

GETTING TO THE BEACH JUST GOT HARDER

By Dwight Worden

NCTD recently announced increased enforcement of trespassing laws along its rail right of way. Tickets will be issued carrying fines up to \$500 and 6 months in jail. What's up? Why the new rules? Access along and across the tracks in Del Mar has a long history. Joggers, dog walkers, beach goers and others are in the right of way every day, and that has been the case for decades. There is no way for the public to get to the beach south of Powerhouse Park without illegally crossing the tracks until one gets all the way to Torrey Pines State Beach. Ditto for all those to the east wanting to get to the beach between the Jimmy Durante/CDM overpass and Via de la Valle. Why the crack down now? Answer: crossing the tracks has never been legal. What has changed is until now NCTD has chosen to hold off aggressively enforcing the trespass rules.

NCTD bought the railroad right of way from Santa Fe back in the 1990's. Santa Fe (now BNSF) kept a freight easement to run their freight service, and AMTRAK has its rights under federal law. All three rail services use the corridor. The railroad right of way is generally 100 feet wide, with the rails generally roughly in the middle, so NCTD owns a good stretch on both sides of the tracks, including the beach bluffs west of the tracks south of Powerhouse Park. The Ahmannson Trust owned some of the upper bluff that was/is west of the tracks in this area, so not all of the upper bluff belongs to NCTD. In theory, the public could walk on this non-NCTD property without trespassing. Over the years, however, much, if not all, of this property has fallen into the ocean, so I'm not sure if any non-NCTD property remains on top of the bluffs. If there is some non-NCTD property NCTD cannot control that property, but there is no way to get there without trespassing on the right of way.

What about prescriptive rights or adverse possession—hasn't the public acquired a right to cross the right of way through long term usage? There is an exception to the adverse possession/prescriptive rights laws: public use cannot acquire these rights against public entities, so no luck pursuing this against NCTD. Why can't NCTD slow down the trains in this area instead of issuing tickets? NCTD has spent millions over the years to knock a minute here and there off their train schedules, and they are unlikely to voluntarily add minutes back in by slowing trains to accommodate what they view as trespassers. Even if NCTD were willing to do that as to the Coaster, Amtrak and BNSF would not necessarily have to follow such speed reductions.

NCTD's motivation for stepped up enforcement is safety. There are 50+ trains per day on the Oceanside-San Diego run, or on average about one train every 15 minutes in daytime. That's a LOT of trains. Some run backwards making it hard to hear the engines. The rails were replaced some years ago with "continuously welded rails" meaning the "clickity clack" announcing a train is gone. The trains come fast and quiet. Walking along the tracks with headphones, talking on a cell phone, not paying attention, etc. is a real problem. The tracks curve in this area south of Powerhouse, so even one paying attention can't see very far. Nor can the train driver, meaning the driver cannot always blow the horn in time. All these factors make this a dangerous section.

Can we establish a legitimate rail crossing in this area? The Cal Public Utilities Commission (PUC) regulates rail crossings. They are on record as against at grade crossings and favoring grade separations. They base their position on safety data, and they can show lots of injuries and deaths due to at grade rail crossings across California and the country, including here. Apparently, there have been 3 deaths/accidents in the recent past right in the area we are talking about. The likelihood the PUC would approve an at grade crossing in this area is close to zero--they don't support them in general, and due to curves and poor sight distance, it's an even tougher sell at this location. Even if the PUC were to approve a crossing, Del Mar would have to figure out how to get folks down the bluffs to the beach. Stairways, accessible ramps, and the like are a tough sell both to Del Mar and to the Coastal Commission as they would involve considerable construction/excavation of the protected bluffs.

What about an overpass or underpass? To build an overpass or underpass is theoretically possible--there is a new one at Swamis in Encinitas (an underpass). BUT, they are required to be ADA compliant, meaning they need VERY long ramps or elevators to accommodate wheel chairs. This makes overpasses big, ugly, expensive, and they can block views. The prospect of excavating the bluffs for an underpass is unlikely as the bluffs are protected. Unlike the Del Mar bluffs, the terrain at the new Swamis underpass accommodated going under, but even that one was VERY expensive and took years to process. Even the Coastal Commission with its mandate to encourage public access to the beach can't approve at grade crossings--only the PUC can

do that. True, there was a wooden overpass with stairs near 10th street back in the day. Santa Fe, the then owner of the right of way, took it down in the 1970's in the middle of the night and Del Mar was furious. Bottom line, it was not ADA accessible (the ADA didn't exist then) and it cannot be rebuilt without ADA compliance, Coastal approval, etc.

Eventually, the only real long term solution, in my opinion, is to get the tracks off the bluffs and into a tunnel under Del Mar. Then, this whole bluff area can be a park, and access to the beach will become a piece of cake! With the tracks gone NCTD can stop armoring the bluffs with seawalls, anchor piles, and the like. SANDAG's plan for 2050 is to move the tracks to a tunnel under Del Mar (location yet to be determined). That project is projected to cost 2 billion+ and track removal remains an uncertain long term goal until a funding source is identified. In the meantime, be aware: the risk of crossing the tracks has just gone up.