

## **Board Policy No. 18 Railroad Safety and Community Enhancement Projects**

### Summary

This policy addresses projects that support railroad safety and or community enhancement projects.

### Background

NCTD desires to collaborate with public and private entities to implement railroad safety and or community enhancement projects. Examples of railroad safety and or community enhancement projects include, but are not limited to grade separation projects, wayside horns, railroad quiet zones, pedestrian crossing projects and sealed corridors.

### Purpose

NCTD supports the implementation of projects that enhances the quality of life for communities and support railroad operations and safety. The funding, project development activities, construction and ongoing operations and maintenance of railroad safety and or community enhancement projects will likely require close coordination and continuous collaboration with NCTD, the San Diego Association of Governments (SANDAG), the Federal Railroad Administration (FRA), the California Public Utilities Commission (CPUC), funding agencies, and local (public and private) stakeholders.

Early and continuous collaboration is required to address issues such as property ownership and usage, construction and maintenance requirements, liability and insurance, regulatory requirements, and execution of agreements. Moreover, early, and continuous collaboration supports improved efficiency in project implementation and allows stakeholders to build consensus and develop plans for potentially seeking grants, sharing costs and benefits, and or leveraging concurrent project activities.

### Lead Agency and Project Management

Federal regulations and local decision-making are the primary factors for cities, or the county being designated as the lead agency for the implementation of community enhancement projects that promote safety. For example, the local or state government seeking to establish a pedestrian crossing, quiet zone, or wayside horn system within its jurisdiction must act as the lead agency and comply with the requirements set forth in federal and state regulations.

In most instances, SANDAG will serve as the lead agency for grade separation and capacity enhancement projects that improve NCTD's railroads. NCTD will typically serve as the lead for minor and local projects.

The project management approach and plan for the implementation of railroad safety and community enhancement should be thoroughly evaluated to ensure the availability of staff resources with the required knowledge, skills, abilities, and experience to successfully implement the project combined with understanding the requirements of NCTD. In certain instances, NCTD and or SANDAG may be the best option for providing project management for the implementation of projects.

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### Costs

The lead agency is responsible for securing the funding, permitting, approvals, and construction necessary to create a pedestrian crossing, quiet zone or implement a wayside horn system, and for producing studies and documentation as may be required by the regulations or administrative policies and procedures of the FRA, the CPUC, and NCTD.

The evaluation, application, planning, development, and review processes necessary to establish a pedestrian crossing, implement a quiet zone or wayside horn system shall be cost neutral to NCTD. All costs incurred by NCTD in association with any pedestrian crossing or quiet zone project, including but not limited to staff time, consultant fees, attorneys' fees, environmental studies, permits, inspection fees, flag-protection fees and engineering fees, will be paid directly or reimbursed by the city, county, or state under a memorandum of understanding ("MOU") and/or construction and maintenance agreement ("Construction and Maintenance Agreement").

NCTD, at its sole discretion, may contribute capital funding towards the construction phase of NCTD identified high priority projects that foster increased safety and improved rail operations.

### Pedestrian Crossing, Quiet Zone and Wayside Horn System Design

The design of all Pedestrian Crossing infrastructure and railroad improvements necessary for the implementation of a Pedestrian Crossing, Quiet Zone or Wayside Horn System shall be supported by NCTD with approval of applicable regulatory entities, following comprehensive plan and diagnostic reviews and processes.

The design and costs associated with all non-railroad items including but not limited to paving, striping, pavement signage, sidewalk/pathways, curbs, medians, roadway signage, vegetation, fencing, in-pavement loop detectors, and other traffic and pedestrian control devices shall be the responsibility of the City and shall be coordinated with the design of the improvements, as provided in the Construction and Maintenance Agreement.

### Construction and Maintenance Agreement

NCTD and will enter into an Construction and Maintenance Agreement with the City, County or other organization, which will contain all the pertinent provisions concerning the construction and maintenance of the crossing improvements, right-of-entry and use provisions, relocation provisions, indemnification and insurance provisions, and the cooperation on defense provisions. In the event NCTD's assistance and review is required prior to the establishment of the Construction and Maintenance Agreement, the City, County or other organization and NCTD, shall enter into a MOU, which will contain all the pertinent provisions concerning the design of the crossing improvements, right-of-entry, and indemnification and insurance provisions, and the cooperation on defense provisions.

### Construction

The construction of all railroad improvements necessary for the implementation of a Pedestrian Crossings, Quiet Zone or Wayside Horn System shall be supported by NCTD.

Pedestrian Crossings, Quiet Zones and Wayside Horn Systems will be constructed in a manner as to not interfere with the safe use of the railroad corridor during and subsequent to construction.

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The Construction and Maintenance Agreement shall provide that the City shall pay the estimated cost of design and construction of all railroad improvements necessary for the implementation of the Pedestrian Crossing, Quiet Zone or Wayside Horn System to NCTD, in advance.

If the City, County or other organization decides to design and construct the railroad improvements themselves, NCTD and NCTD's Signal Engineer of Record and Bridge Inspector of Record shall be required to review and approve all design and construction drawings, and shall provide Railroad Signal and Bridge Inspections and support at the City, County or other organization's cost. The City, County or other organization shall pay the estimated cost of design review and inspection in advance.

The City, County or other organization shall be responsible for the construction and cost of all non-railroad items. All non-railroad related work shall be coordinated with railroad improvements to be constructed by NCTD, if any, as provided in the Construction and Maintenance Agreement.

### Maintenance

Pursuant to the Construction and Maintenance Agreement, NCTD shall accept and provide required maintenance for additions to and/or modifications of any railroad equipment improvements necessary for the implementation of the Quiet Zone, both for existing and for new or expanded at-grade public crossings. The Construction and Maintenance Agreement shall specify the portion of the cost of the required maintenance which shall be passed on to the Cities. Wayside Horn Systems and Pedestrian Crossings shall be maintained by the City.

### Indemnification

Each City shall indemnify, defend, and hold harmless NCTD and its Board, and each member of the Board, the National Railroad Passenger Corporation ("Amtrak"), the BNSF Railway ("BNSF"), the Southern California Railroad Authority ("SCRRA"), , Pacific Sun Railroad ("PSRR") and any other entity performing maintenance work on the right-of-way, and any other entity providing passenger rail operation services for NCTD on the right-of-way, and any other entity providing dispatch services to NCTD for the right-of-way, their officers, agents, and employees ("Indemnitees"), from any and all liability, loss, expense (including reasonable attorneys' fees and other defense costs), demands, suits, liens, damages, costs, claims, including, but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the Indemnitees arising out of or connected with a failure to comply with the federal rule and any negligent acts or omissions on the part of the City, its council, officers, agents, contractors, or employees under or in connection with any work, authority or jurisdiction of City required by the federal rule and related to the establishment and operation of the Pedestrian Crossings, Quiet Zones or Wayside Horn Systems at highway-rail crossings.

NCTD agrees to indemnify, defend, and hold harmless the Cities and their respective board members, officers, agents, volunteers, contractors, and employees from any and all liability, loss, expense (including reasonable attorneys' fees and other defense costs), demands, suits, liens, damages, costs, claims, including but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the City Indemnitees arising out of or connected with any negligent acts or omissions on the part of NCTD, its Board, officers, agents, contractors, or employees, under or in connection with any work, authority or jurisdiction delegated to NCTD solely under the Construction and Maintenance Agreement between NCTD and the City.

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### Insurance

#### 1. During construction:

- a. In the event Cities engage in construction activities within the crossing covered by the Construction and Maintenance Agreement, the Cities shall cause to be procured and maintained, in full force and effect, during construction of the said improvements, general and railroad protective insurance, as required by NCTD, in the amounts, coverage, and terms and conditions specified, and issued by insurance companies in the Temporary Right of Entry Agreement.
- b. NCTD shall cause to be procured and maintained, in full force and effect, during construction of the Quiet Zone or Wayside Horn System Improvements, general and railroad protective insurance, and the cost of said insurance shall be a cost of construction of the Improvements, which shall be passed on to the Cities.

#### 2. Post-construction:

- a. NCTD shall procure and maintain the insurance for Quiet Zone or Wayside Horn Systems, and any NCTD railroad specific facilities in Pedestrian Crossings (if any), which shall, if available on the open market, name the Cities as additional insureds. To the extent the procurement and maintenance of the insurance containing coverage for liability resulting from the implementation of the Quiet Zone or Wayside Horns System and/or the improvements required to implement the Quiet Zone or Wayside Horn System, costs more than a policy without said coverage, the incremental increase in insurance costs shall be paid by City, County or other organization and other Cities which have Quiet Zones or Wayside Horn Systems on NCTD's right-of-way. The City, County or other organization's incremental cost shall be determined on an annual basis and will be proportional to the number of highway-rail grade crossings with Quiet Zones or Wayside Horn Systems within each jurisdiction.
- b. The City, County or other organization shall procure and maintain insurance for non-NCTD railroad facilities in Pedestrian Crossings, and name NCTD, and its Board, officers, agents, contractors, or employees, as additional insured.

### Termination

In the event NCTD shall be unable to procure liability insurance described above, the Cities shall, at their discretion, have the right to terminate the Quiet Zone designation or Wayside Horn System, and those provisions contained in the Construction and Maintenance Agreement relating to indemnification and insurance, as set forth in the Construction and Maintenance Agreement. If terminated by the City under this provision after construction has been initiated, the crossing shall be decommissioned to its original state at the sole cost and expense of the City unless NCTD desires in its sole discretion to maintain the crossing improvements directly.

### Cooperation in Defense of Claims

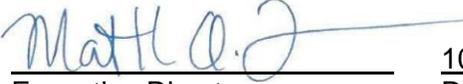
NCTD and each City will agree in the Construction and Maintenance Agreement to cooperate in good faith in any claim or litigation alleging liability of the City and NCTD, to seek a prompt disposition of the City and NCTD, by way of dismissal or summary judgment.

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Approvals

  
\_\_\_\_\_  
Board Chair

10/21/2021  
Date

  
\_\_\_\_\_  
Executive Director

10/21/2021  
Date

  
\_\_\_\_\_  
General Counsel

10/21/2021  
Date

## Board Policy No. 18 – Railroad Safety and Community Enhancement Projects

DATE	REVISION No.	RESOLUTION No.	COMMENTS
10/18/2012	ADOPTED	12-10	
10/17/2013	1	13-07	2013 REVISION
10/16/2014	2	14-04	2014 REVISION
10/20/2016	3	16-10	2016 REVISION
10/17/2019	4	19-06	2019 REVISION
10/21/2021	5	21-05	POLICY RE-TITLED AND RE-WRITTEN IN ITS ENTIRETY.