



Item # 13

December 1, 2023

MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION

FROM: MARTIN ERICKSON, EXECUTIVE DIRECTOR

SUBJECT: FIRST AMENDMENT TO THE SANTA PAULA BRANCH LINE RAILROAD LEASE AND OPERATIONS AGREEMENT

RECOMMENDATION:

- *Approve Amendment No. 1 to the Santa Paula Branch Line Railroad Lease and Operations Agreement.*

BACKGROUND:

On December 16, 2021, the Ventura County Transportation Commission (VCTC) approved the Santa Paula Branch Line Railroad Lease and Operations Agreement (Lease) between Sierra Northern Railway (Sierra Northern) and VCTC. Since January 2022, Sierra Northern has operated the SPBL railroad and maintained the associated right-of-way, including addressing deferred maintenance, building a base of freight customers, supporting television and film productions, beginning railbike tours, planning for additional tourist/excursion service, and rail car storage.

On the early morning of January 10, 2023, heavy rain, stream flow, and debris accumulated during a series of storms and washed out three spans, or approximately 90 feet, of the Sespe Creek Overflow railroad bridge, located at approximately Mile Post 423.44. Bridge repair is necessary to reconnect the Fillmore-Piru segment with the remainder of the Branch Line and restore the connection to the mainline at East Ventura. The damaged bridge substantially affected railroad operations, including creating the need to temporarily store rail cars west of Fillmore near Old Telegraph Road. Several community members have continued to express concerns related to visual impacts, graffiti and blight associated with the stored rail cars. Given this community concern, VCTC Executive Director, Counsel and staff worked with Sierra Northern to reach an agreement that would facilitate relocation of the stored rail cars, with the intent to relocate the stored rail cars by the end of the calendar year (2023).

DISCUSSION:

On November 21, 2023, an ad hoc committee of the Commission established by the Chair met to discuss a proposed Amendment to the Railroad Lease. The ad hoc committee provided guidance on terms that would effectuate movement of the rail cars from the area between 7th Street/Baldwin Avenue and the Sespe Creek Overflow Railroad Bridge by the end of the year. The Amendment would also define "temporary rail car storage" and further define the area in which rail cars can be stored both prior to and following completion of repairs and restoration of service on the Sespe Creek Overflow Railroad Bridge. Based on

guidance of the ad hoc committee, the Executive Director and Counsel negotiated the proposed Amendment Number 1 to the Railroad Lease and Operations Agreement.

Key terms of the Amendment include:

Sierra Northern will relocate the rail cars currently stored in the area of Old Telegraph Road west of Fillmore to an area west of 7th Street/Baldwin Avenue by December 31, 2023. The rail cars will be stored in the area west of 7th Street/Baldwin Avenue until the Sespe Creek Overflow Railroad Bridge is repaired. Once the Bridge has been repaired, third-party rail car storage will only be allowed between Mile Posts 426 and 431 in the unincorporated area east of the City of Fillmore and west of the Existing Community of Piru.

Recognizing the fiscal and operational impacts of this change in allowable storage area, VCTC will extend the Maintenance Subsidy for an additional two (2) years, for a total of seven (7) years. If the Sespe Creek Bridge remains unrepaired as of June 30, 2028, under the terms of the proposed Amendment, VCTC will continue to pay the Maintenance Subsidy for each subsequent fiscal year that the bridge remains unrepaired. Once the bridge is repaired, VCTC will cease paying the subsidy and Sierra Northern will move the rail cars to the permanent storage location between Mile Posts 426 and 431.

VCTC Executive Director and General Counsel will provide a verbal report and final terms of Amendment Number 1 to the Santa Paula Branch Line Railroad Lease and Operations Agreement.

**AMENDMENT NO. 1
TO
SANTA PAULA BRANCH LINE RAILROAD LEASE AND OPERATIONS
AGREEMENT**

This Amendment No. 1 (“**First Amendment**”) is made as of this ___ day of _____ 2023 (“**Effective Date**”) by and between the VENTURA COUNTY TRANSPORTATION COMMISSION (“**VCTC**”), and Sierra Northern Railway (“**Railway**”), sometimes referred together as the “**Parties**” and singularly as “**Party**”.

RECITALS

WHEREAS, VCTC and Railway are parties to that certain Santa Paula Branch Line Railroad Lease and Operations Agreement dated December 21, 2021 (“**Lease**”); and

WHEREAS, the Parties desire to amend the Lease to update certain of the terms and conditions thereof.

NOW THEREFORE, the Parties agree as follows:

1. Exhibit E of the Lease is repealed and replaced with Exhibit E-1 “Rail Car Storage Relocation Area Pre-Sespe Creek Bridge Repair” and Exhibit E-2 “Rail Car Storage Areas Post-Sespe Creek Bridge Repair”, attached hereto. Exhibit E-1 replaces references to Exhibit E in the Agreement until the Sespe Creek Overflow Bridge has been repaired and Exhibit E-2 replaces references to Exhibit E in the Agreement after the Sespe Creek Overflow Bridge has been repaired.
2. A new subsection f. shall be added to Section 2.3 “Rail Car Storage” of the Lease as shown below with additions in double-underline:

f. Immediate Rail Car Storage Relocation Area and Post-Sespe Bridge Repair Rail Car Storage Location. Railway will, before January 1, 2024, at Railway’s expense, relocate Railway’s current Rail Car Storage on the SPBL east of 7th Street / Baldwin Drive to a location on the SPBL west of 7th Street / Baldwin Drive that is outside the “Prohibited Rail Car Storage Area” shown on the diagram entitled “Rail Car Storage Relocation Area Pre-Sespe Creek Bridge Repair” in Exhibit E-1 attached hereto. The “Prohibited Rail Car Storage Area” and “Permitted Rail Car Storage Area” as shown on Exhibit E-1 will apply only until the Sespe Creek Overflow Bridge has been repaired. After the Sespe Creek Bridge has been repaired, Railway will, at Railway’s expense, relocate Rail Car Storage to the area east of Fillmore in locations on the SPBL that are inside the “Permitted Rail Car Storage Area” as shown on the diagram entitled “Rail Car Storage Post-Sespe Bridge Repair” in Exhibit E-2 attached hereto. VCTC will make a good faith effort to seek federal and/or state disaster relief funds to repair the Sespe Creek Overflow Bridge and, provided that VCTC is able to obtain all necessary permits and full funding for the actual costs for the design, construction, and project management of the repair project from federal and/or state disaster relief funds, will make a good faith effort

to repair said bridge. If the Sespe Creek Overflow Bridge is not repaired by June 30, 2028 (i.e. the end of VCTC's fiscal year 2027-28), then VCTC will extend the Maintenance Subsidy provided to Railway as outlined in Section 7.1 for each subsequent fiscal year that the Sespe Creek Overflow Bridge remains unrepaired. Railway understands and agrees that so long as VCTC pays the Maintenance Subsidy for any additional fiscal years (additional to those specifically set forth in Section 7.1) during which the Sespe Creek Overflow Bridge remains unrepaired, Railway will only undertake Rail Car Storage in the Permitted Rail Car Storage Area as shown on Exhibit E-1. In the event that the Sespe Creek Overflow Bridge is repaired mid-fiscal year, VCTC will pay Railway a prorated portion of the Maintenance Subsidy for that fiscal year. Once the Sespe Creek Overflow Bridge has been repaired, VCTC will cease paying any additional Maintenance Subsidy beyond those specifically set forth in Section 7.1 and Railway shall move any and all Rail Car Storage to the Permitted Rail Car Storage Area as shown in Exhibit E-2.

3. Section 2.3 "Rail Car Storage" of the Lease is amended as shown below with additions in double-underline and deletions in ~~strikethrough~~:

"Rail Car Storage. Railway may undertake ~~Rail Car Storage~~ storage of rail cars owned by Railway on the Property related to its own operations on the Railroad Facilities, and/or temporary Rail Car Storage on behalf of third-parties consistent with the provisions of subsections (a)-(f~~d~~) below and the payment of the Rail Car Storage Fee provided in Section ~~408.2~~ below. Rail cars that are conveyed, transferred, assigned, or sold to Railway (or are otherwise put under Railway's dominion or control through oral or written agreements) for the purpose of storage, and not for Railway's actual or planned use in the ordinary course of Railway's operations, shall be subject to the requirements applicable to Rail Car Storage as outlined in subsections (a)-(f) below. All Rail Car Storage pursuant to this Agreement shall be Temporary, with "Temporary" in the context of Rail Car Storage being defined as storage for no more than twelve (12) consecutive months for any particular rail car (as identified by reporting marks) and storage pursuant to rail car storage agreements that do not exceed three (3) years in duration. Temporary Rail Car Storage under this Agreement precludes any abandonment or decommissioning of rail cars subject to Rail Car Storage."

4. Subsection b. "Storage Locations" of Section 2.3 "Rail Car Storage" of the Lease is amended as shown below with additions in double-underline and deletions in ~~strikethrough~~:

"Absent prior written approval of VCTC issued after the effective date of this Amendment No. 1, after the Sespe Creek Overflow Bridge has been repaired, Railway may only undertake Rail Car Storage on the areas of the Property designated as Permitted Rail Car Storage Area as shown in Exhibit E-2 attached hereto. Absent prior written approval of VCTC, Rail Car Storage is prohibited on any portion of the Property located within the city boundaries of any incorporated city within Ventura County and within Existing Communities as defined in County regulations as reflected on Exhibits E-1 and E2 attached hereto; provided,

however, that Railway shall not be prohibited from Rail Car Storage on any improvement under Section 2.4 which may, in the future, come to be located within the city boundaries of any incorporated city within Ventura County, unless Railway is first reimbursed for the cost of such improvement and for the cost of any required removal of such improvement. Rail Car Storage is also prohibited within 150 feet of legal public and private railroad crossings.

5. The third paragraph of Section 7.1 “Maintenance and Maintenance Subsidy” of the Lease is amended as shown below with additions in double-underline and deletions in ~~strikethrough~~:

“In addition to allocation and payment to Railway of ninety-five percent of the annual revenue from third-party lease and license agreements as set forth in the prior paragraph hereinabove for maintenance services, VCTC shall reimburse Railway for actual costs, including overhead, incurred in performance of the deferred maintenance work up to a maximum annual amount of four hundred fifty thousand (\$450,000) per VCTC fiscal year (less the annual amount paid to Railway from third-party lease and license agreements as set forth in the paragraph hereinabove for the year in which the deferred maintenance is completed) for the first ~~five~~ seven (57) years following possession of the Property by Railway for a maximum total potential amount of ~~two~~three million ~~two~~one hundred fifty thousand (~~\$2,23,150,000~~) over the first ~~five~~seven (57) years of Railway's operation. The deferred maintenance categories and criteria eligible for this reimbursement are listed in Exhibit ~~E~~D. To receive reimbursement for qualifying deferred maintenance, Railway must provide documentation reasonably satisfactory to VCTC demonstrating completion of the deferred maintenance work being reimbursed and the actual costs thereof. Further, in order to be eligible for reimbursement, Railway must incur costs in performance of the deferred maintenance work within the fiscal year prior to which reimbursement is sought and within the first ~~five~~ seven (57) years of Railway's possession of the Property. Under the foregoing, the Parties understand and agree that reimbursement for work conducted during the ~~fifth~~seventh (5th7th) full fiscal year of Railway's possession of the Property will be sought in the ~~sixth~~eighth (6th8th) full fiscal year after possession begins on January 1, 2022 (i.e. the payment for deferred maintenance during VCTC fiscal year ~~25-26~~27-28 will be paid during VCTC fiscal year ~~26-27~~29-30). The submission, review and payment timelines for the deferred maintenance payment identified and limited herein shall be same as those set forth in the prior paragraph of this Section 7.1.”

Except to the extent amended herein, all other provisions of the Lease remain in full force and effect.

This First Amendment may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one original, which shall be binding upon and effective as to all Parties.

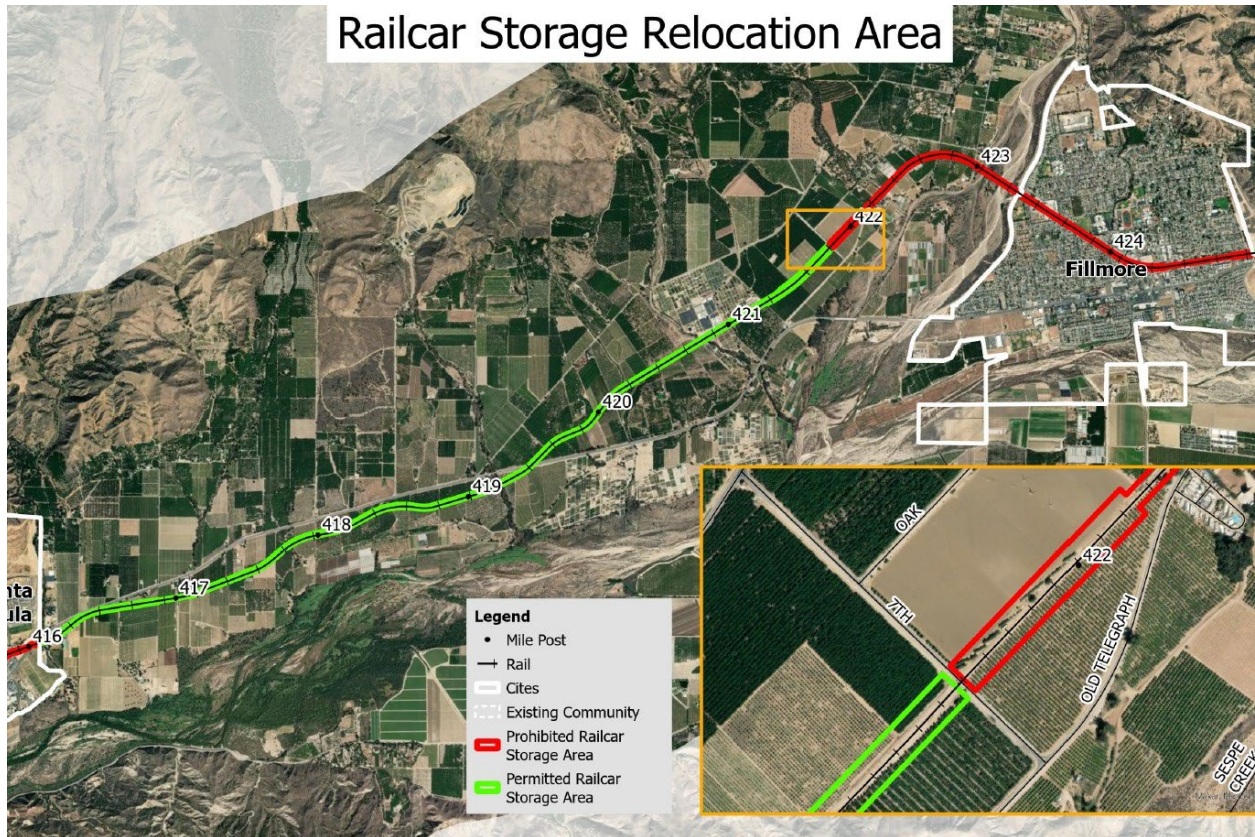
- SIGNATURES ON THE FOLLOWING PAGE-

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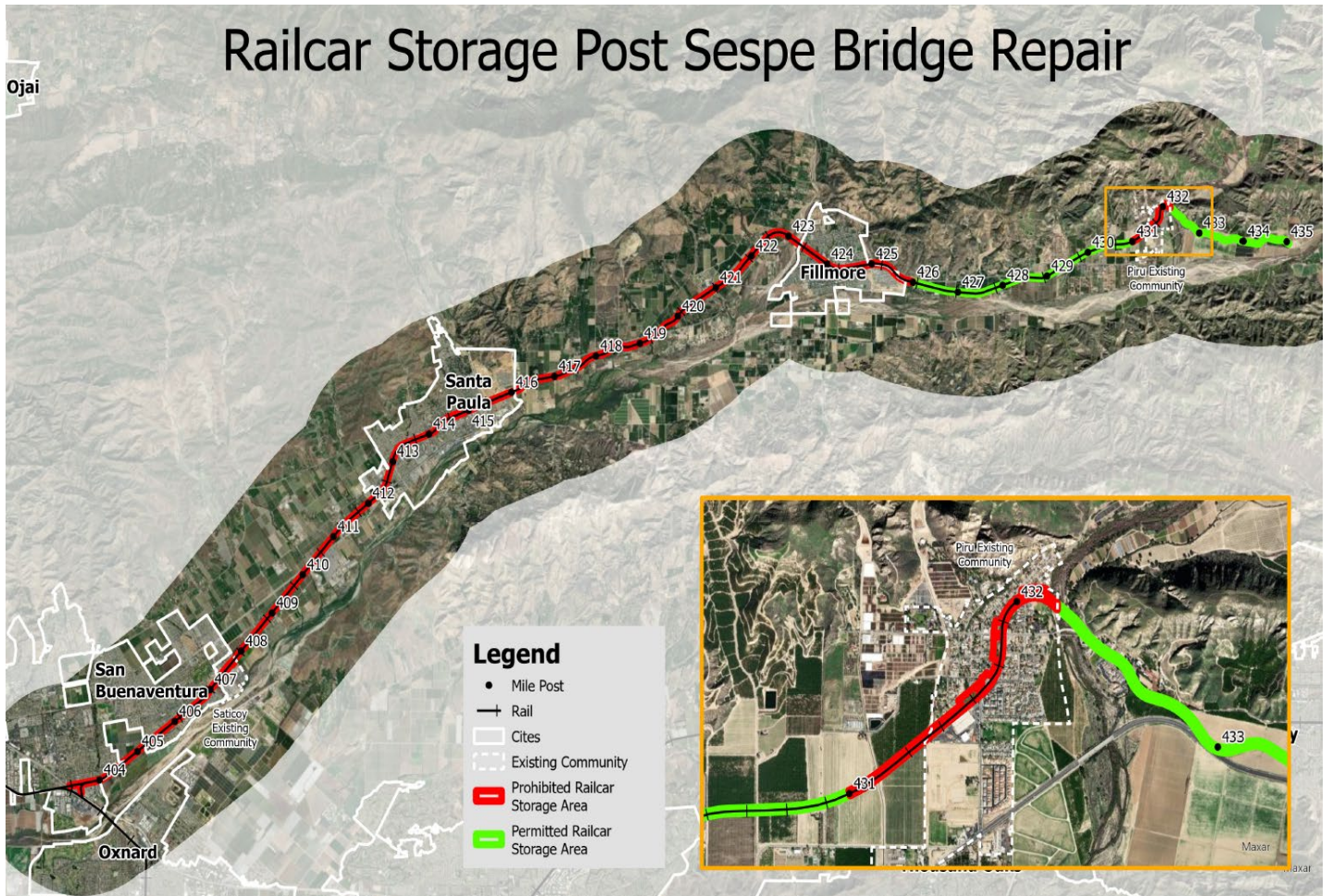
IN WITNESS THEREOF, the parties have executed this First Amendment on the ___ day of _____, 2023.

VENTURA COUNTY TRANSPORTATION COMMISSION:	SIERRA NORTHERN RAILWAY:
By: Martin Erickson Its: Executive Director	By: Its:
APPROVED AS TO FORM:	
By: Steve Mattas Its: General Counsel	
ATTEST:	
By: Roxanna Ibarra Its: Clerk	

Exhibit E-1 - Rail Car Storage Relocation Area Pre-Sespe Creek Bridge Repair



**EXHIBIT E-2
 “Rail Car Storage Areas Post-Sespe Creek Bridge Repair”**



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