



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

VIA E-MAIL ONLY

November 24, 2020

Mr. Tom Bonigut  
Public Works Director/City Engineer  
City of San Clemente, California  
BonigutT@san-clemente.org

**Re: Docket Number FRA-2020-0038**

Dear Mr. Bonigut:

This letter is in response to the April 27, 2020, request from the City of San Clemente (the City) to the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in Title 49 Code of Federal Regulations (CFR) Part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings, relating to use of a Pedestrian Audible Warning System (PAWS). FRA assigned the request Docket Number FRA-2020-0038.

Specifically, the City requested a waiver from 49 CFR § 222.59 (*When may a wayside horn be used?*), to allow the use of a PAWS (similar to a wayside horn) instead of a locomotive horn at seven public highway-rail grade crossings. The City also sought relief from certain provisions found in Appendix E to 49 CFR Part 222, Paragraphs 4 and 6, to allow a minimum sound level of 80 dB(A).

As the City noted in its April 27, 2020, letter, by a letter dated April 14, 2015, in Docket FRA-2014-0081, FRA had previously granted the City this same relief for a period of five years (*See* Document Number FRA-2014-0081-0009). FRA notes, however, that the City failed to timely request renewal of the relief in Docket FRA-2014-0081 and by its specific terms, that relief expired on April 14, 2020. FRA also notes that the City's April 27, 2020, waiver request was not jointly filed with the Southern California Regional Rail Authority (Metrolink) as 49 CFR § 222.15(a) requires.

The seven crossings that are the subject of the City's waiver request are:

- Dije Court – US DOT Number 922847D – MP 203.95 – pedestrian – 3 PAWS
- El Portal – US DOT Number 922848K – MP 204.04 – pedestrian – 2 PAWS
- Corto Lane – US DOT Number 026977D – MP 204.56 – pedestrian – 3 PAWS
- Pier Service Road – US DOT Number 026997P – MP 204.73 – private – 4 PAWS
- T Street – US DOT Number 922849S – MP 205.16 – pedestrian – 3 PAWS

- Lost Winds – US DOT Number 922850L – MP 205.56 – pedestrian – 2 PAWS
- Calafia – US DOT Number 026637S – MP 206.00 – pedestrian – 2 PAWS

On April 17, 2020, FRA conducted inspections of five of the seven involved grade crossings (two were inaccessible at the time). Those inspections revealed the following instances of noncompliance with the conditions of FRA’s previously granted relief:

- The PAWS at various locations were not operating as intended. Some locations’ sound-levels were below 80 dB(A), the minimum allowed under the 2015 waiver, while other locations emitted static.
- Signage and emergency exit swing gates were overall in poor or inoperable condition.
- Several areas of fencing designed to prevent pedestrians from trespassing on the tracks were found to be ineffective due to sand buildup, making stepping over the fence possible.

Additionally, there was evidence of well-worn footpaths along and across the right-of-way, indicating that trespassing on and along the tracks is prevalent.

On June 23, 2020, FRA conducted formal field inspections at each involved grade crossing to verify the City’s compliance with the conditions of FRA’s April 14, 2015, letter in Docket FRA-2014-0081. During these inspections, each PAWS was tested for an 80 dB(A) minimum/110 dB(A) maximum. The City had performed maintenance prior to these inspections, but some PAWS were still not in compliance. With FRA’s assistance, each PAWS was adjusted onsite to meet the 80 dB(A) minimum, but FRA learned that the City has experienced reliability issues with the PAWS and that the dB(A) level is difficult to maintain (e.g., if adjustments are made that increase the dB(A) level too much, the amplifier circuit board may fail; speaker units are subject to the weather, beach front elements, and irrigation overspray and can decrease to a level below the 80 dB(A) level and potentially not report failure to the system). Further, during these inspections, FRA learned that there is no joint periodic testing conducted by the City and Metrolink to determine if PAWS decibel levels and detection feedback are operating as intended. In fact, Metrolink reported being unaware of the portions of the crossings it was responsible to maintain (emergency pedestrian exit swing gates and attached signage), and those items were left in disrepair over the last 5 years.

FRA’s Railroad Safety Board (Board) reviewed the petition, the results of FRA’s field investigation, and FRA’s technical staff findings. The Board determined that, at this time, granting the City’s request is not in the public interest or consistent with railroad safety. The Board found that the issues with noncompliance during the inspections, the overall poor condition of the required fencing, and apparent lack of maintenance and communication processes and procedures between the City and Metrolink, are concerning. Accordingly, the Board has denied the City’s April 27, 2020, request.

Improving Grade Crossing Safety and Reducing Trespassing Incidents is one of FRA’s highest priorities. Grade Crossing and Trespassing issues account for 95% of total railroad-related deaths. The Board additionally found that granting the City’s request in light of the concerns noted above would not advance safety in this critical area.

As the 2015 relief is no longer in effect, the operating railroads must sound their horns at the above-identified crossings. If the City plans to submit another waiver petition, it must be filed jointly with Metrolink as 49 CFR § 222.15 requires. The Board also asks that any future waiver petition include a communication plan with the operating railroads and a maintenance plan that shows how the City will maintain all of the required portions of the system.

In any future correspondence regarding this letter, please refer to Docket Number FRA-2020-0038. If you have any questions, please contact James Payne, Staff Director, Grade Crossing and Trespasser Outreach, at 202-493-6005 or james.payne@dot.gov.

Sincerely,

Karl Alexy  
Associate Administrator for Railroad Safety  
Chief Safety Officer

CC:  
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