

Recording Requested By And
When Recorded Mail To:

State Coastal Conservancy
1330 Broadway, 11th Floor
Oakland, CA 94612-2530
Attn: Staff Counsel (JJ)

EXEMPT FROM RECORDING FEES -- GOV. CODE SECTION 6103

DECLARATION OF RESTRICTIVE COVENANTS

Santa Cruz Rail Branch Line Property, Santa Cruz County

This Declaration of Restrictive Covenants is made this ____ day of _____, 2005, by the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION (“**SCCRTC**”), a _____, for the benefit of STATE COASTAL CONSERVANCY (“**Conservancy**”), an agency of the State of California, and is made with specific reference to the following facts.

Recitals

WHEREAS, SCCRTC, is the owner of certain real property commonly known as the “Santa Cruz Rail Branch Line Property” and described in Exhibit A, attached hereto and incorporated by reference (referred to herein as “**the Property**”).

WHEREAS, the Property consists of approximately 32 miles of railroad right-of-way of varying width (50-350 feet) from Davenport, California to Watsonville, California.

WHEREAS, as of the date of recordation of this Declaration, the Property is improved with a single main railroad track extending the entire length of the right-of-way and with siding tracks, signals, spurs, and other railroad improvements (collectively, the “**existing railroad tracks**”).

WHEREAS, SCCRTC received a reimbursable grant from the Conservancy (the “**Grant**”) to be used by SCCRTC to acquire the Property pursuant to the terms and conditions of that certain Grant Agreement No. _____ (the “**Grant Agreement**”).

WHEREAS, the Grant Agreement provides that SCCRTC, as a condition to the Grant, record certain covenants and restrictions against the Property to ensure that a portion of the Property will be preserved for future use as a public bicycle and pedestrian trail.

WHEREAS, SCCRTC now desires to satisfy the requirements of the Grant Agreement by

recording this Declaration against the Property.

Declarations

NOW THEREFORE, SCCRTC hereby declares the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following restrictions:

1. Term: The obligations of this agreement are agreed to be covenants running with the land within the meaning of California Civil Code § 1468. The covenants shall run with the Property and be binding upon and inure to the benefit of SCCRTC, its assigns and successors in interest, and the Conservancy and any successor public agency.
2. Severability: Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect, unless the exclusion of such covenant would result in such a material change so as to cause the remainder of the covenants herein to be unreasonable.
3. Restrictive Covenants:
 - a. The Property was acquired by SCCRTC pursuant to the Grant from the Conservancy, together with other funds, for the purpose, in part, of preserving a portion of the Property for future development and use for public access and recreation as a bicycle and pedestrian trail (the “**trail**”) along as much of the length of the Property as possible, except where it is not reasonably feasible to do so, as specified in subsection b of this Section 3, below. No use of the Property inconsistent with that purpose is permitted; provided that use of the Property for freight rail or passenger rail purposes on the existing railroad tracks shall not be deemed an inconsistent use.
 - b. The exact location, placement and extent of the area on the Property to be preserved by SCCRTC for future development and use for the trail (the “**Protected Area**”) is not currently known and will be determined under a separate planning process by the SCCRTC. However, the Protected Area shall conform generally with the following:
 - i. The Protected Area shall consist of a strip of land extending along the length of the Property, except those segments where the placement of the trail on the Property is not reasonably feasible. Any determination that placement of the trail on the Property is not reasonably feasible shall be based on one or more of the following:
 1. The cost of improvements needed to accommodate a trail along a segment of the Property is prohibitive, because of the peculiar physical, geographic or topographic constraints existing on that

segment of the Property.

2. The width of the Property is insufficient to locate a segment of the trail within a safe distance from the existing railroad tracks.
 3. The width of the Property is insufficient to locate a segment of the trail within a safe distance from the existing railroad tracks because of the anticipated need for additional improvements on the Property, reasonable in scale and extent, to accommodate future uses of the Property for rail service on the existing railroad tracks. Such additional improvements may include, without limitation, siding tracks, turnouts, signal facilities, catenary poles, rail stations, and other transportation-related improvements.
 4. The development of a segment of the trail on the Property would be redundant, because of the existence of another nearby Class 1 pedestrian and bicycle trail that is permanently dedicated and open to the public for use as a trail and that can be directly linked to the trail on the Property.
 5. Negative environmental effects are identified in the course of the planning process referenced above and these effects cannot be avoided or reduced to less than significant effects through reasonable, feasible changes in the trail design or through imposition of reasonable mitigation measures.
- ii. The Protected Area shall not encompass any portion of the Property on which the existing railroad tracks are located, but may be within a safe distance from the existing railroad tracks.
 - iii. The Protected Area may be used for purposes other than the trail, so long as the other purposes do not prevent the development and use of the Protected Area for the trail.
- c. The planning, design and development of the trail shall be left to the sole discretion of SCCRTC, provided, however, that the planning, design or development shall be consistent with the terms of this Declaration. SCCRTC shall consult with the Conservancy throughout any process by which it may plan, design or develop the trail.
 - d. SCCRTC shall in good faith endeavor to undertake the planning, design and development of the trail, and open the trail to public use, as soon as reasonably practical, subject to availability of funding, taking into account other SCCRTC public transportation priorities and projects.
 - e. Following the date of recordation of this Declaration, the Conservancy, or

another person or entity, may offer SCCRTC grant funding for the planning, design, development, construction, management or operation of the trail. Provided that the grant funding (i) is non-reimbursable, (ii) is offered on terms that are reasonable, and (iii) permits SCCRTC the discretion to determine the design of the trail and to place reasonable, non-discriminatory restrictions on the public use of the trail, SCCRTC shall not reject such funding, except for bonafide reasons that are not inconsistent with the terms of this Declaration.

- f. The Conservancy shall be permitted access to the Property for the purpose of inspecting the Property for compliance with the provisions of this Declaration upon 24-hour prior notice to SCCRTC.
- g. Any transfer or conveyance of the Property, or transfer or conveyance of any portion of, or title, interest, or right in, the Property, shall be subject to the prior written approval of the Executive Officer of the Conservancy, or its successor, provided that the Conservancy shall, within 60 calendar days following receipt of the proposed terms and conditions of such transfer, either approve the transfer or advise SCCRTC in writing of the basis of disapproval. The bases for the Conservancy's approval shall be limited to preserving compliance with the provisions of Section 3, and the Conservancy's approval shall not be unreasonably withheld or conditioned.

Notwithstanding the foregoing, the approval of the Conservancy shall not be required for the transfer of any portion of the Property provided that either:

- (i) The transferee is a public entity, or non profit corporation whose primary purposes include the development and operation of public access, including pedestrian and bike trails (an **“Approved Operator”**); or
- (ii) The Protected Area has been identified pursuant to Section 4(a) of this Declaration and the SCCRTC reserves an easement for the trail over the Protected Area for itself or any Approved Operator for the purpose of complying with the provisions of this Declaration.

The Property, or any portion of the Property, or right, title, or interest in the Property, that is transferred, conveyed or retained in connection with a transfer or conveyance, shall remain subject to all provisions of this Declaration, except to the extent that a portion of the Property has been released from the operation of this Declaration pursuant to Section 4 of this Agreement.

SCCRTC shall under any circumstance provide the Conservancy with at least 60 calendar days advance notice of any proposed transfer.

4. Identification of Protected Area; Release of Portions of the Property:

- a. If SCCRTC identifies the specific location of the Protected Area pursuant to the planning process referenced in Section 3.b, above, the parties shall execute and record an amendment to this Declaration identifying the Protected Area and releasing the remaining portions of the Property from the operation of this Declaration.
 - b. In addition to the release provisions of Section 4.a, SCCRTC may at any time request the release of certain portions of the Property from the operation of this Declaration. The Conservancy shall cooperate with SCCRTC in executing and recording the requested release, subject to the following conditions:
 - i. If the SCCRTC has not yet recorded an amendment to this Declaration identifying the Protected Area pursuant to Section 4.a, SCCRTC must reasonably demonstrate: (A) that the request to release said portion of the Property will not prevent development of the trail on the Property in the vicinity of the released portion and will maintain the continuity of the trail, unless Subsection 4.b.ii applies; or (B) that the placement of the trail in the vicinity of the released portion is not reasonably feasible.
 - ii. If releasing the requested portion of the Property from the operation of this Declaration would prevent the development of the trail on the Property in the vicinity of the released portion (regardless of whether SCCRTC has recorded an amendment to this Declaration identifying the Protected Area pursuant to Section 4.a), SCCRTC must reasonably demonstrate both of the following:
 - A. The Protected Area can be directly linked to another nearby Class 1 pedestrian and bicycle trail, in a manner that maintains the continuity of the trail.
 - B. The nearby trail and the connection between it and the Protected Area are permanently dedicated and open to the public for use as a trail.
5. Remedies: If any of the provisions of Section 3, above, are violated, the Conservancy shall have the right to pursue all legal and equitable remedies to enforce the covenants herein.
 6. Inspection and Notice of Violation: The Conservancy shall have the right, on reasonable advance written notice to SCCRTC, to enter the Property for purposes of inspecting for compliance with the terms and conditions of this Declaration. SCCRTC may place reasonable restrictions on entry. Prior to pursuing any legal or equitable remedy, the Conservancy shall provide to SCCRTC a notice of violation,

which shall specify the violation and provide SCCRTC with a 30-day period to abate the violation prior to the institution of any legal action.

7. Forbearance: Any forbearance by the Conservancy to exercise its right to pursue legal or equitable remedies under this Declaration in the event of any violation of the provisions of Section 3 shall not be deemed or construed to be a waiver by the Conservancy of such provision or of any subsequent violation of the same or any other provision of this Declaration or of any of the Conservancy's rights under this Declaration. No delay or omission by the Conservancy in the exercise of any right or remedy under this Declaration shall impair such right or remedy or be construed as a waiver.
8. Notices: Any notices, requests, approvals or communications required by or made pursuant to this Declaration shall be in writing and shall be personally delivered or sent by first class mail, to the following addresses, unless a party has been notified by the other of a change of address.

To the Conservancy:

State Coastal Conservancy
1330 Broadway, 11th Floor
Oakland, CA 94612
Attn: Executive Officer

To SCCRTC:

9. Effective Date: This Declaration, executed as of the date hereof, shall take effect only upon, from and after its recording in the Office of the County Recorder of Santa Cruz County, California.
10. Governing Law: This Declaration shall be governed by and construed in accordance with the laws of the State of California.
11. Termination of Declaration. Repayment of the Grant without interest, pursuant to the terms of the Grant Agreement, shall not give SCCRTC the right to terminate this Declaration. Notwithstanding the foregoing, SCCRTC may elect, at its sole discretion, to terminate this Declaration upon repayment of the entire Grant to the Conservancy, together with interest at a rate equal to the average BMA Municipal Index over the period during which Grant funds were outstanding and unpaid. As used in this Section, the term "BMA Municipal Index" means the Bond Market Association Municipal Swap Index produced by Municipal Market Data, Inc., or its successor, or as otherwise designated by the Bond Market Association; provided,

however, that if such index is no longer produced by Municipal Market Data, Inc., or its successor, then “BMA Municipal Index” means such other reasonably comparable index selected by SCCRTC. If SCCRTC elects to terminate this Declaration pursuant to this Section, the Conservancy shall cooperate in executing and recording a written instrument effecting such termination.

IN WITNESS WHEREOF, the undersigned executes this Declaration on the date first set forth above.

SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION

By: _____

Its: Executive Director

EXHIBIT A

Legal Description of the Property

Land situated in the County of Santa Cruz and described as follows:

Exhibit A (cont.)