



Policy Regarding Processing Of And Action Upon Requests For Conveyance Of Property Interests Involving NCRA Property

The NCRA has acquired the former Northwestern Pacific Railroad (NWPRR) Right-of-way north of Mile Post 68.22 in Healdsburg for the purpose of preserving it as a transportation corridor. Recognizing that the NCRA will receive requests for entry onto the right-of-way from time to time for various transportation and non-transportation purposes, the Board desires to enact policies to facilitate the timely processing of requests for easements, licenses or other encroachments. By adoption of the policies set forth below, the NCRA reaffirms the basic principle that protection and preservation of the former Northwestern Pacific (NWP) Right-of-way for transportation purposes is of paramount importance. Requests for entry onto the corridor will only be considered and/or granted if they can be accommodated in accordance with the aforementioned principle.

Review of all Requests by NCRA Staff

NCRA staff will process for consideration all requests for entry onto property owned by the NCRA, including, without limit, requests for encroachments, licenses, leases, right-of-entry permits, special event permits, and easements (collectively, "Encroachment"). All requests will be submitted on the NCRA standard application form, along with an initial application fee in the amount set in the NCRA fee schedule as set forth in Chapter 0801.6 of this policy, and such supporting information as NCRA staff deems necessary to review the Encroachment request. Additional fees may be required depending on the type and nature of encroachment requested.

NCRA staff will analyze the Encroachment request for its compatibility with the current use and anticipated future development of the corridor for transportation purposes from engineering feasibility, planning, maintenance, and cost impact perspectives. NCRA staff's review will verify that:

1. The Encroachment request is in accordance with current and applicable railroad engineering standards and operational requirement and all applicable provisions of Public Utilities Commission regulations
2. The applicant's improvements are compatible with the broadest range of possible transportation alternatives for the right-of-way and will minimize the necessity for future relocation of any improvements

3. The granting of the Encroachment request is in full compliance with the requirements of applicable federal and state law, including any restrictions contained in grants and/or funding agreements for the right-of-way acquisition
4. The granting of the Encroachment request will not materially interfere with rail freight or passenger transit operations or cause additional expense or increase the liability exposures to the operator(s) of such services or the NCRA
5. The basic principle of protection and preservation of the Right-of-way for transportation purposes.

Encroachment Agreement

NCRA staff will analyze each Encroachment request in accordance with this policy, and, if it supports granting the request, NCRA staff will proceed to develop a proposed form of agreement with the party presenting the Encroachment request (i.e., grantee, licensee, lessee or permittee, herein collectively referred to as “Licensee”) for execution by either the Executive Director or the Chairperson of the Board of Directors, as provided for below in Chapters 0801.3 and 0801.4. The form of agreement shall contain, in addition to provisions deemed necessary or appropriate by legal counsel or due to the particular features of the Encroachment request, the following requirements:

1. That Applicant maintains and repairs to NCRA requirements, at its sole expense, its improvements that are constructed or placed on the Encroachment property.
2. That Applicant agrees to reimburse the NCRA for all costs and expenses incurred above the Application Fee in processing the application, evaluating and preparing the Encroachment Agreement and other related documents, and overseeing the construction or placement of improvements on NCRA property (including the cost of providing flagging and other support activities).
3. That Applicant and/or its contractor shall indemnify the NCRA, its directors, officers, staff, employees, agents, and representatives against liability arising out of Licensee’s use of the property.
4. That Applicant maintains the types of insurance at the insurance limits deemed necessary or appropriate by NCRA.
5. That Applicant shall provide a surety and/or performance bond or other acceptable form of security to insure satisfactory completion of any construction occurring on the Right-of-way during the period of such construction and, in the sole discretion of NCRA staff, Licensee shall provide a surety bond or other acceptable form of security to insure the satisfactory performance of any other obligations as deemed necessary or appropriate.
6. That Applicant agrees to relocate the improvements constructed or placed on the Encroachment property at its sole cost and expense, if such relocation is necessary for the development of the Right-of-way for public transportation purposes or to otherwise protect the Right-of-way as determined at the sole discretion of the NCRA, its successors or assigns.
7. That NCRA reserves the right to revoke the Encroachment agreement with 30-day notice without cause or breach.

8. That Applicant agrees to pay the fee for use of NCRA property in accordance with the schedule set forth in Chapter 0801.6 hereof as it may be amended from time to time.

NCRA staff shall forward the completed application and its recommendation to the Executive Director. If the request is within the authority of the Executive Director, as described below, the Executive Director shall decide whether or not to grant the Encroachment request. If the request is not within the authority of the Executive Director, the Executive Director shall determine whether it is appropriate for the Board's consideration and, if appropriate, shall insure timely consideration of the Encroachment request by the Board. Any decision by the Executive Director to deny an Encroachment request falling within his/her authority or not to schedule a request not within his authority for Board approval shall be final, subject only to the right of any Board member to bring the matter before the Property Committee for review and recommendation to the Board.

Authority of the Executive Director

The Executive Director may approve all requests for licenses, leases or right-of-entry permits that do not require NCRA Board approval, as provided in Chapter 0801.4 below (such as underground or overhead utility installations, filming or temporary construction uses of the Right-of-way, provided that (1) the Encroachment request will not have an adverse impact on the current use or future development of the corridor for transportation purposes, and (2) the Encroachment agreement shall be terminable upon no more than thirty (30) days' notice without cause.

North Coast Railroad Authority Review

After review and recommendation of the Property Committee, the Board of Directors of the NCRA shall review and approve, by signature of the Chairman of the Board, or disapprove the following types of Encroachment requests:

1. All Encroachment requests for permanent easement rights for any purpose. The NCRA hereby enunciates a policy that requests for permanent easements generally should be denied. However, the Board shall review each such request on a case-by-case basis to determine if the easement is compatible with the current use of and future development of the transportation corridor. The permanent easement may be granted provided the applicant pays appropriate compensation or provides other consideration for burdening the Right-of-way with the easement.
2. All Encroachment requests for at-grade crossings, public or private. The NCRA hereby enunciates a policy that requests for at-grade crossings should be denied. However, under special circumstances, an applicant may request an at-grade crossing, which shall be reviewed by the NCRA on a case-by-case basis. Upon review, if the NCRA determines that the requested crossing is necessary, and no other readily or reasonably feasible alternative exists, the NCRA may grant a

temporary license for an at-grade crossing, terminable at will. The license agreement shall provide that upon termination, if the applicant has no other feasible alternative access, the applicant shall construct a suitable overcrossing or undercrossing at its sole cost and expense. Any crossings permitted will be subject to compliance with the regulations of the California Public Utilities Commission.

3. Any Encroachment request determined by NCRA staff to have probable adverse impacts on existing freight operations or the future development of the corridor for transportation purposes. NCRA approval is required for any Encroachment request that has probable adverse impacts on the current use or the future development of the corridor for transportation purposes.
4. All other Encroachment requests, which fall outside of the scope of authority for approval by the Executive Director as described in Chapter 0801.3, or are determined by the Executive Director to be appropriate for Board consideration. All other Encroachment requests as determined by the Executive Director to be appropriate for Board consideration shall be referred to the Property Committee for review and recommendation to the Board for approval or disapproval.

Form of Agreement

The form of agreement to be used in the event that an Encroachment request is granted shall be reviewed and approved by legal counsel.

Fee Schedule

The applicant shall be responsible to reimburse the NCRA for the Authority's actual costs and expenses of processing the application, preparing the encroachment agreement, and other related documents and overseeing the placement or construction of improvements to the property.

The following minimal fee schedule for Fiscal Year 2006-07 has been adjusted from the prior December 2002 rates based on the Consumer Price Index – All Consumers for San Francisco, Oakland, San Jose, CA. The following fees will be used, and all contracts will be written with an escalation provision based on an annual increase to take effect every July based on the CPI change from the current year April as compared to the prior year April.

The following fees will be accompanied by a \$324 application fee. Long term agreements may have higher fees depending on usage, and will include the escalation factor described above.

1. Temporary rights-of-entry permits: \$541
2. Private Roadway Crossings: \$324 per year
3. Utility Crossings: \$324 per year
4. Commercial Crossings: \$3,244 per year
5. Special Event Permits: \$108 per day

6. All other Encroachments: Market Value as determined by the Executive Director, Property Management Committee, or Board of Directors
7. Unauthorized Encroachments: Twice the applicable fee applied retroactively
8. Late fees for delinquent annual encroachment payments.

This fee schedule is subject to periodic revision from time to time by the NCRA Board of Directors.