

**MEMO**

**Date:** February 18, 2021

**To:** NCTD Board of Directors

**From:** Matthew O. Tucker, Executive Director



**Re:** Historical Review of Communications with City of Del Mar Regarding Railroad Trespassing and Creating Safe and Legal Access

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At the request of the Board of Directors at its meeting of January 21, 2021, NCTD staff has compiled internal documents to provide history and context of activities related to mitigating railroad trespassing and creating safe and legal access in the City of Del Mar. Additionally, NCTD has requested that the City of Del Mar provide similar documents via a Public Records Act (PRA) request. The City of Del Mar provided responsive documents on February 12, 2021 and further documents on February 16, 2021.

NCTD's staff has developed a summary of the historical documents (Attached) that have been compiled and will post the compilation with the specifically referenced documents on NCTD's Trespasser Mitigation website by February 19, 2021 (excluding documents received on February 16, 2021). NCTD has augmented this information with additional, relevant documentation we have partially received from the City of Del Mar in response to the request for records under the PRA. However, some of the documents received by the City of Del Mar were not substantive and were not included in the summary of historical documents.

I encourage Board members to independently review the historical information that has been compiled. I have reviewed the documentation beginning in the mid-1990s and offer the following.

- The City of Del Mar and NCTD have had ongoing discussions since the mid-1990s about railroad trespassing and the need to create safe and legal access. The historical review identifies the City of Del Mar's and Surf Riders Foundation's claims to historic access rights, the right to (illegally) cross the tracks, and opposition to fencing.
- In a letter dated January 11, 1995, the City of Del Mar requested *"that the NCTD Board place a moratorium on the issuance of fines in Del Mar and up and down the coast while we seek funding for safe pedestrian crossings."*
- The historical review documents efforts by NCTD to mitigate trespassing through enforcement and the City of Del Mar generally opposing such efforts that would result in a fine. Additionally, the historical review documents NCTD's efforts and actions related to increasing public awareness through communication campaigns, signage installation to mitigate trespassing, and discussions about fencing.
- In a letter dated January 25, 1995 addressed to the Mayor and City Council for the City of Del Mar, NCTD's Executive Director, Richard Fifer, and NCTD's

General Counsel, Dwight Worden, provided a summary from the January 19, 1995 NCTD Board of Directors meeting related to discussions about the rail right-of-way and NCTD's policy on trespassing. During the NCTD Board meeting and subsequently in the letter to Del Mar, Mr. Worden articulated a summary of legal reasons for the no trespassing policy.

1. "Only the PUC CAN Approve a Rail Crossing."
2. "California Penal Code section 369 (i) Makes It a Crime to Enter Upon Railroad Property."
3. "A Moratorium on Enforcement, Or Other Allowance of Trespassing Could Put NCTD In Breach of Its Contracts."
4. "FRA and PUC Regulations." In summary, NCTD is put at risk for failing to follow regulatory requirements.
5. "NCTD's Insurance Could Be At Risk."
6. "Prescriptive Rights." In summary, the General Counsel stated that there is no right to trespass based on past practices of trespassing and that the only appropriate way to allow crossing of the right-of-way is to gain PUC approval for a crossing.
7. The January 25, 1995 letter to Del Mar's Mayor and City Council from NCTD's Executive Director, Richard Fifer, and NCTD's General Counsel, Dwight Worden, concluded with the following. *"The NCTD Board and staff remain ready and willing to work with Del Mar and other coastal jurisdictions to assist any applications they might make to the PUC to receive approval for a new grade crossing. And, NCTD Board and staff will continue to work with the rails to trails program and interested cities to allow appropriate lateral use of the right-of-way. We hope that you can appreciate the Board's strong commitment, however, to safety in the right-of-way above other concerns. Amtrak Intercity currently runs approximately 18 trains per day, Santa Fe runs two freight trains per day, and NCTD will be adding 8 trains per day starting the end of February. As an agency and as an owner of the right-of-way we remain committed to enforcing the no trespassing policy as necessary to ensure public safety."*

- Tort relief legislation was sought by the City of Del Mar and NCTD. This legislation was unsuccessful "due to objections of the trial lawyer lobby."
- In the mid-1990s, the Del Mar City Council formed *The Railroad Advisory Committee* (TRAC) which provided recommended locations for creating safe and legal access. NCTD compiled a list of potential locations for safe and legal crossings along the entire railroad, including some locations identified by the City of Del Mar.
- The historical review documents discussions about seeking grants for at-grade crossing and pedestrian crossings. NCTD clearly communicates that funding for such projects is a city requirement and that project approvals are subject to review by the Public Utilities Commission.

- The City of Del Mar advocated the construction of a tunnel /relocating the tracks based in part on the condition of the bluffs and that costs for constructing safe and legal crossings should be minimized as the tracks would be relocated in the future.
- It should be noted that at the January 19, 1995 meeting of the North San Diego County Transit Development Board, Mr. David Druker, Chairman of the Railroad Advisory Committee in Del Mar, requested *“that citations not be given to those who are safely using the right of way and the City of Del Mar be given more time to find alternative safe crossing points.”*
- As of today, no safe and legal crossings have been constructed within the City of Del Mar. The cities of Solana Beach, Encinitas, and Oceanside have funded and created safe and legal crossings projects.
- Currently, the City of Del Mar, the San Diego Association of Governments (SANDAG), and NCTD are kicking-off a new study, Coastal Connections, to identify potential safe and legal crossings for the same project area as the TRAC Study.

I hope this information is responsive to the Board’s request. Should there be any questions, please feel free to reach out to me.

Attachment: Summary of Historical Documents