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RAILROAD RIGHT-OF-WAY MANAGEMENT

ISSUES AND STRATEGIES

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**Prepared for the City of Austin and
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DISCLAIMER

This report reflects the views and research findings of the author, who is responsible for the contents, facts, and the accuracy of the data presented herein. The contents do not necessarily reflect the official views of the institutions represented. This report does not constitute a standard, specification, or regulation.

PREFACE

In the fall of 1986, the City of Austin and the Capital Metropolitan Transportation Authority (Capital Metro) entered into an agreement to provide for the management and related-matters of the Giddings-Llano railroad right-of-way, recently purchased from the Southern Pacific Transportation Company. After a year of operations, the Joint Use Committee (the group charged with managing the right-of-way) saw a need to investigate alternative management strategies for the right-of-way. The Center for Transportation Research was contracted for this purpose.*

The primary emphasis of this study is to identify procedures for improving the efficiency and effectiveness of railroad management and explore alternative management strategies. Section I of the report outlines the history of the right-of-way purchase and outlines the research objectives and methodology. Section II identifies the major contextual and operational issues affecting right-of-way management. Contextual issues are general environmental issues that establish the framework wherein right-of-way management occurs. Operational issues deal with the routine issues faced by persons or agencies responsible for right-of-way management. Section III presents a series of 14 recommendations aimed at improving the efficiency and operations of right-of-way management. The recommendations are procedural in nature. Section IV addresses long-term management strategies. Particularly, the options of public or private ownership and public or private management are addressed. Selection of a recommended strategy is based on the underlying expectations of the right-of-way. A summary of the report is contained in the final section. Appendix A and B present the Railtran Transportation Corridor's fee policy and financial policy, respectively.

* Actual research began in the spring of 1988 and was completed in December 1988. The findings of the final report were reviewed by the Joint Use Committee from January to June 1989.

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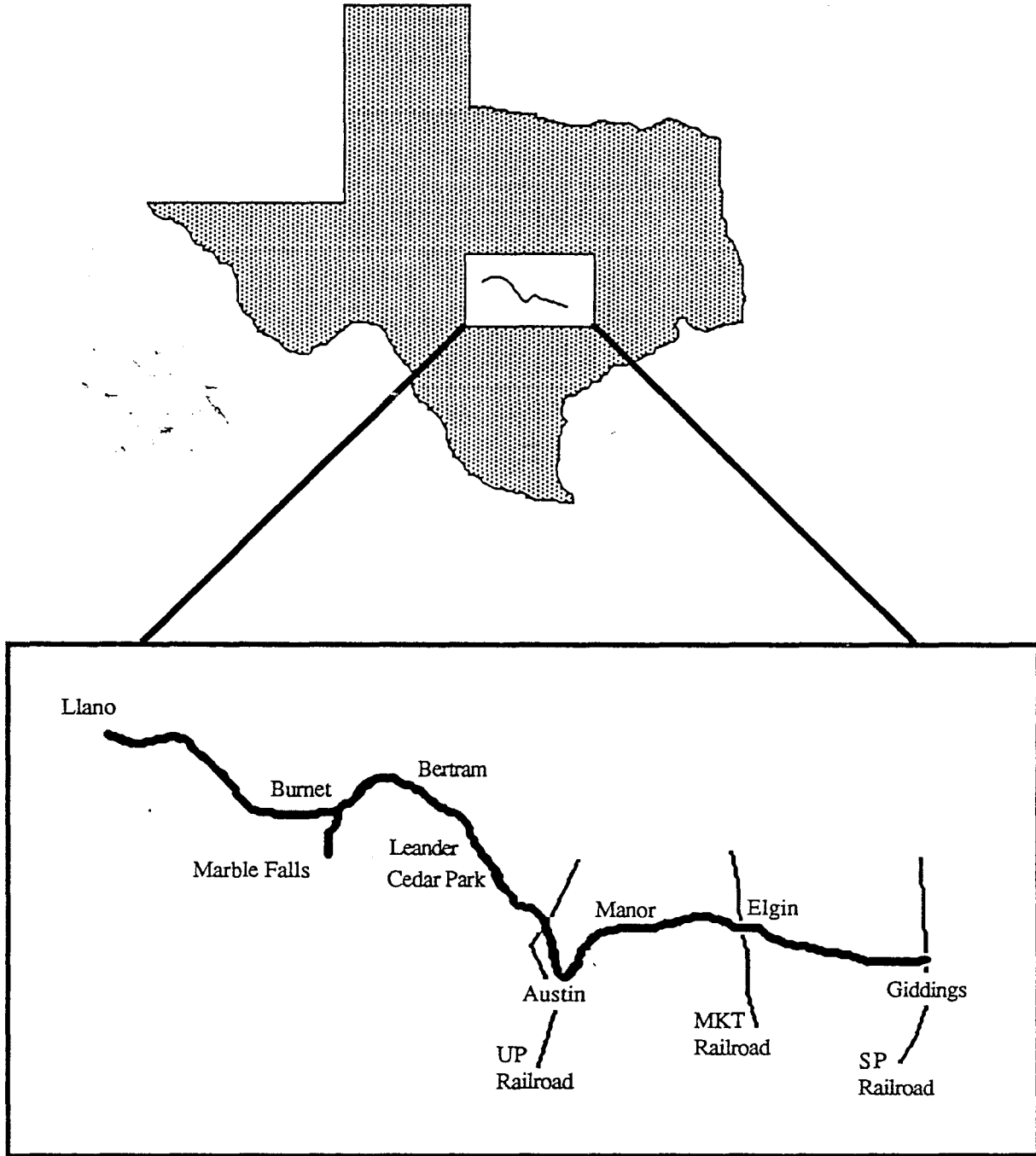
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Austin and Capital Metro
Railroad Right-of-Way



SECTION I
INTRODUCTION AND BACKGROUND

History of Right-of-Way Purchase

The original Austin and Northwestern Railroad was chartered in 1881. Actual construction of the track between Austin and Burnet was completed in 1882, between Burnet to Marble Falls and Fairland to Llano in 1892, with the quarries of Granite Mountain linked to the Marble Falls Branch a year later. The principle commodity hauled on the right-of-way was Sunset Red Granite used to construct the capital building in Austin. As the years passed, expansion continued under the ownership and operation of the Southern Pacific Transportation Company. Then, in late 1983, the Southern Pacific Transportation Company began to explore ways for disposing of the right-of-way, due primarily to declining revenues and the relative high costs of operating the railroad.

Negotiations between the Southern Pacific Transportation Company and the Austin Area Rapid Transit Authority for purchase of the railroad began shortly thereafter.* During 1984, the city negotiated an option to purchase and began applying for federal Urban Mass Transportation Administration funds to assist. Congressman J. J. Pickle was instrumental in guiding legislation through the Congress reallocating unspent funds by small cities to larger metropolitan areas. Without this legislation, federal funds would not have been available for purchase of the railroad right-of-way. The Texas State Highway Commission approved the Urban Mass Transportation Administration grant in 1986 and on August 15, of the same year, the City of Austin approved the purchase of approximately 162 miles of the railroad right-of-way from the Southern Pacific Transportation Company for \$9,382,454.

The purchased right-of-way extends from Llano in the west to Giddings in the east. The City contributed \$600,000 towards the purchase with the Urban Mass Transportation Administration granting \$6,035,760 and the remaining \$2,746,694 provided by the Capital Metropolitan Transportation Authority (Capital Metro) in exchange for a perpetual non-exclusive easement in the Manor-Bertram portion of the right-of-way. The Manor-Bertram section of the right-of-way (68 miles in length) is to be used primarily for mass transit purposes, in accordance with the inter-local agreement signed by the City and Capital Metro and the Urban Mass Transportation Administration grant contract. The remaining 94 miles of right-of-way, Giddings to Manor and Bertram to Llano, are reserved for rail freight service and other incidental non-mass transit purposes. The incidental uses include a fiber optics easement with the Southern Pacific Transportation Company, Southern Pacific rail operations over a portion of the Giddings-Manor right-of-way, placement and maintenance of public utilities, an easement for rail freight service over the entire portion of the right-of-way, and other uses as determined by the City and approved by Capital Metro.

* The Austin Area Rapid Transit Authority was authorized by the Austin City Council in 1983. It consisted of a five person interim board charged with establishing a public transportation plan and holding an election for the authorization and creation of the Capital Metropolitan Transportation Authority.

The City and Capital Metro executed an Inter-local Agreement on October 9, 1986 to provide for the granting of easements, the use and management, and other matters relating to the right-of-way. The City and Capital Metro retained the services of the Austin Railroad Company, known as the Austin and Northwestern Railroad Company, to operate freight and related services on the right-of-way. The Austin and Northwestern Railroad Company, a wholly-owned subsidiary of RailTex, Incorporated, is responsible for operating a "commercially prudent" freight service; developing and implementing a plan for routine and preventive maintenance of the tracks, structures and grade crossings; developing a service marketing strategy to actively solicit and promote additional rail shipment business; and developing a five-year rehabilitation and betterment plan. The Rail Freight Service Contract is a 10 year agreement with an option to renew for three additional 10 year periods by the Rail Operator.

Granting of easements and all other non-freight related matters are the responsibility of the City and Capital Metro. A three-member Joint Use Committee was authorized to review and make recommendations with respect to 1) easements between the City and freight operator, 2) operations of rail freight service by the operator, and 3) proposed uses of the right-of-way. The committee consists of a representative from the City and Capital Metro, and a third member selected jointly by the City Manager and Executive Director of Capital Metro. A staff person, known as the Right-of-Way Manager, is retained to manage coordination of the Joint Use Committee and assist the committee in its operations. The inter-local agreement specifies that the staff person is to "be retained by Capital Metro and funded from the first \$50,000 received by the City and Capital Metro as 'Owners' under the Rail Operator Contract."

Study Objectives and Methodology

A number of questions relating to lease and license agreement management, right-of-way maintenance and funding, property management, and routine administration have surfaced since the inception of the inter-local agreement. After a year of operation, the City and Capital Metro, through the Joint Use Committee, recognized a need to identify and investigate long-term management strategies for the railroad right-of-way. The Center for Transportation Research of the University of Texas at Austin was selected to address this question.

The following study objectives were identified and used to direct the five-task work plan.

- 1) Describe the current arrangement and structure for management of the railroad right-of-way in relation to the objectives and goals of the right-of-way owners.
- 2) Identify the significant legal, operating, and financial issues of railroad right-of-way management and present and describe alternative strategies for effective management.
- 3) Identify procedures and issues central to successful implementation of the recommended strategies.

Task 1: Document current management and operating issues.

Familiarity with the current management approach provides an essential framework for identifying and analyzing alternative management practices and strategies. The activities in this task focus on identifying the procedures and activities involved in right-of-way management, identifying the goals and objectives of the various parties who interact with the right-of-way and rail operations, and documenting the operational and legal issues effecting these different organizations.

Completion of task one was accomplished by analyzing source documents and interviewing persons involved in right-of-way management and decision making and other interested persons or parties. The principal source materials used in task one are:

- Inter-local Agreement between the City of Austin and Capital Metro, October 9, 1986;
- Contract for Rail Freight Service, July 31, 1986;
- Bylaws of the Joint Use Committee, April 9, 1987;
- Urban Mass Transportation Administration Grant, Project Number TX-05-0130, April 11, 1986;
- Joint Use Committee meeting minutes;
- unpublished and unaudited financial summaries for the City of Austin and Capital Metro railroad right-of-way administration.

Additionally, interviews with the following organizations were conducted to identify key operating and management issues:

Joint Use Committee	City of Bertram
Current and former Right-of-Way Manager	City of Burnet
City of Austin	City of Cedar Park
legal staff	City of Elgin
Real Estate Division	City of Leander
Capital Metro	City of Llano
Grants Management	City of Manor
Management Services	Burnet County
Study Supervisor	Llano County
Accounting	Travis County
Austin and Northwestern Railroad	Williamson County
Urban Mass Transportation Administration	Kingsland

Analysis of source materials and information gained from the interviews provide the basis for identifying the key issues relating to right-of-way management and administration.

Task 2: Identify and review other experiences with public right-of-way ownership.

The purpose of this task is to identify appropriate issues and management techniques used by other public-owned railroads. A literature survey was conducted to identify public-owned railroads. Based on this review contact was made with the following public-owned railroads:

Vermont Railway	Allegheny Railroad
Green Mountain Railroad	The Bloomer Line
Central Montana Rail	Chicago Transit Authority
West Virginia	San Diego Trolley
New Hampshire	Railtran Transportation Corridor
Wisconsin	New Orleans Public Belt
Little Rock Port Authority	

After further review, only the San Diego Trolley and the Railtran Transportation Corridor were deemed appropriate for analysis in detail. The other systems either were not comparable to the Austin owned right-of-way or had very little information to share. In addition to the San Diego Trolley and the Railtran Transportation Corridor, contact was made with the Dallas Area Rapid Transit and the Rail Properties Group. The Dallas Area Rapid Transit manages railroad right-of-way in the Dallas area and Rail Properties Group is a private company specializing in short-line property management and real estate.

Task 3: Identify feasible management strategy alternatives.

Based on the information obtained in the first two tasks and identification of the major operational and management issues, procedures for enhancing or facilitating efficient practices will be recommended. Basic goals and expectations of the right-of-way owners will guide the selection of appropriate recommendations. Recommendations will focus on current management and operation issues and identify alternatives that are both practical and realistic.

Task 4: Select an appropriate management strategy.

The critical elements in this task are identification of general management approaches for railroad right-of-way and application of these approaches to operational issues and goals of the owners. A strategy, compatible with the anticipated uses of the right-of-way and consistent with efficient management techniques will be recommended.

Task 5: Develop a plan of implementation.

The final task is concerned with identifying the key issues for implementing the recommended management strategy and other recommendations relating to operational issues. Implementation of any recommendation is always the responsibility and prerogative of the affected organization. Completion of this task will assist this effort by identifying key elements for successful implementation.

SECTION II RAILROAD MANAGEMENT ISSUES

Contextual Issues

There are a variety of issues, internal and external, that effect management of the railroad right-of-way. The internal activities relating to right-of-way administration are impacted by an external environment. This external environment creates an overall framework which within the various operational issues act and react. All of this is to say, that management of the right-of-way does not occur within a vacuum. External factors create a context for management operations and strategies. There are four principal contextual issue areas that impact railroad right-of-way management and are classified as:

- 1) Goals for right-of-way management
- 2) Development and review of policy
- 3) Right-of-way ownership
- 4) Long-term planning for right-of-way uses

Although each of the contextual areas are discussed separately there is some overlap. Specific issues relating to one contextual area often surface in another contextual area. This is due to the dynamic nature of a contextual environment. The environment is not static but under constant pressure for change and adjustment.

Goals for right-of-way management

Expectations of policy makers are an important element in the management process. These expectations create an organizational climate that directly influence actions and activities of management. There are three principle expectations or goals for railroad right-of-way management.

Maintain integrity of rail line for future public transportation uses

The long-term purpose of the Manor to Bertram right-of-way is public transit, as identified by persons interviewed during the study and as defined in the Urban Mass Transportation Administration grant, TX-05-0130. (The purpose of the right-of-way outside this corridor is not designated, other than, not interfering with public transit operations in the Manor to Bertram corridor.) Consequently, it is essential that the track not be allowed to deteriorate to an unusable form, during the interim, and that the right-of-way is preserved or protected from uses that may undermine or limit efforts to implement future plans for public transportation.

An efficient and identifiable management structure

Although efficient use of resources is a standard objective for organizations, optimal utilization of the City's and Capital Metro's resources is pivotal. The management approach for right-of-way administration must utilize financial and human resources in a manner that is practical, logical, and efficient. Implementation of this goal becomes complicated as interested parties in right-of-way management and ownership -- City of Austin, Capital Metro, Urban Mass Transportation Administration, Austin and Northwestern Railroad, and other governmental and community organizations -- interact. A number of specific questions and concerns surface during these interactions, but generally they relate to questions of authority, accountability, and evaluation.

Simply defined, authority grants administrators the power to respond to operational issues and questions. It places them in a position to act. Assignment of responsibilities without the authority to effectively respond is extremely frustrating to administrators and persons/groups seeking an action or response. This, in turn, leads to unnecessary time delays, increased administrative costs, an unfavorable public image, and in some instances litigation. Effective authority is essential for efficient long-term right-of-way management.

Generally speaking, accountability pertains to the acceptance of responsibility for action(s) taken. It does not ask whether a group has the power to act but addresses the question "Who is responsible?" Just as frustrating to an individual's inability to get an organization to act or respond is the inability to locate or identify who is responsible. Accountability requires that the management structure be visible. The structure must have form and substance and delegation and assignment of responsibilities must be clearly defined.

Finally, activities of the management structure, especially as they relate to authority and accountability, require periodic evaluation. Evaluation serves as the basis for reviewing the organization's activities and readjusting or correcting deviations from the goals of the system. The evaluation process lends effective control to policy makers and decision makers by providing a documented record of management and related activities.

A self-sustaining management system

During consideration of the railroad right-of-way purchase, it was expected that operation of the system would not be an onerous task and would not require substantial annual outlays of financial resources. The revenues collected from the rail operator, license agreements, and application review fees were to offset the costs incurred in the management of the railroad. This was, and still is, an appropriate expectation especially given that revenues are a product of special, private, or commercial uses of a public asset.

Development and review of policy

Policy is a conglomeration of attitudes, intentions, and values -- explicitly stated or implied -- which guide program or project administrators. Policy development as a contextual issue is not so much concerned with how the policy is developed but with the impact of the development of policy on management and operations. Policies governing the issuance of fees, annual fee adjustments, standards for license agreement approval, financial policy, etc., are not generally initiated by the management structure. The internal administration and management, although indirectly effecting the development and review of policy, are concerned primarily with operations. Addressing policy questions and making recommendations are outside the scope of routine operations and administration. Activities relating to the development and review of policy must be clearly delineated from the activities of routine management and administration. Failure to define policies for administrators, which sets the agenda for program and activities, often results in unwieldy and inefficient management.

Right-of-way ownership

Questions regarding ownership of the railroad and the responsibilities of the different interests has created a complex operating environment. A successful management strategy requires a clear delineation of ownership, legal interests and obligations, and other rail related responsibilities. Ownership issues raise questions of liability, appropriate and legal issuance of licenses and easements, the sale and or conveyance of properties, etc. Additionally, without a clear understanding of ownership proper authority and accountability, which directly impact the goal of an efficient and identifiable management structure, are jeopardized.

Long-term planning for right-of-way uses

Functional planning is important for routine day-to-day operations and management; long-term planning focuses on strategic opportunities and expectations. Strategic plans establish the framework for management's routine functional planning, including the development of annual budgets. Although the major anticipated use for the rail property is public transportation, public transportation will not utilize all of the right-of-way. Other uses of the right-of-way may be compatible and consistent with plans for public transportation. The overall objectives and long-term plans for the right-of-way identify the priorities for the system and assists in the development of effective and responsive management.

Operational Issues

As noted previously, the primary objective of task one of the research project is to document essential management and operating issues. Based on an analysis of source documents and interviews seven significant issues were identified.

Lease and license agreement management

The City inherited nearly 400 license agreements from the Southern Pacific Transportation Company. Since the purchase in 1986, nearly \$73,000 has been collected from about 40 license agreements. (Most of the agreements do not generate annual revenues.) Management of license agreements is the responsibility of the Right-of-Way Manager. This requires processing and reviewing license agreement applications, billing and fee collection, maintaining a license agreement database, periodic review of the agreements to implement modifications or adjustments required by the agreements, review of the licenses to determine if licensees are operating within the terms of the agreement, and to modify or update the terms of the agreement when necessary.

Although the number of submitted license agreement applications vary according to the economic conditions of the area, the Right-of-Way Manager has processed about 25 applications a year since 1986. New license recipients are assessed a \$200 annual fee with exemptions granted to departments or agencies of state and local governments and companies covered under a City franchise agreement.

Approval for incidental right-of-way usage

The Austin and Capital Metro inter-local agreement provides for incidental, non-exclusive uses of the railroad right-of-way that do not interfere with mass transit uses in the Manor-Bertram corridor. The non-exclusive uses include a fiber optics easement for the Southern Pacific Transportation Company, rail services over a portion of the right-of-way by the Southern Pacific Transportation Company, the placement and maintenance of public utilities by the City of Austin, rail freight service, and other uses. Joint approval by Austin and Capital Metro is required for the non-exclusive uses, except for other uses outside the Manor-Bertram right-of-way which require approval by the City of Austin only.

The review process for license applications begins with the submission of a completed application packet and a \$550 review fee (\$350 to the City and \$200 to Capital Metro). Copies of the application are distributed to the City, Capital Metro, and the Rail Operator for review. Technical review is primarily the responsibility of the City's Transportation and Public Services Department and the rail operator, Austin and Northwestern Railroad, based on accepted industry and engineering standards. Following review, a "feasibility and design sufficiency" notice is sent to the applicant noting any required design changes, conditions, etc. associated with the license request. The applicant has 30 days to respond. Following completion of any required changes the license request is presented to the Joint Use Committee for review with their recommendation communicated to the City and Capital Metro. Final approval of the license request is charged to the Austin City Council, Capital Metro Board,* and indirectly the Urban Mass Transportation Administration. Following the approval of a request a license agreement documenting the

* The Capital Metro Board has delegated approval for routine agreements to the Capital Metro General Manager.

terms of the license are signed by the appropriate parties. The City's legal department is responsible for development of the agreement with the assistance of Capital Metro.

Standard agreements have been prepared for pipeline/drainage licenses, public street or highway licenses, private roadway licenses, and underground or overhead power and/or communication lines and facilities. All licenses require the licensee to acquire insurance coverage naming the City, Capital Metro, and the rail operator as coinsured. Specific types of insurance and coverage are identified in the license application.

Maintenance of right-of-way

There are two aspects to right-of-way maintenance -- maintenance of the trackage and structures and maintenance of the remaining properties. In the early stages of rail operations, it was unclear who was responsible for maintenance of the right-of-way -- the owners or the rail operator. Consequently, maintenance of the right-of-way has been sporadic. Municipal governments along the right-of-way have been frustrated in their efforts to contact the agency or organization responsible for routine maintenance, especially mowing and weed control. It is noted in Section V.G. of the Contract for Rail Freight Service that the operator is responsible for maintenance as it relates to operating freight service in a commercially prudent manner. This is interpreted by the operator to include all structures and maintenance of the right-of-way within six feet either side the center-line of the track. Right-of-way outside this area is not defined, by the operator, as essential to commercially prudent freight service and, thus, is the responsibility of the owners. This includes vegetation and litter control, brush removal, etc.

Management of rail operator contract

The right-of-way purchase agreement charged the City with continuing freight operations on the right-of-way. Shortly thereafter, the City requested proposals from rail operators desiring to provide rail freight service on the Giddings-Llano right-of-way. A contract for rail freight service was completed on July 31, 1986 with RailTex, Inc. As a part of its freight service responsibilities, the rail operator is charged with developing a rehabilitation and betterment plan including financing for a five year period, the development of a marketing plan identifying service market strategies, and providing the owners with quarterly status reports. The owner's responsibilities with respect to the rail operator are listed in the Contract for Rail Freight Service and are to:

- cooperate with and assist the rail operator in obtaining and maintaining all necessary permits, clearances, agreements and other requirements for the operation and maintenance of rail freight service;
- cooperate with the rail operator in obtaining federal, state or local grants which may be available from time to time for betterment or rehabilitation of the railroad facility;

- cooperate with and assist the rail operator with regard to negotiations with connecting railroads, and federal, state and local governmental agencies as may be appropriate to ensure continued rail freight service;
- assist the rail operator, to the maximum extent feasible, in the solicitation of additional shipments by rail; and
- work with the rail operator to ensure that maintenance, track design, construction and operating schedules for rail freight operations are planned and implemented to ensure minimum disruption of both freight service and transit service.

In addition to these, the owners have the right to audit the gross non-operating and gross operating revenues of the rail operator as well as the funds accumulated in the escrow account for rehabilitation and betterment.

Right-of-way inspection

The Giddings-Llano right-of-way extends nearly 162 miles. The width of the right-of-way varies considerably, in some instances extending 200 feet from the track. All of this is to say the acreage associated with the right-of-way is significant. Inspection of right-of-way is necessary for maintaining the integrity of the rail property. Inspection is used to identify potential encroachments, adverse possessions, and any other property rights violations.

Related to the physical inspection of the property is documentation of the real estate title. The documentation identifies the type of ownership (fee simple, defeasible fee, easement, etc.); restrictive covenants or conditions; property continuity, i.e., an unbroken and continuous corridor; and encumbrances created by instrument. The documentation should also include a tracing of the chain of title.

The responsibility for right-of-way inspection and documentation of title and related activities is not explicitly declared in any of the source documents. Actual right-of-way management logistics implies that inspection is under the control of the Joint Use Committee with the assistance of the Right-of-Way Manager. However, no resources have been allocated or declared for this purpose.

Financial reporting and management

A major function of financial reporting and management is providing information useful for decision making. Financial policy delegates fiscal and budgetary authority and outlines the procedures used for financial reporting and management. A financial policy should include procedures for administration of revenues received from license agreements and other sources; procedures to account for appropriate indirect expenses relating to rail management; person(s) responsible and procedures for development, review, and final approval of annual budgets; and procedures for reporting revenues and expenses in a timely manner. This basic financial information is essential for effective budgeting and planning. Procedures for financial reporting and management are currently undefined.

Revenues associated with application review fees and license agreement fees are collected by the Right-Of-Way Manager and transferred to the accounting section of the City's Transportation and Public Services Department. The rail operator sends a quarterly report of its gross operating and non-operating revenues to the owners and a quarterly payment in the amount of 2.5 percent and 85 percent of the gross operating revenues and gross non-operating revenues, respectively. Table 1 details the quarterly receipts from the Austin and Northwestern Railroad since the inception of the contract for rail freight service. There have been no gross non-operating revenues reported as of the second quarter, 1988.

Table 1
Austin and Northwestern Quarterly Financial Summary

		<u>Operating Revenue</u>	<u>Payment to Owners</u>
1986	Quarter III	\$79,051.00	\$1,976.28
	Quarter IV	\$162,107.69	\$4,052.69
1987	Quarter I	\$854,620.00	\$21,365.50
	Quarter II	\$482,963.19	\$12,074.08
	Quarter III	\$497,437.62	\$12,435.94
	Quarter IV	\$452,897.23	\$8,443.25
1988	Quarter I	\$418,000.32	\$14,050.69
	Quarter II	<u>\$736,452.00</u>	<u>\$18,411.30</u>
	TOTAL	\$3,683,529.05	\$92,809.73

It is important to note that when the rail operator's gross operating revenues exceed two million dollars in one year, one and one-half percent of the revenues are deposited into an escrow account for rehabilitation and betterment projects. Therefore, the owners will not receive more than \$50,000 annually from the rail operator's gross operating revenues.

Capital Metro received the first series of rail operator payments (the Right-of-Way Manager was initially an employee of Capital Metro). An analysis of Capital Metro's revenues and expenses indicates receipt of \$51,928.21 in operating revenues and an expense of \$29,307.81 for the Right-of-Way Manager wages. This financial information is summarized in table 2. The "other" revenues is imputed from the rail operator payments and the total revenues reported by Capital Metro.

The City of Austin began receiving rail operator payments in the fourth quarter of calendar year 1987. In addition, the City began collections from license agreements inherited from Southern Pacific Transportation Company and new license agreement and application review fees. Revenue and expense statements as reported by the City of Austin are shown in table 3 and 4 for fiscal year 1986-87 and a portion of fiscal year 1987-88, respectively.

Table 2
Capital Metro Right-of-Way Revenues and Expenses

Revenues:	
Rail Operator	\$51,904.49
Other	\$23.72
Expenses:	
ROW Manager Wages	<u>\$29,307.81</u>
Balance:	\$22,620.40

The revenue and expense statement shown in table 3 actually began in October 1987, when the Right-of-Way Manager became an employee of the City of Austin. License fees represent application review fees and annual use fees from license agreements approved by the City of Austin and Capital Metro. Lease agreements are the funds from the Southern Pacific Transportation Company turned over to the City.

Table 3
City of Austin Right-of-Way Revenues and Expenses
FY 1986-87

Revenues:	
License Fees	\$4,150.00
Lease Agreements	<u>\$33,732.92</u>
Total Revenues	\$37,882.92
Expenses:	
Salaries	\$11,258.90
Fringe Benefits	\$1,632.90
Printing	\$18.00
Books	<u>\$445.00</u>
Total Expenses	\$13,354.80
Balance (9/30/87):	\$24,528.12

The revenue and expense summary in table 4 is somewhat confusing. License fees and lease agreements are similarly defined as in table 3, and rail operator revenues are as defined earlier. The Capital Metro Management study is actually a reimbursement and not a revenue, as reported. The City of Austin and Capital Metro contracted for a \$15,000 management study, half to be paid by the City and half by Capital Metro. The management study expense, however, does not show up as an expense on the revenue and expense summary in table 4. The Southern Pacific revenue adjustment is for funds received during the 1986-87 fiscal year from Southern Pacific Transportation Company lease agreements that did not actually belong to the City of Austin. The \$22,030.19 represents a refund of those monies reported as revenues in the revenue and expense statement shown in table 3. Fee adjustments are refunds to organizations in which their license agreement was terminated. The Capital Metro License fees represents the \$200 portion of the license agreement application fee that Capital Metro charges for review of license applications.

Table 4
City of Austin Right-of-Way Revenues and Expenses
FY 1987-88*

Revenues:	
License Fees	\$6,300.00
Capital Metro Management Study	\$7,500.00
Lease Agreements	\$55,978.92
Rail Operator	<u>\$40,905.24</u>
Total Revenues	\$110,684.16
Revenue Adjustments:	
Southern Pacific	(\$22,030.19)
Fee Adjustments	(\$1,817.75)
Capital Metro Review fees	<u>(\$2,000.00)</u>
Total Adjustments	(\$25,847.94)
Expenses:	
Salaries	\$49,536.52
Fringe Benefits	\$6,680.99
Rental-Vehicles	\$9.50
Printing	<u>\$653.00</u>
Total Expenses	\$56,880.01
Balance:	\$27,956.21
Balance as of 9/30/87	<u>\$24,528.12</u>
Balance as of 7/31/88	\$52,484.33

The revenue and expense statements shown in table 4 indicate that only a portion of the expenses associated with right-of-way administration are documented. For example, the statements do not allocate costs associated with legal review and development of license agreements, or staff time for right-of-way administration, other than the Right-of-Way Manager. Actual expenditures, in all likelihood, are significantly higher than shown and actually may result in a deficit rather than the reported surplus. Also, interest revenue associated with the fund balances are either not deposited in the funds or are not reported. Some items are reported incorrectly, Capital Metro Management study as a revenue in table 4, or unreported, Capital Metro's \$2,000 for application reviews.

Intergovernmental relations

There are three principle governmental entities involved in the management of the railroad right-of-way: the City of Austin, Capital Metro, and the Urban Mass Transportation Administration. Intergovernmental activities include grants management by Capital Metro with the Urban Mass Transportation Administration; Right-of-Way Manager activities for the City of Austin and Capital Metro;

* As of July 31, 1988

review of license agreements by the City of Austin, Capital Metro, and the Urban Mass Transportation Administration; and coordination of the Joint Use Committee. Additionally, the owners must interact periodically with municipal and county officials along the right-of-way.

Coordination with the Urban Mass Transportation Administration has been a time-consuming process; specifically, regarding the authority of the City and the disposition of right-of-way outside the Manor-Bertram corridor, language in license agreements, and approval of license agreements. A letter from Wilbur Hare, Regional Manager of the Urban Mass Transportation Administration, dated August 4, 1988 confirmed the city's authority to manage and dispose of properties outside the mass transit easement without prior approval from the Urban Mass Transportation Administration. This is consistent with the language of the Urban Mass Transportation Administration grant TX-05-0130 which describes the project as a "purchase of 68 miles" from Manor to Liberty Hill and the language of the City of Austin and Capital Metro inter-local agreement.*

The Urban Mass Transportation Administration has approved language for standard license agreements. Consequently, it should not be necessary to submit all applications for license agreements to the Urban Mass Transportation Administration for review and approval. The Railtran Transportation Corridor in Fort Worth and Dallas has been working under a similar arrangement for several years. Non-standard agreements will, however, require approval from the Urban Mass Transportation Administration, including agreements in which the license applicant has difficulty with the language required by the Urban Mass Transportation Administration.

Interviews with municipal and county officials adjacent to right-of-way properties indicate a need for better coordination and cooperation with the Right-of-Way Manager and Joint Use Committee. Most of the problems are logistically related, i.e., who is responsible for right-of-way management? whom do I contact for maintenance?, etc.

* The actual rail distance between Manor and Liberty Hill is 51 miles. The discrepancy is due to the grant using the old Southern Pacific mileposts and the inter-local agreement using actual mileposts.

**SECTION III
MANAGEMENT ISSUE RECOMMENDATIONS**

This section presents 14 recommendations for responding to the operational issues identified in the previous section. The major thrust of these recommendations are organizational and procedural in nature. Implementation of the recommendations should strengthen railroad right-of-way operations and management. Generally, successful implementation of these recommendations is not dependent on a particular management strategy, as identified in section four of this report. Although, in some instances, selection of a management approach will affect how the recommendation is implemented. Issues relating to specific management approaches are discussed in the next section.

Lease And License Agreement Management

Recommendation 1: Develop a fee policy

As noted in the section on contextual issues, the development of policies is an external issue that impacts effective management. Based on the current structure, the fee policy should be formulated by the Joint Use Committee with the approval of the City Council and the Capital Metro Board. The policy should address who is to be charged and the amount of the fee. The fee policy should also include a statement concerning the application review fee. As an example, the fee policy for the Railtran Transportation Corridor is shown in Appendix A.

It is both reasonable and financially prudent to base annual license and lease fees on the market value of the associated property. Table's 5 and 6 show the fee schedules for the Railtran Transportation Corridor between Fort Worth and Dallas and for other City of Austin properties, respectively. (The Real Estate Division of the Austin's Department of Transportation and Public Services administers the fees for the city.)

Table 5
Railtran Lease and License Fee Schedule

<u>Type</u>	<u>Fee</u>
Subsurface only	area x market value x 3.6%
Air rights only	area x market value x 8.4%
Surface use	area x market value x 12%
Parking use	based on rental value of spaces, gross receipts, or highest and best bid received
Billboard signs	based on current billboard market rental rates

Table 6
City of Austin Lease and License Fee Schedule

<u>Type</u>	<u>Fee</u>
surface license	10% of land value based on unit value of adjoining properties
aerial license	7.5% of land value based on unit value of adjoining properties
underground license	5% of land value based on unit value of adjoining properties

Table 7 summarizes fees based on the experiences of other short-line railroads. Generally, short-line railroads attempt to avoid private road crossing agreements, but if compelled to grant a license, assess an ample annual fee.

Table 7
Other Rail Line Fee Schedules

<u>Type</u>	<u>Fee</u>
Land Leases	10% of properties fair market value
Signboard Leases	20% - 25% of annual gross revenues or based on local per-face advertising rates
Pipeline Leases	\$500 for 10 year agreement (adjusted for size of pipe)
Wireline Licenses	\$500 to \$2,500 depending on voltage
Public Road Crossings	50% to 100% of properties fair market value for permanent easement

A related issue in fee policy development concerns the actual property used by the licensee. An investigation of leases for other short-line railroads revealed that the portion of land identified in the leases is often considerably less than the area actually accessed by the lessees. Annual fees for the agreements should reflect the actual area required for access to the property. This also extends liability protection to a wider area.

In any case, a minimum amount should be assessed to cover annual administrative costs for managing and administering the license agreement or lease. Waiver of fees should be avoided. The lease or license agreement should also contain procedures for periodic review of the fee to adjust for changes in the market value of the property. After formulation of a fee policy, all existing leases and license agreements should be renegotiated, accordingly.

Recommendation 2: Property management by real estate specialists

Lease and license agreement management should be handled by persons, offices, divisions, or organizations with experience in property management. Specific activities relating to management of the leases and license agreements includes receiving applications for license agreements, processing the applications to the proper departments for review, completion of the license agreement, placement of the license agreement on the city council agenda for approval or disapproval, receipt of approval or disapproval from the proper Capital Metro administrator, oversight of billings and collections, and review of agreements for escalation and adjustment clauses. A real estate or property management staff are best equipped to handle these routine operations effectively and efficiently.

There are basically two alternatives for implementing this recommendation -- property management by the City's Real Estate Division of the Department of Transportation and Public Services or by a private management firm. Capital Metro no longer has a staff assigned to real estate or property management, although the Director of Management Services has been assigned the responsibility for management of Capital Metro's downtown rail properties, approximately 14 acres of land. The City's Real Estate Division handles property-management for the city, not including the railroad right-of-way. Although the number of new leases and license agreements processed each year by the Real Estate Division vary according to the economy, generally this is not a large number. (About 20 leases and license agreements were processed in 1987.) The other option is to contract with a private firm for management of the right-of-way properties. There are a number of competitive property management companies with this capability. More recently, several management companies specializing in short-line railroad right-of-way management have been created. Additionally, the current rail operator may be contracted for this purpose. Consideration of a private management company is discussed further in the next section.

Recommendation 3: Review inventory of leases and licenses

All existing leases and license agreements should be reviewed to determine the type of agreement, consistency and appropriateness of the language used in the agreement, annual fees or rentals, terms of the agreement and any cancellation provisions. This activity is not envisioned as an annual event, and is only necessary when new or modified ordinances, legal rulings, etc. occur.

Identification of agreement type, i.e., pipeline license, signboard, private road crossing, etc., can assist persons responsible for inspection and inventory of right-of-way and provide important information in the development of a fee policy. Experiences from other rail lines indicates that review of the various agreements language, form, and provisions is essential. Generally, the agreements cover lengthy time periods often with different railroad companies whose governing policies and procedures have changed numerous times. Past experience also identifies the need for reviewing the agreement's indemnification and hold harmless provisions. Pre-1970 agreements often do not identify the complete legal name of the second

party, the state of incorporation, or the second party's mailing address. These circumstances complicate efforts to contact agreement holders as well as create legal difficulty in rendering written notice to a holder pursuant to any contract provisions. This is particularly important when a lessee's usage involves the storage or handling of hazardous materials.

Management of license agreements and leases should also include an exploration of the potential revenues associated with the right-of-way properties. Rail analysts note that rentals and leases for rural railroad right-of-way average \$500 per track mile. Existing leases and license agreements should be reviewed and where possible, and in accordance with an approved fee policy, increased to reflect a percentage of the fair value of the property.

Approval For Incidental Right-Of-Way Usage

A number of issues concerning the license review process were raised during the interview portion of the study. Applicants for license agreements note the excessive time delay between submission of an application and the signing of the license agreement. Related to this, the decision to approve or disapprove an application is perceived as arbitrary. Many of the applicants are under the impression that the Joint Use Committee is assigned responsibility for approval and disapproval, rather than the City Council and the Capital Metro General Manager.

Recommendation 4: Develop standards for lease and license agreement approval

Currently, the license application requires the applicant to provide technical drawings and information related to the desired structure or crossing. However, standards of review or general policies governing the issuance of licenses are lacking. This is potentially disruptive to planning and development, and is a source of frustration for governments and developers.

A policy governing the issuance and approval of leases and license agreements should be developed by the Joint Use Committee. The Inter-agency Contract between Capital Metro and the City of Austin lists the primary and incidental uses of the right-of-way which can guide the development of the standard's policy. Given the publication and availability of technical industry and engineering standards, it is not necessary to include in detail these standards for review. A statement noting that the application submission must conform to accepted industry and engineering standards, as is currently noted on the application, is all that is needed. (The standard's policy should include specific references to any industry or engineering standards that are subject to controversy.) The policy statement should include the key criteria for evaluating license applications. Clear and concise statements governing the approval/disapproval of applications, made available to all interested parties, should reduce some of the tension currently experienced in the review process. Parties may still disagree with the policy governing approval of licenses and leases, but the attention shifts, appropriately, from the administrative arena to the policy making arena.

Recommendation 5: Eliminate Joint Use Committee review of standard short-term license agreements

The office or persons responsible for lease and license agreement management should be authorized to grant new short-term license agreements that conform to the approved standards and to renew existing month-to-month leases. This can expedite the issuance of license agreements and allow the Joint Use Committee to focus on other issues. Review by the Joint Use Committee is still necessary for long-term licenses, easements, and other non-standard agreements. Successful implementation of this recommendation is dependent on the development of standards for license applications, noted above in recommendation four.

Recommendation 6: Develop tracking procedure for license applications

A tracking procedure assists the person(s) responsible for processing applications in identifying the status of pending applications. This is particularly useful during inquiries by interested parties. The tracking procedure should include dates delivered and received for the following activities:

- distribution of application packet to reviewers;
- note of approval or disapproval from reviewers;
- submission of feasibility and design sufficiency notice and applicants response, if necessary;
- Joint Use Committee review and recommendation;
- recommendation to Capital Metro and the Austin City Council and placement on Council agenda;
- if license is approved, receipt of licensee's insurance coverage as required in the license agreement;
- submission of license agreement for applicant's, City's, and Capital Metro's signature or notification of applicant if application is denied.

In addition, a written acknowledgement for a completed application packet and payment of the \$550 review fee should be given to each applicant.

Maintenance Of Right-Of-Way

Vegetation and weed control is the major concern voiced by local governments along the right-of-way. The recommendations presented in this section focus on maintenance of the property outside the area defined as commercially prudent for the rail operator, i.e., trackage and structures. (Recommendations pertaining to this area are addressed in the section "Management of contract with rail operator.")

Recommendation 7: Use private contractor for right-of-way maintenance

Capital Metro does not have the resources available to respond to routine maintenance calls. The City of Austin has the equipment, but scheduling and coordination are somewhat cumbersome. (Timeliness of response is an important factor for maintenance, in the minds of the property owners adjacent to the right-of-way.) Routine maintenance is also very expensive. Estimates by the City's Transportation and Public Services Department, indicate the cost of maintenance alone would exceed all revenues currently received for the right-of-way. Additionally, there is a problem when the area maintained is outside the corporate limits of the City. Finally, the Right-of-Way Manager does not possess the authority to request the City's mowing crews, and other necessary workers, to respond to right-of-way maintenance.

Consequently, utilization of a private contractor for mowing, vegetation control, etc is advisable. The financial implications involved with the private sector are documented in the Railtran Transportation Corridor. The City of Dallas spent \$57,000 during the first year of operations for vegetation control and cleanup. The following year a private contractor was used on a call basis and Railtran spent only \$10,000.

The second element relating to this recommendation is the provision for maintenance on a call basis. Some of the cost associated with the City of Dallas' maintenance was related to the maintenance department's policy of providing maintenance on a routine basis. A portion of the savings while using the private contractor can be attributed to the Railtran policy of providing mowing, etc., only when a complaint was presented to the right-of-way administrators. Also, following a complaint, the Railtran Executive Assistant visually inspects the area where maintenance is requested to determine if the request is reasonable and prudent. Based on these factors it is recommended that maintenance be provided by contract with a private company on basis of complaint to the Right-of-Way Manager.

Recommendation 8: Promote beautification license agreements

A beautification agreement allows an adjacent property owner access to the right-of-way for upkeep and maintenance of the property. A beautification agreement enhances the appearance of the adjoining properties and is more aesthetically pleasing to the adjacent land owner. The upkeep by the licensee reduces the amount of property subject to maintenance by the rail owners, and as an incidental benefit, documents the right-of-way ownership for the City. The agreements should include a nominal annual charge to cover administration of the agreement, and a nominal application fee. The availability of these agreements should be conveyed to property owners along the right-of-way.

Management of Rail Operator Contract

As noted previously, the rail operator is responsible for all activities relating to commercial freight operations. The City and Capital Metro are to cooperate with and assist the rail operator in its activities. The following recommendations are within the parameters of the freight service contract and are procedural in nature.

Recommendation 9: Audit operator's financial records routinely

Section XVI of the Contract for Rail Freight Service allows the owners at their expense to audit the rail operator's gross non-operating and gross operating revenues. The audit provides for a systematic inspection of the rail operator's accounting records to determine their accuracy, fairness, and general acceptability. A routine audit by the owners is essential to document financial compliance with the terms of the rail contract.

A reasonable estimate of the cost of an audit is difficult to determine. Audits for the Metropolitan Development Transit Board of San Diego's railroad freight operator are in the form of a review of the financial statements by the Railway Board, composed of one member of the transit board and two members of the rail operator. The Railtran Transportation Corridor does not have the contractual right to audit their operator's financial statements.

Recommendation 10: Regular reporting of escrow account status

After the rail operator's gross operating income exceeds two million dollars in a given year, one and one-half percent of the amount exceeding this level are deposited into an escrow account for rehabilitation and betterment projects. Ideally, the owners should be in control of the escrow account. However, the freight service contract provides for the rail operator to maintain the account. At a minimum, the owners should require quarterly reporting of the accounts status, including interest income. Although the funds currently in the escrow account are minimal, in the future the owners will need to routinely audit the account, both the income and expenditures for rehabilitation and betterment projects.

Recommendation 11: Periodic review of rail operator plans

The Austin and Northwestern Railroad Company is required by section XV of the freight service contract to provide a quarterly periodic report of its activities. Included in this review are status reports of the rail operator's maintenance plan, rehabilitation and betterment plan, and a rail freight service marketing strategy. These plans are specifically defined in section V of the contract and require the rail operator to:

- develop and implement, at its sole expense a maintenance plan which will provide for routine, ordinary and preventive maintenance of a commercially prudent rail freight service, including highway-rail grade crossing safety improvements;
- develop, at its sole expense, a rehabilitation and betterment plan covering the entire railroad facility to span, at a minimum, the first five years of rail freight service, and a financing plan listing the sources of funding; and
- develop a rail freight service marketing strategy to actively solicit, promote, expand, attract, retain and produce new or additional rail shipment business on the Giddings/Llano line.

Each of these activities require the rail operator to submit a plan to the owners within six months of the signed contract. The first two plans directly impact the condition of the track and structures and is particularly important to future rail uses of the right-of-way. It is in the best interests of the owners to be aware of the activities of the rail operator and to have input into improvements for the rail-line. The different plans need to be reviewed periodically and modified or amended when necessary.

Right-of-Way Inspection

Recommendation 12: Conduct right-of-way title analysis and Inspection

As noted previously, documentation of title identifies the type of ownership, restrictive covenants, property continuity, etc. There are three principle activities involved in this recommendation:

- an inventory of the right-of-way by visual inspection
- matching lease and license agreements with the inventory
- determining the type of ownership

A visual inspection of the right-of-way is important in identifying situations which may interfere with the operation of the railroad or present a potential liability issue to the owners. The on-ground inspection also may identify situations where the owner's real estate title is threatened. Recent experiences with land development near Llano are indicative of some of the types of problems affecting ownership of the right-of-way and point to the need for a visual inspection of the right-of-way properties.

Matching lease and license agreements with the inventory is a logical continuation of the visual right-of-way inspection. This activity assists in determining whether the lessee is operating within the stated purpose and terms of the agreement. Standard railroad lease agreements are often very general in describing the activities of the lessee. As per recommendation three, these agreements should be redrawn to reflect the actual activities of the lessee. It may also be useful to photo-log the encroachments or other violations for future reference.

Finally, the type of ownership conferred by the purchase of the railroad right-of-way needs to be determined. An analysis of the chain of title may be necessary for this task. Generally, railroad right-of-way consists of a mix of both fee and easement property. Ambiguous wording in dated acquisition deeds may create a problem in determining if the grantor conveyed fee simple ownership or an easement right of usage. Problems associated with deed gaps, i.e., no deed of record evidencing ownership, also need to be identified and corrected.

Financial Reporting And Management

Recommendation 13: Develop right-of-way financial policy

A financial policy elucidates the purposes of revenue collection and their expenditure in relation to the system's objectives. It delegates budgetary authority and responsibility and establishes financial management and reporting requirements. The financial policy of the Railtran Transportation Corridor is illustrated in Appendix B. Based on current operating procedures, the development of a financial policy should be the responsibility of the Joint Use Committee with final approval from the Austin City Council and the Capital Metro Board of Directors.

The budget process plays an important role in the provision of public services and goods and is similar to the activities in the economic market in determining what services are provided, who will receive the services, and how the services are rendered. The budget process serves three important functions: (1) expenditure control; (2) management and efficiency; and (3) planning for service requirements. The control of expenditures provides the legal basis for agency transactions. Budgeting also is a tool to increase managerial control of operating units and improve efficiency in agency operations through accountability of actions. Finally, budgeting establishes a plan for allocating resources to the various activities that the agency is commissioned to perform.

The financial policy should outline the steps for the budget process. This process is basically a four-step cycle -- preparation, approval, execution, and evaluation. Preparation requires the development of estimates for planned activities within the framework of the purposes and objectives of right-of-way ownership. Budget approval follows preparation and includes consideration of the proposed budget by persons responsible for the development of railroad right-of-way policy. Approval authorizes appropriation of funds for specific purposes. During execution, allocated funds are expended within the limits identified in the approved budget. Execution requires continued monitoring and reporting of revenues and expenditures. The last step of the budget cycle is evaluation. Generally, this is done in the form of a financial audit. The financial audit checks financial records to determine if funds were spent in accordance with the approved budget and according to legal requirements of the governmental entity. The budget cycle is completed following review of the financial audit. The financial policy should identify who is responsible and what is to be performed for each stage of the budget cycle.

Financial reporting and management is interconnected with the budget cycle. It provides useful information for preparation and approval and serves as a basis for control of expenditures and evaluation. The financial policy should identify the essential elements of reporting and management and require accurate recording of all expenses and revenue associated with railroad right-of-way administration. A separate fund or account should be established for Capital Metro and the City of Austin and each agency should account for the status of all collections and expenditures, otherwise it will be difficult to maintain the integrity of railroad administration funds.

Intergovernmental and Public Relations

Recommendation 14: Improve public communications

Organizational communication serves a variety of functions, however, the emotive and information functions are most relevant to intergovernmental and public communications for right-of-way management. The emotive function of communication recognizes the emotional content involved in communications between two or more persons. As the name implies, information communication is technological in orientation and focuses on the sharing of relevant data. This type of information is useful for information processing and decision making, and, basically, has been addressed in earlier discussions. The focus of this recommendation is on the emotive function of communication.

Open communication with the public and other governmental agencies provides a mechanism for reducing tension and resolving conflict. This has been a critical issue during the formative stages of the right-of-way administration. Tremendous dissatisfaction and frustration is being communicated between local governments and some citizen's groups concerning management of the right-of-way. This conflict is elevated when there is difficulty identifying persons, groups, or agencies responsible for management of the right-of-way. Two activities can assist in opening the communication line and assist in improving intergovernmental and public relations -- development and distribution of a railroad right-of-way administration fact sheet and communication with the governments along the right-of-way.

The right-of-way administration fact sheet or brochure should describe the railroad system; summarize the objectives and purposes of the right-of-way, and the agencies involved in the different activities of the railroad; publish the addresses and phone numbers of these organizations; and list any other salient issues and facts affecting the right-of-way. Next, this brochure and a letter should be sent to the managers and directors of the governments along the right-of-way. The letter should indicate that the concerns of the governments have been heard and addressed in a management study and procedures for addressing future concerns have been established.

SECTION IV MANAGEMENT STRATEGIES

The previous section presented a number of recommendations aimed at improving the efficiency and management of the railroad right-of-way. Generally, implementation of the specific recommendations can be accomplished within the current framework. This section focuses on identifying management strategies that differ from the current management structure. The selection of a particular management strategy or alternative is guided by the identification of a set of assumptions governing the purposes and objectives of the right-of-way.

Operating Assumptions

State and local governments played a major historical role in the development of railroads during the 1800's. More recently, as the economic viability of many railroads has declined, state and local governmental interest in railroads has been revived, beginning with the purchase of the Long Island Railroad by New York and the Rutland by Vermont in the mid 1960's. State and local involvement accelerated further with more simplified abandonment procedures, a more generous policy of granting abandonment by the Interstate Commerce Commission, and the availability of federal funds for the purchase, rehabilitation and operation of railroads in the 1970's and 1980's.*

Initially, local governmental interest in the purchase of railroads was guided by the desire to preserve rail service for their communities. Local governments feared that the closing of the railroad would jeopardize the economic stability of their area. More recently, especially with the availability of federal funds, local governments have identified other reasons for owning a railroad.** These include:

- future public transportation
- new sources of revenue
- fostering and stimulating economic development
- improved rail service and access

A list of potential uses for the City of Austin owned right-of-way adds to these reasons:

- future public transportation uses
- additional source of revenue to the City and Capital Metro

* John F. Due, "The Surprising Roles of the State and Local Governments in Preserving Rail Freight Service," State Government, Vol. 58, No. 1, Spring 1985, p. 7-8.

** David C. Nice, "State and Local Government Ownership of Freight Railroads," Transportation Quarterly, Vol. 41, No. 4, October 1987, p. 587-599.

- foster economic development in and along the right-of-way
- future rail access to airport
- preserve and/or enhance rail service in the Austin area
- passenger or excursion service to and from outlying communities
- stimulus for economic growth
- future utility corridor uses

The relative importance of these uses is dependent on a number of factors including the condition of the economy, the political climate, public support, and others. Additionally, with multiple interests in the ownership and operation of the railroad, the importance of these uses will vary by organization.

Range of Strategies

The strategies identified below range from complete private ownership and management to public ownership and management. There are a variety of approaches or alternatives in each strategy with the relevant alternatives discussed under the appropriate strategy. Ownership refers to a bundle of rights including the right of possession, control, enjoyment, and disposition of the property. Management is used in reference to management of properties and other operational issues identified in the section two of this report and not to commercial freight operations.

Private Ownership and Private Management

Basically, this is the typical commercially-operated railroad, i.e., Southern Pacific Transportation Company, Burlington Northern Railroad Company, etc. As the name implies, the railroad company both owns and operates the railroad. Implementation of this strategy would require the sale of the Austin-owned right-of-way and a grant reimbursement to the Urban Mass Transportation Administration.

The important question affecting this strategy is the status of the perpetual easement that Capital Metro purchased from the City of Austin. Given the Urban Mass Transportation Administration licensing and use requirements affecting the public transit corridor, it is doubtful that a private owner would submit to these restrictions. An option is to sell the portions of the right-of-way outside of the Manor-Bertram right-of-way public transportation easement. This is a viable option only if an arrangement can be developed where the freight operator has reasonable commercial access to the public transportation corridor or if there are two independent markets, one to the east and one to the west, for freight operations. Outside of this, railroads are not generally interested in purchasing isolated portions of right-of-way.

The experience of the Metropolitan Development Transit Board of San Diego also raises some important issues. In November 1979, the Metropolitan Development Transit Board purchased 108 miles of railroad right-of-way from the San Diego and Arizona Eastern Railway. The Board purchased the entire line

to avoid title problems, even though only a portion of the track was needed for the proposed trolley system. Presently, the right-of-way is used both for public rail transportation and freight movements. The San Diego and Imperial Valley Railway operates freight service at night during the trolley's off-hours. The important issue or concern of the Metropolitan Development Transit Board is public safety. Because of the potential liability, the Metropolitan Development Transit Board believes it should be in control of the management, maintenance and operation of the right-of-way. The Metropolitan Development Transit Board does not wish to be exposed to any liability risk associated with private maintenance and management of the right-of-way. Consequently, the Metropolitan Development Transit Board is responsible for maintenance of the railway where public transit vehicles are in operation.

Public Ownership and Public Management

This category defines the current situation -- the City of Austin owns the right-of-way and jointly manages the properties with Capital Metro. The discussion for this strategy will focus on the alternative of a Capital Metro owned and managed right-of-way. (The Right-of-Way Manager, an employee of the City, is responsible for the operational and management issues affecting the right-of-way, for the most part.)

Capital Metro ownership would require a modification of the Urban Mass Transportation Administration grant and compensation to the City for its interest in the railroad right-of-way. Contractual and license agreements may also need to be modified to reflect the new ownership. Compensation to the City may be in the form of a percentage of future revenues, a lump sum in the amount of the City's initial investment, an amount based on the value of the properties, or, in lieu of payment, a perpetual easement for future public utilities.

Although management of the right-of-way may be integrated with Capital Metro's downtown rail properties, there is an important difference. Management of the Giddings-Llano right-of-way includes the contract for rail freight service. Capital Metro's other rail properties do not involve the operation or contract for operation of a rail freight line, an area that Capital Metro is not inclined to participate. Currently, Capital Metro lacks the staff and resources for effective property management, including the technical review of license agreements and maintenance of the right-of-way. Given the current conditions and climate, it is doubtful that Capital Metro can effectively manage the day-to-day operations of the right-of-way.

Public Ownership and Private Management

This final strategy is a blend of the first two. The railroad facility is publicly owned by either the City of Austin, Capital Metro, or owned jointly and the management of the right-of-way is handled by a private company. The advantages to private management are traditionally listed as:

- increased efficiency and productivity by creating a profit motive;

- greater flexibility in hiring labor, especially in utilizing skilled labor on a job basis rather than a full-time basis;
- reduced operating costs;
- economies of scale; and
- protecting the public sector from inefficiencies of the learning curve in new areas of administration by using companies experienced in the contracted area.

The disadvantages often cited include:

- difficult to monitor the quality of the contractor's work;
- less responsive to the public;
- higher costs, if there is poor competition for the contracted work.

The disadvantages can be minimized by specific and thorough contracts. Fortunately, property management is a long-standing activity with a large number of competitive companies. In recent years, management companies specializing in short-line properties have emerged.

There are a number of key elements associated with a successful contract for private company management including:

- specifying in measurable or identifiable terms exactly what the public will receive from the private company, i.e., the work to be done;
- noting who is responsible for completing the work;
- if the method for accomplishing the specific tasks is important to the public agency, specifying the method to be used in the contract;
- identifying what is satisfactory performance;
- specifying what will be done in the event of unsatisfactory performance; and
- properly addressing liability and indemnification issues.

Specifically, the contract should address the operational issues identified in section two of this report. The establishment of policies and procedures can be a part of the contract itself, designated the responsibility of the management company with approval from the owners, or designated the responsibility of a policy or oversight committee. The major concerns associated with contracting are appropriating liability justly and maintaining the integrity of the right-of-way for future public transportation uses. Given the uncertainties of future public transportation, a policy or oversight committee should have the responsibility for approving all non-standard or unusual lease and license agreement requests. Regardless, these types of requests will still have to be approved by the Urban Mass Transportation Administration.

Management Strategy Compatibility With Right-Of-Way Uses

Ultimately, selection of a specific strategy is dependent on the strategy's appropriateness to the intended uses of the right-of-way. Table 8 is a compatibility matrix showing the range of strategies in relation to the potential right-of-way uses. A "1" indicates compatibility, a "2" indicates somewhat compatible, a "3" partially incompatible, and a "4" incompatible. The categorization is subjectively based on analysis of interview responses during the study.

Based on the interviews and analysis of source documents, it is reasonable to assume that the guiding purpose for the right-of-way is future public transportation uses, and of secondary importance are future

Table 8
Strategies and Uses Compatibility Matrix

USES \ STRATEGIES	Privately Owned and Privately Managed	Publicly Owned and Privately Managed	Publicly Owned and Publicly Managed
Future public transportation uses	4	1	1
Source of additional public revenue	4	3	1
Foster economic development in and along right-of-way	2	2	2
Future rail access to airport	4	1	1
Preserve and/or enhance rail service in Austin	1	1	2
Provide passenger or excursion service	3	2	2
Stimulus for general economic growth	2	2	1
Future utility corridor uses	3	1	1

utility corridor uses. The other uses may be significant and appropriate uses for the right-of-way but are not driving factors or essential elements for selecting a management strategy. Consequently, the privately owned and managed strategy is ruled out as an alternative due to the inconsistencies with the principle.

purposes of the right-of-way. Preserving the right-of-way for future public transit uses is most compatible with public ownership.

Based on the compatibility matrix ownership of the right-of-way should reside in Capital Metro, because of the importance of anticipated public transportation uses. Although portions of the right-of-way are outside the public transportation corridor, these portions may not be used in a manner inconsistent with public transportation. Capital Metro is best equipped to determine the appropriateness of other uses in relation to public transportation. The secondary future utility corridor uses is an issue important to the City and can be addressed in an easement rather than outright ownership. It is important to note that the recommendation of ownership by Capital Metro is based on the anticipated uses of right-of-way as listed in table 8. There may be other economic and political factors, outside the scope of this study, that ultimately impact a final decision regarding ownership.

The remaining question is whether a private firm or the City of Austin and Capital Metro are best equipped to manage the right-of-way. Based on the desires of the public entities and the availability of experienced management firms, management by a private company is recommended. The disadvantage to this selection is that the additional revenues gained from ownership of the right-of-way are minimal and, depending on the type of contract with a private company, may result in additional costs to the City and/or Capital Metro.

Implementation Issues

The major thrust of this final section is to recommend a strategy for efficient and effective management of the railroad right-of-way. Following are a list of implementation issues that need to be addressed for completion of this objective.

Issue #1 Establish a railroad policy or oversight board

The development of a three-person policy or oversight board will facilitate the implementation of recommendations, guide the process for reviewing private management contracts, and make recommendations to the appropriate council or board regarding policy, management, and operations. The board should include appropriate division or department heads and an executive assistant or project coordinator for coordinating board activities and routine contact with the right-of-way management company. The board should identify and establish implementation priorities and target dates.

It is important to note that this implementation issue is independent of ownership. Regardless of who owns the railroad -- Capital Metro, the City, or both -- a policy board will benefit the long-term operations and management of the railroad. The recommendations identified in section three are not dependent on any particular form or designated ownership.

Issue #2 Develop appropriate policies and standards

As noted earlier in this report, the development of policies concerning finance, fees, license approval, and other areas are critical to effective right-of-way management. The policy or oversight board should be charged with this responsibility. The board may wish to establish general guidelines, waiting for the input of a private management company for specific standards and issues, if a private firm is selected to manage the right-of-way.

Issue #3 Initiate bid procurement and evaluation process for private management

The goals and expectations for right-of-way management as defined by the policy/oversight board should be translated into a request for right-of-way management proposals. It is recommended that compensation be based on a percentage of collected revenues, excluding freight revenue. The freight revenues should be used to offset administrative costs of the policy/oversight board and funds over \$50,000 should continue to accumulate in the escrow account for rehabilitation and betterment projects.

Right-of-Way Ownership

The "strategies and uses compatibility matrix" focuses on two important questions: Who should manage? and Who should own? Most of the report addresses the former question. The latter question is important but more difficult to answer. Generally, the ownership question focuses on decision authority and liability. The decision aspects are described in various source documents, including the Inter-local agreement, Contract for Rail Freight Service, and the Joint Use Committee's Bylaws. The liability issue, however, is subject to debate. According to the Urban Mass Transportation Administration grant, the City is the owner, while the Inter-local agreement provides for Capital Metro determining appropriate uses for the right-of-way in the perpetual easement. This creates an interesting relationship that somewhat clouds the liability question, especially, since neither of the documents directly address the liability question. Consequently, determination of liability is a legal question outside the parameters of this study. Resolution of questions regarding ownership and liability need to be resolved. Distinctions and interests in the City's ownership and Capital Metro's perpetual easement should be clearly identified and recognized.

Undoubtedly, transfer of ownership to Capital Metro would resolve any questions regarding ownership. However, given the current economic and fiscal climate, Capital Metro does not feel adequately equipped to assume right-of-way ownership. Equally, the City of Austin is impacted by the current climate and additionally does not perceive long-term benefits to owning the right-of-way. Given that the economic environment will not change in the short-term, resolution of questions concerning ownership and liability is advisable.

If the economic climate changes in the future it may be appropriate to transfer ownership of the railroad right-of-way to Capital Metro. This would require an amendment to the Urban Mass Transportation

Administration grant TX-05-0130, similar to the amendment transferring certain downtown railroad properties from the City to Capital Metro. Attorneys would also need to determine how the ownership transfer affects the "Contract for Rail Freight Service." The contract will either need to be renegotiated or the language amended to eliminate references to the City's ownership or implied interests.

SECTION V SUMMARY

Since the purchase of the railroad by the City of Austin and Capital Metro, the Joint Use Committee has been concerned with a number of issues relating to efficient and effective management of the Llano to Giddings right-of-way. The principal purpose of this study was to document the current management and decision-making process for the right-of-way, identify significant legal, operating and financial issues, and identify strategies for improving right-of-way management.

Section two of the report identifies the major issues affecting right-of-way management. These issues are classified as either contextual or operational. Contextual issues are the external factors that affect management and operational issues are factors directly controlled by management. The external environment creates a framework within which the operational issues interact.

Based on an analysis of the issues and the experiences of other public-owned railroads 14 specific recommendations are listed for improving management of the right-of-way. These recommendations are identified in section three of this report. The recommendations relate to lease and license agreement management, approval for incidental right-of-way usage, right-of-way maintenance and inspection, rail operator contract management, financial reporting and management, and intergovernmental relations.

Section four of the report examines management strategies. The strategies range from public to private ownership and management. Based on anticipated uses of the right-of-way a public-owned and privately managed strategy is highlighted. Issues affecting the implementation of this strategy are outlined.

It is important to note that the recommendations presented in section three of the report are independent of questions regarding ownership. Resolution of ownership questions and issues are important and deserve special attention by the City of Austin and Capital Metro. However, it is possible to improve the effectiveness of right-of-way management under the current ownership situation.

APPENDIX A
RAILTRAN TRANSPORTATION CORRIDOR FEE POLICY

I. Statement of Issues

What fees should be paid by the Cities of Dallas and Fort Worth for uses of Railtran property unrelated to mass transit:

- a) where existing facilities are in the right-of-way,
- b) where new facilities are planned, and
- c) where the use or facility benefits the public generally or Railtran specifically.

II. Background

On January 18, 1984 the City Councils of Dallas and Fort Worth executed a contract to establish the Dallas and Fort Worth Railtran System for the purpose of acquiring approximately 34 miles of railroad property located between the cities of Dallas and Fort Worth and to provide for the management and operation of said railroad property. The Railtran Policy Committee was appointed pursuant to this contract to adopt policies in accordance with directives of the two city councils and to make recommendations to the city councils regarding policies and all aspects of the management and operations of the system.

On January 23, 1984, the cities of Dallas and Fort Worth took title to the railroad property as tenants in common, each owning an undivided one-half interest in the property. The Department of Transportation, Urban Mass Transportation Administration Grant No. Tx-03-0082, provided 80 percent of the funding required for the purchase of the right-of-way from the Rock Island and M.K. & T. Railroads. The State of Texas and the cities contributed 13 percent and 7 percent respectively.

Railtran has been informed by the Urban Mass Transportation Administration, and the Office of the Inspector General that: (i) steps must be taken to insure that current and future leases will not adversely affect the development of the rail corridor; (ii) the Cities must properly collect and record all lease income; and (iii) all income generated from the Grant must be retained and used only for mass transportation related purposes.

On July 16, 1984, the Dallas and Fort Worth Railtran Policy Committee approved a lease and license fee schedule, attached hereto as Exhibit A, which requires a \$350.00 application fee for new request, and specifies fees to be charged for the use of Railtran right-of-way.

New requests have been processed in accordance with the fee schedule approved by the Dallas and Fort Worth Railtran Policy Committee and in compliance with the guidelines required by the Urban Mass Transportation Administration and the Office of the Inspector General. All existing lease and license agreements received from the Rock Island Railroad are being revised to comply with the fee schedule and Department of Transportation requirements.

Most of the 400 plus existing license agreements assigned to Railtran by the Rock Island are for utility crossings. The cities of Dallas and Fort Worth each have been granted approximately 25-30 water and sewer line crossings. Agreements generally provide for a 30 day termination by either party, have no fixed term and provide for no rental payment.

III. Recommendations

1. All existing and new leases should be granted in compliance with Department of Transportation requirements and in accordance with the official Railtran fee schedule, which was developed to provide an equitable return for the use of Railtran property.

2. The Cities of Dallas and Fort Worth should be granted leases and licenses on the same basis as all other lessee's and licensee's.
3. Consideration in establishing fees to be charged for use of Railtran right-of-way should be given to uses which are in the public interest, pursuant to Section 4(4) of the fee schedule.

RAILTRAN LEASE AND LICENSE FEE SCHEDULE

Effective July 16, 1984

Section 1. Application:

All applications for the use of Railtran property shall be directed to Property Management, City of Dallas, 1500 West Mockingbird Lane, Dallas, Texas, 75235 (670-6447) and shall include:

- 1) a letter signed by the applicant which clearly identifies the subject matter of the application;
- 2) a non-refundable application fee in the amount of \$350 made payable to the Dallas and Fort Worth Railtran System;
- 3) a plat showing the location and dimensions of the subject area; and
- 4) such other documentation as is available to the applicant.

Section 2. Annual Fee:

The annual fee for a license or lease to use or cross Railtran property is \$350 or is calculated in accordance with one of the following formulas; whichever is greater:

- 1) Fee for subsurface use only: $\text{area} \times \text{market value} \times 30\% \times 12\%$.
- 2) Fee for air rights use only: $\text{area} \times \text{market value} \times 70\% \times 12\%$.
- 3) Fee for use of property including surface: $\text{area} \times \text{market value} \times 12\%$.
- 4) Fee for parking use: Based on rental value of spaces, gross receipts or highest and best bid received.
- 5) Fee for billboard signs: Based on current billboard market rental rates.

Section 3. Lump Sum Payment:

Long term licensees may elect to make one initial payment in lieu of annual payments, based upon the present value of annual payments for the term of the license, calculated in accordance with Section 2 hereinabove, and discounted at the Dallas City Treasurers contract interest rate.

Section 4. Miscellaneous:

- 1) Where not specified in the lease or license to the contrary, Railtran retains the right to increase or decrease fees charged for the use of its property.
- 2) The market value to be used in determining the per square foot appraised value of Railtran property in connection with leases and licenses shall be based upon the value of a useable tract of land at the subject location, with no adjustment for size, shape or lack of access.

- 3) The Property Management Office of the City of Dallas, shall periodically review fees based on market value and, where it is determined that the market value has increased, Property Management shall notify the licensee or lessee in writing that the annual fee has been increased. If a licensee or lessee is unwilling to accept the increased fee, he may at his option terminate the agreement and receive any refund due for prepaid fees.
- 4) The Railtran Policy Committee may, where the use of the Railtran property is determined to be in the best interest of the public, waive the fee schedule hereinabove set out and recommend a fee that is appropriate for the intended use of the property.
- 5) Month to month lessees may elect to pay their fees monthly, quarterly, semi-annually or annually.

REVISED RAILTRAN UTILITY AND MUNICIPAL FEE POLICY

New Requests

The use of the Railtran Corridor by municipalities, public utility and franchised cable companies shall not require an application fee or annual fee provided the use is for a) public improvements, b) utility purposes, or c) cable utilization.

This waiver of the application fee and annual fee shall be for crossing purposes only. All parallel request will be considered on an individual basis.

All new requests, upon review and approval of plans, will be granted permission to utilize the Corridor by the issuance of a permit, executed by the Property Management Director of the City of Dallas, or his designee.

Application fees and annual fees shall be required of municipalities, public utility and franchised cable companies requesting to utilize the Railtran Corridor for:

- A) non-utility revenue-generating purposes.
(e.g. revenue-producing parking lot)
- B) private use.
(e.g. employee parking)

Applications shall include:

1. letter of request signed by applicant, which clearly states the subject matter of the application;
2. plat showing the location and dimensions of the subject area;
3. appropriate engineering and/or architectural plans, if required;
4. \$350 non-refundable application fee, if required in accordance with the above stated uses.

All new applications for the use fo Railtran Property shall be sent to:

Dallas and Fort Worth Railtran System, c/o Property Management, City of Dallas, 320 E. Jefferson Blvd. Room 203, Dallas, Texas 75203 (214 948-4100).

(Fee structure remains the same.)

APPENDIX B
RAILTRAN TRANSPORTATION CORRIDOR FINANCIAL POLICY

I. Statement of Issue

For what purposes should the Dallas and Fort Worth Railtran System expend operating revenues?

II. Background

On January 18, 1984, the City Councils of Dallas and Fort Worth executed a contract which established the Dallas and Fort Worth Railtran System. The purpose of this contract was to acquire approximately thirty-four miles of railroad property located between the two cities and to establish guidelines for the management and operation of the aforementioned railroad property. Pursuant to this contract, the Dallas and Fort Worth Railtran Policy Committee was appointed to adopt policies and make recommendations to the two City Councils regarding policies, management and operations of the System.

The aforementioned contract delegates budgetary responsibility to the Policy Committee.

Annually, the Policy Committee is required to submit a proposed fiscal year budget to the City of Dallas and Fort Worth city managers for review and presentation to the two City Councils for approval. The Committee is charged with monitoring expenditures of Railtran revenues. Expenditures over \$5,000 must be approved by both City Councils after approval by the Railtran Policy Committee.

Under terms of the contract, Railtran revenues may be expended for management, operations and maintenance of the System. Railtran accounts are audited annually as part of the annual audits of each City.

Railtran operating revenues are the property of both Cities; each City owns fifty percent of the revenues, regardless of where the funds are deposited. Interest accrues jointly to both Cities on a fifty/fifty basis.

The Railtran property management function is administered primarily by City of Dallas employees, who handle the leases and licenses of the property. These employees collect the rental fees. To facilitate collection, the rental fees are deposited with the City of Dallas in a separate Railtran fund. Beginning in FY 86, the City of Dallas sends to the City of Fort Worth a portion of the jointly-owned operating revenues equal to the total amount of the City of Fort Worth Railtran annual budget. This allows the City of Fort Worth to charge Fort Worth Railtran administrative costs directly to a City of Fort Worth Railtran operating fund, which also earns interest.

To date, the routine expenditures have been Railtran staff salaries and benefits, communications, office supplies, and insurance. However, there could be future expenditures in the areas of transit planning, and maintenance or consultant services.

While the contract between the Cities give considerable latitude concerning expenditures of revenues for capital improvements and maintenance, consideration must be given to the Urban Mass Transportation Administration conditions under which the acquisition grant was approved. Under the conditions of the grant, "all revenues derived from any leases or easements ... must be utilized for mass transit purposes only."

Based upon the above considerations, staff recommends the following policy:

Recommendation:

That the Policy Committee recommend the Dallas and Fort Worth City Councils adopt the following financial policy:

Dallas and Fort Worth Railtran System Financial Policy

All expenditures from the Dallas and Fort Worth Railtran System operating revenues derived from any lease or easements shall be for administration, planning and capital improvements which will improve or maintain the property for future mass transit usage. Revenues shall not be used to participate in financing physical improvements along or adjacent to the Railtran corridor that do not directly enhance the capability of the System to provide future mass transit, except as may be required by law.

