

NORTH COUNTY TRANSIT

SAN DIEGO RAILROAD

Board Policy No. 18

Railroad Safety and Community Enhancement Projects

Summary

This policy provides a framework for NCTD's cooperation on locally initiated, rail-based project(s) undertaken by the county, city, state or other organization for the purpose of improving railroad safety and/or community enhancement. The railroad safety and/or community enhancement projects within the scope of this policy are generally limited to rail crossings, grade separations, wayside horns, pedestrian crossings, sealed corridors, and/or quiet zones (individually or collectively "Project"). NCTD desires to collaborate with public and private entities seeking to implement the Project. These guidelines may be expanded to other projects at the discretion of NCTD and as deemed appropriate by the Chief Executive Officer.

Purpose

NCTD supports Projects that enhance the quality of life for communities and that are compatible with railroad operations and safety protocols. The funding, project development activities, construction and ongoing operations and maintenance of the Project 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 and permitting 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 a Project. The local or state government seeking to establish a Project within its jurisdiction must act as the lead agency and comply with the requirements set forth in federal and state regulations ("Lead Agency").

A Lead Agency may request that SANDAG serve as the project manager for the Project. NCTD will typically serve as the project manager for minor and other local projects, such as maintenance or minor improvements.

The project management approach and plan for the Project 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 NCTD's requirements. NCTD and/or SANDAG are often the best option for providing project management

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for the Project due to the unique characteristics and requirements for constructing within the railroad right-of-way ("ROW").

Limitations on Use

The Lead Agency must comply with all applicable terms, conditions, and requirements of NCTD's policies regarding NCTD's ROW and all other NCTD ordinances, rules, and regulations. The Lead Agency's use of the Project area must not in any way interfere with NCTD's continuing control over the property or NCTD's expressed continued ability to carry out its functions.

Relocation

The Lead Agency shall, at its sole expense, protect, temporarily relocate, or remove the Project if NCTD determines that the Project is inconsistent or interferes with NCTD's current or planned use of the Project area or ROW.

Project Design Phase

The design of all rail crossing infrastructure and railroad Project improvements, and any element necessary for the Project implementation of a rail crossing, quiet zone or wayside horn system shall be supported by NCTD with the approval of applicable regulatory entities, following comprehensive plan and diagnostic reviews and processes. NCTD strongly recommends and encourages Lead Agencies to enter into memorandums of understanding ("MOU") with NCTD to establish a collaborative relationship early in the Project development phase.

Costs

The Lead Agency and/or Project Manager designated by the Lead Agency is responsible for securing funding, permitting, approvals, and constructing the necessary improvements/modifications to implement the Project, 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 the Project shall be cost neutral to NCTD, and will be addressed in a MOU and/or license agreement ("License Agreement"). For example, the MOU requires that the Lead Agency provide NCTD with full cost recovery for NCTD staff and consultant services and other Project costs for the design phase of the Project (e.g., traffic and queuing study, pedestrian study, etc.), and provide an initial deposit for services within thirty (30) days of execution of the MOU. The License Agreement also requires that the Lead Agency reimburse NCTD within 30 days of invoice for all costs incurred by NCTD in association with the review and processing of any work performed on the Project, including but not limited to staff time, consultant fees, attorneys' fees, environmental studies, permits, inspection fees, railroad flagging protection fees, and engineering fees). The MOU and License Agreement are discussed in more detail below.

NCTD, at its sole discretion, may contribute capital funding towards the construction phase of any Project that fosters increased safety and improved rail operations.

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Memorandum of Understanding

A MOU is often the first step the Lead Agency and NCTD take before entering into a contract or negotiations. MOUs document the parties' understanding and responsibilities with respect to the Project and indicate that a legally binding contract will follow (i.e., License Agreement).

The execution of the MOU is for the design phase of the Project only. The MOU will generally define roles and responsibilities for the Project activities, including coordination with regulatory agencies, and grant support.

The design, environmental permitting, and costs associated with all Project-related items, including but not limited to design of 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 Lead Agency. Insurance, indemnification, and other legal requirements associated with the design phase of the Project shall also be memorialized in a MOU.

License Agreement

The License Agreement is entered into between the Lead Agency and NCTD once the Lead Agency has applied for the issuance of a License for use of NCTD's property in accordance with Board Policy 11, and NCTD has agreed to allow the Lead Agency to use that portion of the ROW. The Lead Agency agrees to be legally bound by the terms and conditions of the License Agreement.

If NCTD enters into a License Agreement with the Lead Agency, the License will contain all the pertinent provisions concerning the construction and maintenance of the Project, including but not limited to, right-of-entry and use, relocation, indemnification and insurance, and the cooperation on defense. In the event NCTD's assistance and review is required prior to the establishment of the License Agreement, the Lead Agency and NCTD shall enter into another MOU prior to the commencement of additional work, as described above. The main elements of the License Agreement are summarized below.

1. Construction

The construction of all railroad improvements necessary for the implementation of the Project shall be supported by NCTD pursuant to the License Agreement.

The License Agreement shall provide that the Lead Agency pay for all costs necessary for design and construction of all railroad improvements necessary for the implementation of the Project in advance. It shall also allocate and describe long-term maintenance responsibilities associated with the Project.

If the Lead Agency decides to design and construct the Project 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 Lead Agency's cost. The Lead Agency shall pay the estimated cost of design review and inspection in advance.

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The Lead Agency shall be responsible for the construction and cost of all non-railroad items. This shall include any indirect costs of construction that may be necessary and required to work in the railroad ROW, such as flagging costs, signal modifications and/or signal support, track inspection, and any additional insurance requirements as may be deemed necessary by NCTD. All non-railroad related work shall be coordinated with the construction of railroad Project improvements by NCTD, if any, as provided in the License Agreement.

2. Maintenance

The License Agreement shall outline the maintenance and repair work obligations of the Lead Agency for use of NCTD property, which shall include but not be limited to requirements pursuant to CPUC General Order 72-B. NCTD shall accept and provide required maintenance for additions to and/or modifications of any railroad signal equipment and warning devices necessary for the implementation of the quiet zone, both for existing and for new or expanded at-grade public crossings, including but not limited to vehicle gates, vehicle warning devices and pedestrian gate arms. The License Agreement shall specify the portion of the cost of the required maintenance that shall be passed on to the Lead Agency. Non-railroad improvements, wayside horn systems and pedestrian crossings shall be maintained by the Lead Agency.

3. Indemnification

Pursuant to the License Agreement, the Lead Agency 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"), and any other entity performing maintenance work on the Project, and any other entity providing passenger rail operation services for NCTD on the ROW, and any other entity providing dispatch services to NCTD for the Project, their officers, agents, and employees ("NCTD 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 NCTD Indemnitees arising out of or connected with design or construction defects, a failure to comply with the federal rule and any negligent acts or omissions on the part of the Lead Agency under or in connection with any work, authority or jurisdiction of the Lead Agency required by the federal rule and related to the establishment and operation of the Project.

NCTD agrees to indemnify, defend, and hold harmless the Lead Agency and their respective board members, officers, agents, volunteers, contractors, and employees ("Lead Agency Indemnities") 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 Lead Agency 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 the Project where authority or jurisdiction was delegated to NCTD solely under the License Agreement between NCTD and the Lead Agency.

4. Insurance

The License Agreement sets the specific insurance requirements during construction and post-construction.

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a. During construction:

In the event the Lead Agency engages in construction activities within the Project covered by the License Agreement, the Lead Agency shall cause to be procured and maintained, in full force and effect, during construction of the said Project improvements, commercial and general liability insurance, railroad protective insurance, automobile liability, workers' compensation and employer's liability, and property insurance (if applicable)_ as shall be required by NCTD, in the amounts, coverage, and terms and conditions specified, and issued by insurance companies in the Right-of-Entry Permit. The policies must name in the endorsements and schedules as additional insureds NCTD.

b. Post-construction:

NCTD shall procure and maintain, in full force and effect, post construction of the said Project improvements for Quiet Zone or Wayside Horn Systems and any NCTD railroad specific facilities in Pedestrian Crossings, commercial and general liability insurance, railroad protective insurance, automobile liability, and workers' compensation and employer's liability, as required by NCTD, in the amounts, coverage, and terms and conditions specified in the License Agreement, and, which shall, if available on the open market, name the Lead Agency as an additional insured. 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 Project 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 the Lead Agency, which have Quiet Zones or Wayside Horn Systems on NCTD's ROW. If applicable, the Lead Agency'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 the Lead Agency's jurisdiction.

The Lead Agency shall procure and maintain insurance for non-NCTD railroad facilities extending outside of the railroad ROW, and name NCTD, and its Board, officers, agents, contractors, or employees as additional insureds.

5. Termination

In the event NCTD shall be unable to procure liability insurance described above, the Lead Agency shall, at their discretion, have the right to terminate any special status designations associated with the Project, and those provisions contained in the License Agreement relating to indemnification and insurance. If terminated by the Lead Agency under this provision after construction has been initiated, the Project shall be decommissioned to its original state at the sole cost and expense of the Lead Agency, unless NCTD desires in its sole discretion to maintain the crossing improvements directly.

6. Cooperation in Defense of Claims

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

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Approvals



Board Chair

10/23/2025

Date



Chief Executive Officer

10/23/2025

Date



Deputy Chief Executive Officer/
Chief General Counsel

10/23/2025

Date

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.
10/20/2022	6	22-18	2022 REVISION
10/19/2023	7	23-06	2023 REVISION
10/17/2024	8	24-08	2024 REVISION: UPDATES THROUGHOUT TO REFLECT ROLES AND RESPONSIBILITIES OF LEAD AGENCY AND DISTRICT
10/23/2025	9	25-06	2025 REVISION: UPDATES TO LOGO AND POSITION TITLES