RFTA has proposed a new Access Control Plan (ACP) and has not had the courtesy to inform all of us property owners which this has the potential to impact. In addition, it is difficult to find these documents on your website. You should not be enacting this Plan administratively since there are many legal issues and much uncertainty surrounding the RFTA corridor. We do not believe that you have established any legal right to reactivate rail service. You cannot start to require licenses and fees of property owners whose driveways cross the 'trail', especially when those driveways have existed for over 27 years. The Rio Grande Trail is no longer a viable location for a rail line. If a rail line is developed in the future it should follow Highway 82 which is an established travel route with far less cross street intersections and with established commuter parking lots.</p>	<p>emailed to confirm we received comment and it has been added</p>
34	CDOT	<p>I am writing to provide comments on your proposed Access Control Plan (ACP) for Railroad Right of Way. It is our understanding this applies to the Rio Grande Railroad Corridor, which has an alignment parallel to State Highway (SH) 82 throughout most of its length and is crossed by SH 133 in Carbondale. SH 82 is an extremely important highway providing access from Interstate 70 to the entire Roaring Fork Valley. SH 133 provides critical access to the west-central valleys. The Colorado Department of Transportation (CDOT) is required to operate, maintain and may need to upgrade these routes and their connections in the future. CDOT is extremely concerned that interpretation of requirement imposed by 16 USC 1247(d) by the Roaring Fork Transportation Authority (RFTA) and their implementation through this ACP will place unnecessary requirements on entities seeking to modify or install new crossings of the Rio Grande Trail. The Colorado State Highway Access Code provides authority to and authorizes the CDOT to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining a public highway for the health, welfare and safety of the traveling public. The draft ACP does not balance the interests of the traveling public and has the potential to impede CDOTs administration of the Colorado State Highway Access Code. In recent coordination for a proposed new connection between SH 82 and the new South Bridge in Glenwood Springs we learned that RFTA defines avoiding "obstruction to freight rail reactivation" to mean that any new crossing must be designed as if freight rail were in existing operation on the corridor or financial assurances provided such as sufficient escrowed funds to make future changes. Freight rail operation in the corridor seems highly unlikely; however, such requirements were imposed and will lead to a substantial cost increase for the project. This is evidence the draft Access Control Plan could easily place costly restrictions on governments and private landowners seeking access between their local streets and the State Highway System. We understand the need to protect the RFTA interests; however, it is our opinion this is overly restrictive and does not anticipate inevitable economic growth or related changes in land use. The current transportation infrastructure cannot accommodate increases in local access without crossing the RFTA right of way and eliminating existing access points or constructing crossings to freight rail design standards places a substantial and unexpected burden on your neighbors. CDOT considers stakeholder input to be vital and requests that implementation of the RFTA Railroad Right of Way Corridor Access Control Plan be put on hold until meaningful collaboration occurs that balances the interests of all affected stakeholders.</p>	<p>Angela advised we received and they have been added</p>
35	David Swersky	<p>Angela, Mike and Dan, Thank you for taking the time for the meetings and phone calls we have had to discuss these issues. As best as I can recall... What we agree upon: 1. That the Rio Grande Corridor should not be compromised in any way. 2. That no adjacent property owner should be denied access to his home. What we don't: The impact and relevance of the Supreme Court decision concerning Brandt v. United States. I suspect that this plan is reactive to that. Nevertheless, my main concern is limiting the license to the individual and not transferring it with the property. Naturally, I would like to have it totally transferrable to a potential buyer. Short of that, adding a phrase to the effect of: a new owner must apply for his own license, which approval shall not be arbitrarily withheld. I have discussed this with both Angela and my county representative, Michael Owsley, both of whom thought it reasonable. I question the right and the necessity of a fee charged the adjacent property owners for living near and crossing the right of way. All of us already pay a healthy mill levy to Open Space and Trails, happily so. In addition, we are required to maintain our crossing. I have had no problem with that, however in seems incongruous to be charged. Since a fee seems inevitable, I request that it be done with total equanimity for all households involved. Overall, I find the document extremely heavy handed and authoritarian. It is inconsistent with the ethos of an entity designed to serve the public in the Roaring Fork Valley. Please re-write it.</p>	<p>Dan responded that we have received his comments</p>
36	Bob Lockard	<p>Hello RFTA, Can you clarify the ACP and how it relates to railroad? It's not clear to me, is RFTA submitting this document to prepare for building out new railroad line in place of or alongside the current bike path? I live at 3014 Sopris Ave and back up to the path. I frequently use the bike path for recreation as many others do. I am NOT in favor of restoring any type of rail service as there is already too much noise and light pollution from current Highway 82 and surrounding markets. Our yard backs up to the right of way and I am NOT in favor of losing any real estate to a railway corridor. Are you planning to put up any type of sound barrier wall to protect residents along Sopris Ave and 33rd St neighborhoods? Thanks for clarifying my questions and thank you RFTA for your work this winter in maintaining the bike path and removing snow to keep it clear as we are enjoying this unusual warm winter.</p>	<p>Angela responded with explanation and Gust column letter</p>
37	Martin Schlumberger	<p>As a resident of Pitkin County with three properties crossing over the Rio Grande Trail, I was shocked to learn about this proposal, not from RFTA, but from some conscientious neighbors and a newspaper article! What are you thinking?</p>	<p>Angela responded with explanation and public notice</p>

38			Everything about this proposal along with the thought of rail service, is fraught with potential legal battles. The impact of this proposal to property owners is huge!	
39	David Swersky	16-Feb	Also sent his comments to Pitkin County BOCC	emailed to confirm we received comment and it has been added
40	Sandie Bishop	19-Feb	Please know we all want a soft trail to Glenwood	emailed to confirm we received comment and it has been added
41	Roberta McGowan	19-Feb	I would like to request that the equestrian community, represented by the RfVHC wants the Soft Track RFTA trail from Emma School House area to Glenwood.	emailed to confirm we received comment and it has been added
42	Gail Otte	19-Feb	Please know that I along with many other horse riders do use the trails and hope that you will provide a SOFT TRACK from Emma to Glenwood--- we have quite a few members and if you drive up/down the valley you will find that there are horses and they ARE being ridden not all are pasture ornaments!! Please provide the horse riding public a soft surface. THANK YOU for your time.	emailed to confirm we received comment and it has been added
43	Alexandra Anwyl-Davies	20-Feb	It was with dismay and grave concern that I discovered that the topic of soft surface for users of the Rio Grand Trail was not even considered. Please review this issue as I do believe it raises the questions of Safety foremost and secondly enjoyment of this wonderful trail that is there for all of the Community to use.	emailed to confirm we received comment and it has been added
44	Chantal Henderson	20-Feb	The equestrian community represented by RfVHC is requesting soft track RFTA trail from Emma School house area to Glenwood. Cyclists scare the horses as some do not realize that they need to stop and let horses pass and continue cycling by at speeds. The path is relatively inexpensive to provide. PLEASE CONSIDER PRESERVING THE RIGHT OF COLORADO 'S TRAIL RIDERS. Horses are part of our heritage well before cyclists took over.	emailed to confirm we received comment and it has been added
45	Nina Ware	20-Feb	Please add my voice to those who want a soft track on the trail from Emma to Glenwood Springs! I live in Aspen at 624 West Hallam and look forward to riding a horse on this portion of the trail.	emailed to confirm we received comment and it has been added
46	Terry Murray	21-Feb	New trails are always exciting. Improvements to trails are so important. All users and potential users should be considered. Soft track is critical for horses. Fortunately, it's the lesser cost of trails in both creation and upkeep. Please keep in mind that although bicycles are important, and a lot of fun, the west wasn't won on rubber, and we have many horsemen who need access to public trails. Parking for trucks and trailers is also important, and the space need not be paved. Thanks for the opportunity to have horsemen considered in decisions	emailed to confirm we received comment and it has been added
47	Helen Carlsen	3-Mar	I support the updated proposal for RFTA's section of the RGT. I disagree with the objections of Glenwood Springs and Garfield County. First, I agree that we need to keep the rail banking option open both for a potential train and to keep the corridor open for public access to the trail. Second, I ride my bike on the RGT frequently and the trail is safer with fewer road and driveway crossings. I support the concept of making new houses use existing crossings instead of approving new crossings. Every crossing increases the chance of accidents. Thank you for doing such a good job on the RGT.	emailed to confirm we received comment and it has been added
48	Scott Hoffman	7-Mar	In the winter of 2012 I moved from another Colorado mountain community to Aspen. While I cared deeply for my former hometown I was drawn to the thoughtful and progressive thinking of the Roaring Fork Valley - particularly regarding housing and transportation. I was encouraged by Dan Blankenship's comments reported in the February 17th edition of the Aspen Times noting efforts via the proposed update of the Rio Grande Corridor Access Plan to preserve the opportunity for reactivation of future rail service. And I was equally discouraged by comments in the March 6th edition of the Aspen Daily News noting downvalley sentiment against the Plan. I certainly do not pretend to know what the future holds, but I do know that rail service very well may be a component of that future. Sacrificing a future option (preservation of rail rights) that could benefit the entire corridor for a more short term economic benefit (reduced cost of crossing construction) that could benefit far fewer seems shortsighted at best. This is exactly the type of conversation that occurred in my former hometown where short term economic benefit most often won out resulting in the intended/unintended consequence of significantly tougher (more impactful and more costly) future challenges.	Angela emailed advising we received comments and of when our board meeting is.
49	Joan Troth	16-Mar	I live on Cooper Court in Cole Subdivision and I was shocked to see the RFTA ownership lines overlaying the existing homes on Blake Court in the map published in the Glenwood Post Independent. Please explain the intention of RFTA in claiming ownership that encroaches this neighborhood which has been in existence for decades. Do you intend to inform homeowners that you have no plans to widen the existing bike trail space into their backyards and homes? A response would be appreciated.	Angela emailed advising we received comments and of when our board meeting is.
50	Sandy Israel	18-Mar	I HAVE EXPRESSED CONCERNS SEVERAL TIMES REGARDING THE RIO GRANDE TRAIL WHICH I HAVE TRIED TO RIDE ON WITH MY HORSES. I HAD THOUGHT THE NEW TRAIL WOULD BE OF A COMPOSITE SOFT ENOUGH - - - HOWEVER, TO MY TAXPAYING DISAPPOINTMENT, IT WAS TOO HARD, AND ONLY PROVIDED AN ADDITIONAL TRAIL WHICH THE BICYCLES NOW LIKE TO USE. I SINCERELY AM HOPEFUL THAT WE CAN BE PROVIDED A HORSE-FRIENDLY TRAIL ON THE RIO GRANDE. THANK YOU FOR YOUR CONSIDERATION AND HELP.	emailed to confirm we received comment and it has been added
51	Chantal Henderson	18-Mar	I am emailing along with my other counterparts as a member of the equestrian community, asking RFTA for equal consideration of our horses on the path.	emailed to confirm we received comment and it has been added
52	Sandie Bishop	18-Mar	As an owner of 8 horses in this valley, and an avid rider, I would encourage the committee to do everything possible to endure safe footings and separate trails for your riders.	emailed to confirm we received comment and it has been added
53	Carolynn Harder	18-Mar	As a local horse person, I am sending this email in support of a horse-friendly surface adjoining the Rio Grande Trail from Emma to Glenwood Springs. Thank you for your consideration of this matter,	emailed to confirm we received comment and it has been added
54	Adelaide Zabriskie	18-Mar	I urge you to put in a soft track along the concrete trail from Emma to Glenwood Springs. With the current bike use of the paved trail, it is not safe for pedestrians, especially people who are the slightest hard of hearing. A paved trail is, in reality, a bicycle trail. If there are places for horses and pedestrians, it is a very good thing for property values, and just general enjoyment. Horses are a positive factor for any community or valley.	emailed to confirm we received comment and it has been added
55	Dale Reed	1-Apr	Vehicle parking is obviously inadequate at the 27th Street Station- at least at peak periods. There is property "For Sale" at the south end of Blake (near Wal-Mart) Segways should not be accepted (allowed) on trails designed for pedestrians and bicycles- because of their width and slowness, it becomes a safety issue.	ACP open house comment card
56	Ken Ransom	1-Apr	I think it is important for RFTA to preserve the railbanked status of the corridor. The taxpayers shouldn't be asked to buy the land again if it reverts to private ownership as a result of removing the railbanked status. I firmly believe that the corridor will eventually be used for a light rail system to take pressure off of CO 82. While it may seem like an expensive proposition, the widening of CO 82 will also be very expensive and will adversely impact residential and commercial properties along the highway. I think that RFTA should update the 2005 report on traffic in the valley and being to firm up some ideas on how the rail corridor will help relieve congestion on US 82. There many who would use a light rail system who aren't too keen on buses (probably generated from other bus systems)	ACP open house comment card
57	Parvin Erlandsen	1-Apr	Doing a fantastic job. We love RFTA Services. However, 27th street crossing is dangers and an underpass is needed. And not enough parking at the 27th street station	ACP open house comment card
58	Anonymous	1-Apr	I love the trail. I use it at least twice a week from Aspen to Glenwood Springs and back. If it was not complete it would be very detrimental to my lively hood.	ACP open house comment card
59	Kathy Hegber	6-Apr	Please do everything to keep the railroad corridor in tact. It is vital to the health of the community and I Love the dinosaur eggs!!!!	ACP open house comment card
60	Brian Davies	6-Apr	Please send me the Federal Rail Banking Status. Page 74 of survey is incorrect	ACP open house comment card; Angie emailed and provided information that was requested.
61	Anonymous	n.d	Protect our trails- what a great asset	ACP open house comment card
62	Anonymous	6-Apr	Protect the trail- what a great asset	ACP open house comment card
63	Anonymous	7-Apr	Please consider putting in a bridge at Crown Mountain Park to access the Rio Grande Trail	ACP open house comment card

64	Jim Wahshrem	7-Apr	1. Rio Grande Trail is a fantastic facility/amenity for valley. 2. Reserve Rail Road for future commuter train service. 3. Connect by trail & bridges the Rio Grande Trail to Nearby regional parks and neighborhoods.	ACP open house comment card
65	Hunt Walker	7-Apr	Overwhelming support maintain the Rio Grande now's railbanked status. It is important that the rail Corridor is preservrd for rail a trail, and other non transit opportunities. If public agencies want to cross the corridor with a road, they need to mee the crossing design standards in order to preserve the rail banked status.	ACP open house comment card
66	Doc Phillip	7-Apr	Since you started years ago, you have always been wonderful and still are. You folks are great and tend to be fun people. Even your bus drivers have always fun folks and always talk to people. So thanks--for everything.	ACP open house comment card
67	James Campbell PhD	7-Apr	Keep the rail bank/trail as it is. Fight viciously to sustain the corridor. Any change will be a negligent one.	ACP open house comment card
68	John Hoffman	7-Apr	I would like to see us start to obtain the easy land grant properties. The ones overlapping CDOT or Remote and adjoining friendly or public interests. Possible Parcels 24, 35, 36, 37, 42, 44, 54, 56, 61*, 67, 68 on Byout Ink Pod, 86, 90, 85, 88. Good Job putting the exhibits together	ACP open house comment card
69	James Breasted	n.d	Dear Editor: Having worked since 1977, along with many others, to preserve the Rio Grande right-of-way as a public asset, I was astonished to learn last week that the County Commissioners of Garfield County now want to subordinate the transportation right of way to development interests. Having failed to convince RFTA not to remove and sell the rails themselves. I was nevertheless overjoyed that the eight local governments agreed to purchase the right of way for what now seems the paltry sum of \$8.5 million. Although disappointed that we were unable to persuade RFTA not to remove and sell the rails themselves, I remain delighted with the interim use of the railroad as a bike path. However, through appropriate legislation ("rail banking") the Denver & Rio Grande Western Railroad right of way, as purchased by the Roaring Fork Railroad Holding Authority and now owned by the Roaring Fork Transportation Authority, remains legally a railroad. Thank God. On March 12 at the regularly scheduled RFTA meeting in Carbondale, I shall ask that all railroad crossings up and down the valley be marked on each side with signs stating as follows: "NOTICE: This is legally a railroad crossing in existence by reason of use. In the even actual railroad use is resumed this crossing may be reconfigured or terminated to conform with railroad regulations. Current use as a bike path is permitted but is not essential to its actual legal status as a railroad right of way."	ACP open house comment card; Provided his letter as his ACP comments
70	Quian Gu	10-Apr	I have rode RFTA buses for years. I really appreciate all your hard work! But the upcoming schedule for off season seems really inconvenient for me. To be more specific, I will take the local to 27th to transfer to BRT to buttermilk, and the waiting is going to be 22 mins. Then both local and brt get to buttermilk almost the same time which doesn't make much sense to have brt running at that time to me. Again, thank you for all your efforts!	email was forwarded to operations for response
71	John Beckius	5-May	My name is John Beckius and I live at 433 32 nd street in Glenwood Springs which is in the Cole subdivision. I strongly disagree with the access control plan as it is written. The way you have written this plan you would control land use in the Roaring Fork valley and that is wrong. Your statement about "protecting the railroad corridor for future transportation needs" is a cover up for you to protect the hidden agenda you have. I suspect it has to do with Federal dollars and protecting your high paying jobs. The best thing you have done for the corridor is to transform it into a bike path. In my opinion you need to abandon the corridor and let the cities and counties take care of their portion of the bike path. As for you claiming that my property is in your right away, you are again incorrect. We purchased that property over 20 years ago and nowhere in process does it show any right of way encroachment by the railroad or any other entities. The only way you are going to satisfy my wife and I is to give us a signed document stating that the property line stays as it is according to my title insurance or you pay me fair market value for my property.	emailed to confirm we received comment and it has been added
72	R. Hunt Walker	9-May	I support the 2015 Access Control Plan. It is critical that we preserve the railbanked status of the corridor and the Access Control Plan helps protect that status. Although constructing a trail along the corridor was one of the goals for the purchase of the Rio Grande ROW, the primary purpose was to protect the corridor for a future mass transit system. It would be a shame to allow the corridor to be breached, and very short sighted on the part of the valley governments to allow that to happen. Highway 82 will never be six-laned; the only logical alternative is to construct a light rail or other mass transit system along the corridor. It won't happen in my lifetime, but I hope it happens in my kids lifetime.	emailed to confirm we received comment and it has been added

80 Comments total
EQUESTRIAN COMMENTS

	Name	Date	Comment	Response/Resolution
1	Robert Schultz	19-Jan	Please Send me a copy of List A & B of Crossings Grandfathered in	1/20 Sent documentation Mr. Schultz Requested
			Comments from BOCC Meeting 1-20-15	
2	John Wyatt Martin	20-Jan	<p>Agreement with Garfield County needs to remember that the 2012 powers are in place and they do not need to call us for approval on anything.</p> <p>Garfield County is not a member of RFTA</p> <p>They view this as land use control for RFTA</p> <p>If CDOT wants them to change the intersection at CTY RD 154, they will contact us; if CDOT does not want them too they do not need to call us. Same with Cattle Creek intersection</p> <p>Are we aware of what the Agreement says about current crossings and what they can and cannot do for these crossings</p> <p>There are currently 100 crossings, all permanent crossings. The Aspen Glen crossings are irrevocable and safe.</p> <p>RFTA must accept any crossings as they are, if there are any changes to the crossings they must be reviewed by RFTA.</p> <p>The arguments are still there from 1998 when this all started.</p> <p>Garfield County was out voted when they wanted to bring Rail to this area instead of the Trail, he no longer sees a Train going into Aspen from Glenwood Springs.</p> <p>Garfield County will work with RFTA they just need to remember the agreements that were made and that they have given us money and assistance in the past.</p>	RFTA advised that we have the agreement and have read it. We utilize the agreement whenever we are discussing issues in Garfield County.
3	Tom Jankovsky		<p>Is the trail in Glenwood Springs owned by RFTA? Does the Railbanking start in South Glenwood or at the WYE area?</p> <p>Tom concurs with Mr. Martin on concerns with taking of land near corridor.</p> <p>What you are doing is a concern. I am outraged by what is happening at Southbridge. This has set the project back 10 years because of Railbanking and raising the highway. I would like to challenge this railbanking in court.</p> <p>RFTA has had a hand in the land use in Garfield County.</p>	<p>The Riverwalk Trail in Glenwood was built and is owned and maintained from downtown Glenwood Springs to 23rd Street by the City of Glenwood Springs. RFTA's ownership of the Railroad Corridor property advised it begins at the WYE area. RFTA owns the underlying Railroad property from the Wye in Glenwood Springs to Woody Creek.</p> <p>Glenwood Springs owns a small portion of the Railroad Corridor in the downtown section of the WYE as well.</p> <p>The Riverwalk goes from 23rd to the Mainline</p>
4	Terri		<p>City of Glenwood Springs is concerned about the ACP in regard to existing crossings. Changing of the crossing is unclear in the documents. Change of use status is unclear RFTA needs comments on it.</p> <p>This document prohibits at grade crossings and meeting rail standards is expensive. It may be doable for a jurisdiction but not for a private owner.</p> <p>Private crossings only run with the current owner, RFTA could reissue the license when a new owner comes or they could decide not to reissue the license for that crossing.</p> <p>RFTA is not a Railroad, they are not Union Pacific. It should not be as difficult to deal with them as it is with UP.</p>	<p>Angela advised that RFTA cannot land lock someone. We cannot take a crossing away, but could consolidate the crossings is what the documents state. Mr. Martin confirmed this as well.</p> <p>Mr. Martin Responded: We need to understand that railroad is railroad. They have more power than CDOT does when it comes to these things. Take your issues with the WYE and Union Pacific for example.</p> <p>Mr. Martin Responded: But they are the railroad, you dug yourself into a hole by being on the board and with the WYE situation. There are provisions to get out of the board but you need 2/3 vote and you do not have it.</p> <p>Terri responded by saying they might have the 2/3 super majority vote.</p>
5	Mike Hermes		Advised to send all your comments to us. We will try to balance all the concerns as best we can. We cannot land lock people and we look forward to working with everyone during this process.	
6	John Wyatt Martin		We also all need to be willing to agree to disagree.	
7	Tom Jankovsky		<p>I am concerned that this will cause future expenses for the county in order to have crossing over the rail corridor.</p> <p>The expenses of Southbridge do not sit well with me.</p> <p>Cattle Creek (Rivers Edge) will never be developed because of the guidelines by RFTA.</p> <p>Down Valley has issues with Traffic and you have an Up Valley Board killing all the projects.</p>	<p>Mr. Martin advised it can be developed they just have to pay in order for the crossing to meet the RR standards.</p> <p>Angela advised the details of SouthBridge and how they arrived at the design they are now at.</p> <p>Mike Hermes advised that if this was UP you would be doing the same thing RFTA is.</p> <p>Mr. Martin concurred with Mike that the standards would be the same as what we are asking.</p>
			Comments	
8	Holly McLain	24-Jan	<p>I am sending my comment in support of RFTA putting a soft track, 8 feet wide trail with safe footing for horses from Aspen, (some already existing) to Glenwood Springs.</p> <p>Some existing soft track sections are too narrow with drop, off, side shoulders, which are not safe. I am on the Board of the Roaring Fork Valley Horse council (RFVHC), and our mission is to make all equestrian trails safe, especially where multi use with bicycles will occur. The busy asphalt Rio Grande bike paths are not compatible for metal horseshoes, and are dangerously slippery. Add the bike traffic, and disaster ensues. The horse community is now galvanized, with a strong membership base. All of the green pastures that you see while driving down Valley, are most likely, kept open and undeveloped by land owners for their horses. This equestrian community is asking RFTA for equal consideration, along with the bicycles and hikers.</p>	emailed to confirm we received comment and it has been added
9	Carol Dopin	25-Jan	<p>I am so happy to see your planning open to Public Comments</p> <p>I am the President of the Roaring Fork Valley Horse Council and also a founder of this organization. We are a nonprofit organization representing the interests of Equestrians and their horses with our main objectives being preserving trails and education of the public, the government and other users about safety when sharing trails and trailheads with horses.</p> <p>This great country of ours was built by pioneers on horseback.</p> <p>I know there are many sections of the Rio Grande under RFTA care that would be relatively easy to add a separate soft track or at least a wider adjoining soft track. Pitkin County has been open to our needs and had already developed wonderful soft tracks with more being considered. For an equestrian, who loves to ride the Rio Grande Trail, it has been a huge success. The bikers whizzing by on the separate trail have big smile as well when they see us. From the first time I used the newer soft tracks I was smiling from ear to ear, as I could ride my horse with my friends and their horses in a friendly environment.</p> <p>The Horse Council would love to meet with your board and be proactive and helpful in this endeavor. We are a strong group of public users that would like to be included in your planning.</p>	emailed to confirm we received comment and it has been added
10	Alexandra Anwyl-Davies	26-Jan	I would really like to request the expansion of the Rio Grande Trail to include as much soft surface trail running alongside the Tarmac wherever room permits.	emailed to confirm we received comment and it has been added
11	Steph Brown	26-Jan	<p>My name is Stephanie Brown and I've been a valley resident for 35 years. I'm thrilled that Pitkin County is considering equestrians as they continue to build public trail systems. Specifically, I hope you will plan for a soft track on the Rio Grande trail from Emma to Glenwood. There are so many horse owners in this valley that would love to have a usable track on which to ride that is safe and user-friendly. We're a large group, ever-growing and we appreciate your consideration.</p>	emailed to confirm we received comment and it has been added
12	Susan Gibbs	27-Jan	<p>I am making an appeal that the bike path have footing and space created for horse and walking traffic that can let the bikers race the path as they wish. Which is often as if they own it. I have had bikers wish by with no warning and no consideration. I have also experienced some very conscious and respectful bike traffic. It was originally proposed as a path would be horse and foot traffic friendly. This would be terrific.</p>	emailed to confirm we received comment and it has been added
			Comments from the TOC Meeting from the RFTA Presentation on the ACP & DG	
13	Alvin Harvey	27-Jan	<p>Is there a plan to have future discussion with RFTA and Town of Carbondale on how this affects Carbondale?</p> <p>Are all the documents available on the website for comments?</p>	<p>Jay Harington Advised yes, there will be further discussion between RFTA and the Town</p> <p>Angie Advised all documents are on the site and we need all comments by end of February</p>

14	AJ Hobbs	Who owns the entire trail?	Advised we do, the 18 miles we just mentioned are in regard to the Covenant Enforcement Conservation areas
15	Pam Zentmyer	Are these updates for all crossings, or only new crossings?	Advised these updates are for all crossing, any existing crossing is ok unless they undergo change of use then they are subject to changes.
		If Rail banking is lost, who does the property belong to?	Jay advised they would need to change existing crossing if Rail was Reactivated. Advised it would revert back to adjacent property owners in Federal land areas
16	Alvin	Wasn't there a severance case down on Lower River Road?	Advised that is the Phillips case. There was no severance but there was a taking of land. They are going through settlement now.
17	Jay Harrington	When the documents refer to RFTA avoiding future costs, does that mean if someone wants to reactivate the rail they are liable for the costs?	Yes, if a third party wants to reactivate rail they must pay to have the rail re-installed and are responsible for costs of crossings.
18	AJ	Why does light rail not work?	Mike then explained economic severance, Angie advised they can claim economic severance now and we would have to go to Federal Court. If reactivated must allow freight and commuter rail.
		Was the corridor built for one line of track?	Angie advised it runs on a different track. Advised no, it is big enough for two.
19	Attorney's	Asked who the State and Federal Rail Road attorneys are that helped with this.	Advised Walter Downing, and Charles Montange.
20	Jay	Is there a model we're following in order to create these guide lines and ACP?	Yes, there were 6 or 7 used in the creation of ours and the commuter rail guidelines as well.
21	Pam	If we stopped railbanking the corridor, would we risk losing it for the future?	Mike explained we would have lost it and why we did railbanking for the corridor. Angie advised yes, we would lose the corridor to adjacent property owners and it would not be contiguous.
		It makes no feasible sense to put freight and commuter rail instead of light rail. What other hurdles have you come across?	Angie advised unless they change the statute we have to build to commuter and freight rail standards. Angie advised in 2003 there was a study done on light rail in the valley.
		Why are we building the ACP on a rail that will not come back in the future?	Mike advised we cannot predict the future, but we own a rail road and must manage the corridor as such.
22	Alvin	Light rail in the valley has been imagined, they did thorough studies on it. This is a land use document that may help with 8th street, industry way, and satank.	Angie advised that process was already in place for public access. They must go to the PUC for approval.
23	Pam	Are there standards in the current ACP that we use?	There are, but they are very minimal. People were building crossings for whatever they wanted. Now they have to build for Freight Rail standards.
		Will the standards be different for public and private accesses?	Yes, because public accesses must be approved by the PUC and private may be consolidated. We have no way of doing that, it will depend on where the crossing is located and what type of crossing they are proposing that will determine the cost.
24	AJ	Who is the authority figure that determines if we have freight or light rail?	The STB (Surface Transportation Board) makes that decision.
		It would be nice if light rail could happen in the valley.	We tried to make that happen, but could not receive grants. Instead they offered funds for BRT system so we built that instead.
25	Pam	The trail section in Carbondale is ugly. Can we do something to clean that up?	Jay advised we're currently working on it. Angie advised Brett Meredith put in an edible garden and we have applied for grants to help beautify that section of the trail. Pam advised she may be able to help round up volunteers to clean out that area before we begin planting more items.
Comments			
26	Rosemary Strong	30-Jan I would like to suggest that any trails throughout the roaring fork valley have a soft surface of at least six feet. Three feet is not wide enough if a bike comes up from behind on a horse. A rider can see a bike coming at them but the danger does not become less for either the rider or the biker. I have been riding the RFTA trails for over fifteen years but recently I feel my experience is a life or death ride. This is so sad and doesn't need to be. The best answer is to Separate the paved from the soft surface as has been done in the upper valley . It would be Wonderful to see that happen where it can in the lower valley.	emailed to confirm we received comment and it has been added
27	Jec Parker- Andrew Saltonsta	3-Feb I live on Hooks Spur road and cross RFTA's bike path every day. In my point of view RFTA and its employees have already way over-stepped its powers. One of your employees found it necessary to rip out a boundary fence. While I was in the process of trying to protect the fence from being torn out, your employee stuck me with sledge hammer. I should have sued RFTA, however, I can't see the point of trying to get more money out of tax-payers to cover your lawsuits. So with my rant out of the way, I believe you are over reaching again with this plan. I cannot see any good from it. I just look like you are trying to exercise your power.	emailed to confirm we received comment and it has been added
28	Nina Ware	4-Feb I would like to add my voice to those who really want to see a soft track next to the trail from Aspen to Glenwood. The unpaved trail on the Lower Rio Grande is such a delight for dog walkers, joggers, and people like me on a horse. It is imperative that The Rio Grande Trail be all inclusive and encourages all sorts of transportation and recreation alternatives.	emailed to confirm we received comment and it has been added
29	Valarie & Alfred Braun	4-Feb To Whom it May Concern, Below is a copy of the letter we sent to the Pitkin County Commissioners and Pitkin County Manager, John Peacock. It represents our deep concern with an outrageous attempt to usurp private landowner's rights. We will continue to monitor this attempt. Dear Commissioners and Mr. Peacock, Please add our opposition to RFTA's latest land grab, that is trying to require a license for us to use our private drive which we have used for more than forty years. It's been tried before, but there will be NO support for this attempt either. We who live along the Rio Grande Trail already put up with dog poop, people who think anywhere along the trail is a bathroom (I see people peeing and worse often), bikers who are sure that the trail is for their use only, and very little upkeep and safety patrolling. As a daily user of the trail I pick up trash left behind by bikers and trash that blows down from the road as a public service. I walk way to the side of the trail praying bikers will let me know they are coming (only about 25% of bikers do) and I thank the people who walk their dogs on the trail on a leash (not the majority for sure). I do compliment the snow maintenance of the trail this winter. The person doing it has done an excellent job with tough conditions and he has kept the driveway crossings at a reasonable and skiable height. We can honestly not think a of a single reason that Pitkin County should allow such an outrageous government takeover.	emailed to confirm we received comment and it has been added
30	Nancy MacKenzie- to Pitkin C	4-Feb We saw the below 'letter to the editor' in Monday's Aspen Times. Is Pitkin County going to voice opposition to this plan that would require licensing and fees for all our private drives that cross the Rio Grande Trail. The driveways in my community along Upper and Lower River Roads and down valley from us have been here well before RFTA developed the Rio Grande Trail. (RFTA has extended the public comment deadline to February 12.) We wonder if this is related to the fact that the Phillips (Phillips Trailer Park on Lower River Road) are winning their lawsuit to gain ownership of the railroad property adjacent to their land.	Received from George Newman, Pitkin County
31	Jennifer Bennett	5-Feb Having been a horse owner for more than twenty years in the Roaring Fork Valley, I feel that Rio Grande Trail should be a multi-use trail to include horses and create a new soft track. My horse currently resides in Woody Creek and could easily benefit from a safe equestrian trail. As it currently exists, I feel it dangerous for riders. We are asking RFTA to consider the horse community in our valley along with the cyclists and pedestrians.	emailed to confirm we received comment and it has been added

32	Micky Hohl	<p>I have been an equestrian in the valley for 10 years and used to ride on the Rio Grande Trail all the time. When it got paved, there was next to no room left for my horse to fit so we had to stop using it. It seemed very unfair and preferential to bikers. I went to all of those meetings back then but our (equestrian) voice wasn't heard. Please restore a sufficient soft space to the side of the trail so that we can use and enjoy it too. Thank you!</p>	<p>emailed to confirm we received comment and it has been added</p>
	Gary Feldman	<p>Nearly a year ago I and three properties owners whose land is impacted by the former Railroad Corridor met with officials of RFTA to discuss the future of the Rio Grande Trail in light of the Supreme Court ruling in Brandt v. United States. At that meeting, we were promised a written position from RFTA explaining why the Rio Grande Right of Way should not be extinguished with the property reverting to the landowners. We have not received any communication from RFTA. The stated purpose of the Update to the Access Control Plan for management of the RFTA Owned Railroad Corridor has shifted from "managing the Rio Grande Trail" to "management of the Railroad Corridor as a whole in order to uphold and preserve the Railroad Corridor's 'rail-banked' and 'designated trail' status..." For many of the impacted property owners, this 'shift' represents an attempt by RFTA to avoid the negative ramifications of the court's ruling. There are more than forty miles of private property owners negatively impacted by this right of way who deserve a written explanation of why RFTA is exempt from this Supreme Court ruling. Respectfully, I request that RFTA keep its' promise and submit their written explanation that is now almost a year old. I also request that RFTA provide a list of owners and their contact information whose properties are impacted by the right of way. An excel spreadsheet should only take a few minutes to send.</p>	<p>Angela emailed advised our attornies would respond to Brandt case comments and how to get property owners from the counties GIS system</p>
33	Bill & Nancy MacKenzie	<p>We are outraged that RFTA has proposed a new Access Control Plan (ACP) and has not had the courtesy to inform all of us property owners which this has the potential to impact. In addition, it is difficult to find these documents on your website. You should not be enacting this Plan administratively since there are many legal issues and much uncertainty surrounding the RFTA corridor. We do not believe that you have established any legal right to reactivate rail service. You cannot start to require licenses and fees of property owners whose driveways cross the 'trail', especially when those driveways have existed for over 27 years. The Rio Grande Trail is no longer a viable location for a rail line. If a rail line is developed in the future it should follow Highway 82 which is an established travel route with far less cross street intersections and with established commuter parking lots.</p>	<p>emailed to confirm we received comment and it has been added</p>
34	CDOT	<p>I am writing to provide comments on your proposed Access Control Plan (ACP) for Railroad Right of Way. It is our understanding this applies to the Rio Grande Railroad Corridor, which has an alignment parallel to State Highway (SH) 82 throughout most of its length and is crossed by SH 133 in Carbondale. SH 82 is an extremely important highway providing access from Interstate 70 to the entire Roaring Fork Valley. SH 133 provides critical access to the west-central valleys. The Colorado Department of Transportation (CDOT) is required to operate, maintain and may need to upgrade these routes and their connections in the future. CDOT is extremely concerned that interpretation of requirement imposed by 16 USC 1247(d) by the Roaring Fork Transportation Authority (RFTA) and their implementation through this ACP will place unnecessary requirements on entities seeking to modify or install new crossings of the Rio Grande Trail. The Colorado State Highway Access Code provides authority to and authorizes the CDOT to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining a public highway for the health, welfare and safety of the traveling public. The draft ACP does not balance the interests of the traveling public and has the potential to impede CDOTs administration of the Colorado State Highway Access Code. In recent coordination for a proposed new connection between SH 82 and the new South Bridge in Glenwood Springs we learned that RFTA defines avoiding "obstruction to freight rail reactivation" to mean that any new crossing must be designed as if freight rail were in existing operation on the corridor or financial assurances provided such as sufficient escrowed funds to make future changes. Freight rail operation in the corridor seems highly unlikely; however, such requirements were imposed and will lead to a substantial cost increase for the project. This is evidence the draft Access Control Plan could easily place costly restrictions on governments and private landowners seeking access between their local streets and the State Highway System. We understand the need to protect the RFTA interests; however, it is our opinion this is overly restrictive and does not anticipate inevitable economic growth or related changes in land use. The current transportation infrastructure cannot accommodate increases in local access without crossing the RFTA right of way and eliminating existing access points or constructing crossings to freight rail design standards places a substantial and unexpected burden on your neighbors. CDOT considers stakeholder input to be vital and requests that implementation of the RFTA Railroad Right of Way Corridor Access Control Plan be put on hold until meaningful collaboration occurs that balances the interests of all affected stakeholders.</p>	<p>Angela advised we received and they have been added</p>
35	David Swersky	<p>Angela, Mike and Dan, Thank you for taking the time for the meetings and phone calls we have had to discuss these issues. As best as I can recall... What we agree upon: 1. That the Rio Grande Corridor should not be compromised in any way. 2. That no adjacent property owner should be denied access to his home. What we don't: The impact and relevance of the Supreme Court decision concerning Brandt v. United States. I suspect that this plan is reactive to that. Nevertheless, my main concern is limiting the license to the individual and not transferring it with the property. Naturally, I would like to have it totally transferrable to a potential buyer. Short of that, adding a phrase to the effect of: a new owner must apply for his own license, which approval shall not be arbitrarily withheld. I have discussed this with both Angela and my county representative, Michael Owsley, both of whom thought it reasonable. I question the right and the necessity of a fee charged the adjacent property owners for living near and crossing the right of way. All of us already pay a healthy mill levy to Open Space and Trails, happily so. In addition, we are required to maintain our crossing. I have had no problem with that, however in seems incongruous to be charged. Since a fee seems inevitable, I request that it be done with total equanimity for all households involved. Overall, I find the document extremely heavy handed and authoritarian. It is inconsistent with the ethos of an entity designed to serve the public in the Roaring Fork Valley. Please re-write it.</p>	<p>Dan responded that we have received his comments</p>
36	Bob Lockard	<p>Hello RFTA, Can you clarify the ACP and how it relates to railroad? It's not clear to me, is RFTA submitting this document to prepare for building out new railroad line in place of or alongside the current bike path? I live at 3014 Sopris Ave and back up to the path. I frequently use the bike path for recreation as many others do. I am NOT in favor of restoring any type of rail service as there is already too much noise and light pollution from current Highway 82 and surrounding markets. Our yard backs up to the right of way and I am NOT in favor of losing any real estate to a railway corridor. Are you planning to put up any type of sound barrier wall to protect residents along Sopris Ave and 33rd St neighborhoods? Thanks for clarifying my questions and thank you RFTA for your work this winter in maintaining the bike path and removing snow to keep it clear as we are enjoying this unusual warm winter.</p>	<p>Angela responded with explanation and Gust column letter</p>
37	Martin Schlumberger	<p>As a resident of Pitkin County with three properties crossing over the Rio Grande Trail, I was shocked to learn about this proposal, not from RFTA, but from some conscientious neighbors and a newspaper article! What are you thinking?</p>	<p>Angela responded with explanation and public notice</p>

38			Everything about this proposal along with the thought of rail service, is fraught with potential legal battles. The impact of this proposal to property owners is huge!	
39	David Swersky	16-Feb	Also sent his comments to Pitkin County BOCC	emailed to confirm we received comment and it has been added
40	Sandie Bishop	19-Feb	Please know we all want a soft trail to Glenwood	emailed to confirm we received comment and it has been added
41	Roberta McGowan	19-Feb	I would like to request that the equestrian community, represented by the RfVHC wants the Soft Track RFTA trail from Emma School House area to Glenwood.	emailed to confirm we received comment and it has been added
42	Gail Otte	19-Feb	Please know that I along with many other horse riders do use the trails and hope that you will provide a SOFT TRACK from Emma to Glenwood--- we have quite a few members and if you drive up/down the valley you will find that there are horses and they ARE being ridden not all are pasture ornaments!! Please provide the horse riding public a soft surface. THANK YOU for your time.	emailed to confirm we received comment and it has been added
43	Alexandra Anwyl-Davies	20-Feb	It was with dismay and grave concern that I discovered that the topic of soft surface for users of the Rio Grande Trail was not even considered. Please review this issue as I do believe it raises the questions of Safety foremost and secondly enjoyment of this wonderful trail that is there for all of the Community to use.	emailed to confirm we received comment and it has been added
44	Chantal Henderson	20-Feb	The equestrian community represented by RfVHC is requesting soft track RFTA trail from Emma School house area to Glenwood. Cyclists scare the horses as some do not realize that they need to stop and let horses pass and continue cycling by at speeds. The path is relatively inexpensive to provide. PLEASE CONSIDER PRESERVING THE RIGHT OF COLORADO 'S TRAIL RIDERS. Horses are part of our heritage well before cyclists took over.	emailed to confirm we received comment and it has been added
45	Nina Ware	20-Feb	Please add my voice to those who want a soft track on the trail from Emma to Glenwood Springs! I live in Aspen at 624 West Hallam and look forward to riding a horse on this portion of the trail.	emailed to confirm we received comment and it has been added
46	Terry Murray	21-Feb	New trails are always exciting. Improvements to trails are so important. All users and potential users should be considered. Soft track is critical for horses. Fortunately, it's the lesser cost of trails in both creation and upkeep. Please keep in mind that although bicycles are important, and a lot of fun, the west wasn't won on rubber, and we have many horsemen who need access to public trails. Parking for trucks and trailers is also important, and the space need not be paved. Thanks for the opportunity to have horsemen considered in decisions	emailed to confirm we received comment and it has been added
47	Helen Carlsen	3-Mar	I support the updated proposal for RFTA's section of the RGT. I disagree with the objections of Glenwood Springs and Garfield County. First, I agree that we need to keep the rail banking option open both for a potential train and to keep the corridor open for public access to the trail. Second, I ride my bike on the RGT frequently and the trail is safer with fewer road and driveway crossings. I support the concept of making new houses use existing crossings instead of approving new crossings. Every crossing increases the chance of accidents. Thank you for doing such a good job on the RGT.	emailed to confirm we received comment and it has been added
48	Scott Hoffman	7-Mar	In the winter of 2012 I moved from another Colorado mountain community to Aspen. While I cared deeply for my former hometown I was drawn to the thoughtful and progressive thinking of the Roaring Fork Valley - particularly regarding housing and transportation. I was encouraged by Dan Blankenship's comments reported in the February 17th edition of the Aspen Times noting efforts via the proposed update of the Rio Grande Corridor Access Plan to preserve the opportunity for reactivation of future rail service. And I was equally discouraged by comments in the March 6th edition of the Aspen Daily News noting downvalley sentiment against the Plan. I certainly do not pretend to know what the future holds, but I do know that rail service very well may be a component of that future. Sacrificing a future option (preservation of rail rights) that could benefit the entire corridor for a more short term economic benefit (reduced cost of crossing construction) that could benefit far fewer seems shortsighted at best. This is exactly the type of conversation that occurred in my former hometown where short term economic benefit most often won out resulting in the intended/unintended consequence of significantly tougher (more impactful and more costly) future challenges.	Angela emailed advising we received comments and of when our board meeting is.
49	Joan Troth	16-Mar	I live on Cooper Court in Cole Subdivision and I was shocked to see the RFTA ownership lines overlaying the existing homes on Blake Court in the map published in the Glenwood Post Independent. Please explain the intention of RFTA in claiming ownership that encroaches this neighborhood which has been in existence for decades. Do you intend to inform homeowners that you have no plans to widen the existing bike trail space into their backyards and homes? A response would be appreciated.	Angela emailed advising we received comments and of when our board meeting is.
50	Sandy Israel	18-Mar	I HAVE EXPRESSED CONCERNS SEVERAL TIMES REGARDING THE RIO GRANDE TRAIL WHICH I HAVE TRIED TO RIDE ON WITH MY HORSES. I HAD THOUGHT THE NEW TRAIL WOULD BE OF A COMPOSITE SOFT ENOUGH - - - HOWEVER, TO MY TAXPAYING DISAPPOINTMENT, IT WAS TOO HARD, AND ONLY PROVIDED AN ADDITIONAL TRAIL WHICH THE BICYCLES NOW LIKE TO USE. I SINCERELY AM HOPEFUL THAT WE CAN BE PROVIDED A HORSE-FRIENDLY TRAIL ON THE RIO GRANDE. THANK YOU FOR YOUR CONSIDERATION AND HELP.	emailed to confirm we received comment and it has been added
51	Chantal Henderson	18-Mar	I am emailing along with my other counterparts as a member of the equestrian community, asking RFTA for equal consideration of our horses on the path.	emailed to confirm we received comment and it has been added
52	Sandie Bishop	18-Mar	As an owner of 8 horses in this valley, and an avid rider, I would encourage the committee to do everything possible to endure safe footings and separate trails for your riders.	emailed to confirm we received comment and it has been added
53	Carolynn Harder	18-Mar	As a local horse person, I am sending this email in support of a horse-friendly surface adjoining the Rio Grande Trail from Emma to Glenwood Springs. Thank you for your consideration of this matter,	emailed to confirm we received comment and it has been added
54	Adelaide Zabriskie	18-Mar	I urge you to put in a soft track along the concrete trail from Emma to Glenwood Springs. With the current bike use of the paved trail, it is not safe for pedestrians, especially people who are the slightest hard of hearing. A paved trail is, in reality, a bicycle trail. If there are places for horses and pedestrians, it is a very good thing for property values, and just general enjoyment. Horses are a positive factor for any community or valley.	emailed to confirm we received comment and it has been added
55	Dale Reed	1-Apr	Vehicle parking is obviously inadequate at the 27th Street Station- at least at peak periods. There is property "For Sale" at the south end of Blake (near Wal-Mart) Segways should not be accepted (allowed) on trails designed for pedestrians and bicycles- because of their width and slowness, it becomes a safety issue.	ACP open house comment card
56	Ken Ransom	1-Apr	I think it is important for RFTA to preserve the railbanked status of the corridor. The taxpayers shouldn't be asked to buy the land again if it reverts to private ownership as a result of removing the railbanked status. I firmly believe that the corridor will eventually be used for a light rail system to take pressure off of CO 82. While it may seem like an expensive proposition, the widening of CO 82 will also be very expensive and will adversely impact residential and commercial properties along the highway. I think that RFTA should update the 2005 report on traffic in the valley and being to firm up some ideas on how the rail corridor will help relieve congestion on US 82. There many who would use a light rail system who aren't too keen on buses (probably generated from other bus systems)	ACP open house comment card
57	Parvin Erlandsen	1-Apr	Doing a fantastic job. We love RFTA Services. However, 27th street crossing is dangers and an underpass is needed. And not enough parking at the 27th street station	ACP open house comment card
58	Anonymous	1-Apr	I love the trail. I use it at least twice a week from Aspen to Glenwood Springs and back. If it was not complete it would be very detrimental to my lively hood.	ACP open house comment card
59	Kathy Hegber	6-Apr	Please do everything to keep the railroad corridor in tact. It is vital to the health of the community and I Love the dinosaur eggs!!!!	ACP open house comment card
60	Brian Davies	6-Apr	Please send me the Federal Rail Banking Status. Page 74 of survey is incorrect	ACP open house comment card; Angie emailed and provided information that was requested.
61	Anonymous	n.d	Protect our trails- what a great asset	ACP open house comment card
62	Anonymous	6-Apr	Protect the trail- what a great asset	ACP open house comment card
63	Anonymous	7-Apr	Please consider putting in a bridge at Crown Mountain Park to access the Rio Grande Trail	ACP open house comment card

64	Jim Wahshrem	7-Apr	1. Rio Grande Trail is a fantastic facility/amenity for valley. 2. Reserve Rail Road for future commuter train service. 3. Connect by trail & bridges the Rio Grande Trail to Nearby regional parks and neighborhoods.	ACP open house comment card
65	Hunt Walker	7-Apr	Overwhelming support maintain the Rio Grande now's railbanked status. It is important that the rail Corridor is preserved for rail a trail, and other non transit opportunities. If public agencies want to cross the corridor with a road, they need to mee the crossing design standards in order to preserve the rail banked status.	ACP open house comment card
66	Doc Phillip	7-Apr	Since you started years ago, you have always been wonderful and still are. You folks are great and tend to be fun people. Even your bus drivers have always fun folks and always talk to people. So thanks--for everything.	ACP open house comment card
67	James Campbell PhD	7-Apr	Keep the rail bank/trail as it is. Fight viciously to sustain the corridor. Any change will be a negligent one.	ACP open house comment card
68	John Hoffman	7-Apr	I would like to see us start to obtain the easy land grant properties. The ones overlapping CDOT or Remote and adjoining friendly or public interests. Possible Parcels 24, 35, 36, 37, 42, 44, 54, 56, 61*, 67, 68 on Byout Ink Pod, 86, 90, 85, 88. Good Job putting the exhibits together	ACP open house comment card
69	James Breasted	n.d	Dear Editor: Having worked since 1977, along with many others, to preserve the Rio Grande right-of-way as a public asset, I was astonished to learn last week that the County Commissioners of Garfield County now want to subordinate the transportation right of way to development interests. Having failed to convince RFTA not to remove and sell the rails themselves. I was nevertheless overjoyed that the eight local governments agreed to purchase the right of way for what now seems the paltry sum of \$8.5 million. Although disappointed that we were unable to persuade RFTA not to remove and sell the rails themselves, I remain delighted with the interim use of the railroad as a bike path. However, through appropriate legislation ("rail banking") the Denver & Rio Grande Western Railroad right of way, as purchased by the Roaring Fork Railroad Holding Authority and now owned by the Roaring Fork Transportation Authority, remains legally a railroad. Thank God. On March 12 at the regularly scheduled RFTA meeting in Carbondale, I shall ask that all railroad crossings up and down the valley be marked on each side with signs stating as follows: "NOTICE: This is legally a railroad crossing in existence by reason of use. In the even actual railroad use is resumed this crossing may be reconfigured or terminated to conform with railroad regulations. Current use as a bike path is permitted but is not essential to its actual legal status as a railroad right of way."	ACP open house comment card; Provided his letter as his ACP comments
70	Quian Gu	10-Apr	I have rode RFTA buses for years. I really appreciate all your hard work! But the upcoming schedule for off season seems really inconvenient for me. To be more specific, I will take the local to 27th to transfer to BRT to buttermilk, and the waiting is going to be 22 mins. Then both local and brt get to buttermilk almost the same time which doesn't make much sense to have brt running at that time to me. Again, thank you for all your efforts!	email was forwarded to operations for response
71	John Beckius	5-May	My name is John Beckius and I live at 433 32 nd street in Glenwood Springs which is in the Cole subdivision. I strongly disagree with the access control plan as it is written. The way you have written this plan you would control land use in the Roaring Fork valley and that is wrong. Your statement about "protecting the railroad corridor for future transportation needs" is a cover up for you to protect the hidden agenda you have. I suspect it has to do with Federal dollars and protecting your high paying jobs. The best thing you have done for the corridor is to transform it into a bike path. In my opinion you need to abandon the corridor and let the cities and counties take care of their portion of the bike path. As for you claiming that my property is in your right away, you are again incorrect. We purchased that property over 20 years ago and nowhere in process does it show any right of way encroachment by the railroad or any other entities. The only way you are going to satisfy my wife and I is to give us a signed document stating that the property line stays as it is according to my title insurance or you pay me fair market value for my property.	emailed to confirm we received comment and it has been added
72	R. Hunt Walker	9-May	I support the 2015 Access Control Plan. It is critical that we preserve the railbanked status of the corridor and the Access Control Plan helps protect that status. Although constructing a trail along the corridor was one of the goals for the purchase of the Rio Grande ROW, the primary purpose was to protect the corridor for a future mass transit system. It would be a shame to allow the corridor to be breached, and very short sighted on the part of the valley governments to allow that to happen. Highway 82 will never be six-laned; the only logical alternative is to construct a light rail or other mass transit system along the corridor. It won't happen in my lifetime, but I hope it happens in my kids lifetime.	emailed to confirm we received comment and it has been added

80 Comments total
EQUESTRIAN COMMENTS