

July 19, 2019

The Honorable Michael J Carrozzo
Presiding Judge
Santa Barbara County Superior Court
1100 Anacapa Street
Santa Barbara, CA 93101

SUBJECT: Grand Jury Report On Railroad Fatalities In Santa Barbara
County

Dear Judge Carrozzo:

On June 10, 2019, a cover letter and report from the Santa Barbara County Grand Jury was sent to the Santa Barbara City Council, requesting responses to findings and recommendations to address railroad fatalities in Santa Barbara County. The following is the City of Santa Barbara's responses to the Grand Jury's Findings and Recommendations.

Background

The Union Pacific (UP) right of way (ROW) runs about 5.9 miles through the City of Santa Barbara (The City), from the south at Channel Drive, and to the north at Modoc Road. The Grand Jury report, "Railway Fatalities in Santa Barbara County" (the Report), reported three fatalities within the City limits from 2015 to 2018. All three of the fatalities were classified as suicides of members of the transient community, and were located within a two-mile section of the UP ROW. This section extends west, from the Santa Barbara Zoo to the railroad crossing at West Montecito Street, just west of the train depot. The section includes the train depot, and six at-grade railroad crossings at the following locations:

- West Montecito Street
- State Street
- Anacapa Street
- Garden Street
- Calle Cesar Chavez
- Milpas Street

Two of the three fatalities listed in the report were located within the High Fatality Zone 1 (HFZ1), defined by the Report as the section of UP ROW between Ortega Hill and Milpas Street.

City of Santa Barbara/Union Pacific Memorandum of Understanding

The City and UP share a memorandum of understanding about shared maintenance and enforcement activities in the UP ROW (MOU). The MOU was revised and renewed on April 18, 2019. Under the MOU, the City provides graffiti abatement, quarterly trash and debris cleanups in the UP ROW, and spot cleanups of homeless encampments. The MOU also provides the City's Police Department limited authority to enforce illegally parked vehicles and trespassing in the UP right-of-way. UP also agrees to install fencing on UP property as directed by the City; the City has the responsibility to maintain the fencing. The cost of the City's work defined in the MOU is reimbursed by UP. The MOU is included as an Attachment.

City of Santa Barbara Response

Penal Code §933.05 requires that the City respond to the Findings and Recommendations of the Grand Jury pertaining to matters under the control and authority of the City Council of Santa Barbara.

The 2018-2019 Santa Barbara County Grand Jury issued a report on June 10, 2019, entitled "Railroad Fatalities in Santa Barbara County." The Grand Jury required a response from the Cities of Santa Barbara and Goleta, the County of Santa Barbara (County), The Santa Barbara County Association of Governments (SBCAG), and the Santa Barbara County Sheriff (Sheriff). The City is requested to respond to all findings and recommendations within 90 days. The following are the City of Santa Barbara's responses to the Grand Jury Findings and Recommendations.

Finding 1

Eighty-five percent of railroad-related deaths occurring in Santa Barbara County were pedestrian trespasser incidents that occurred in the High Fatality Zone One from Ortega Hill in Summerland to Milpas Street in Santa Barbara and High Fatality Zone Two from Patterson Avenue to Glen Annie Road in Goleta.

The City agrees with Finding 1.

Recommendation 1

That the Cities of Santa Barbara and Goleta, the County of Santa Barbara and Santa Barbara County Association of Governments meet regularly with Union

Pacific Railroad to create a safety plan to reduce trespasser deaths in High Fatality Zones.

The City's Response:

This recommendation has not yet been implemented, but will be implemented within the next six months so long as Goleta, the County, SBCAG and UP are in agreement. SBCAG has offered to host and organize the meetings to develop a safety plan to reduce trespasser deaths in the region, and the City will participate.

Finding 2

A sealed corridor has been used effectively to enhance railroad safety.

The City disagrees partially with Finding 2.

The Federal Railroad Administration (FRA) developed "sealed corridor" strategies for High Speed Passenger Rail Lines that are designed to "block all lanes of travel" on streets where there are at-grade crossings of the railroad corridor. Sealed corridors are primarily intended to create a safe approach to the high speed rail where there are conflicts with vehicle traffic. Studies show that the concept of a "sealed corridor" using various improvements at highway-railroad crossings significantly reduce train-vehicle collisions. The City disagrees that the "sealed corridor" concept keeps trespassers from entering the railroad corridor. Within the City, HFZ1 is easily accessed by trespassers at six railroad crossings. There are no practical barriers to keep trespassers from accessing the UP ROW from the Santa Barbara Zoo to the Castillo Street train bridge. All three fatalities listed in the Report within the City limits were located within this area.

Recommendation 2

That the Cities of Santa Barbara and Goleta, the County of Santa Barbara, and Santa Barbara County Association of Governments collaborate with Union Pacific Railroad to develop a sealed corridor from Ortega Hill in Summerland to Glen Annie Road in Goleta.

The City's Response:

This recommendation requires substantial further analysis to determine the feasibility, practicality, scope and effectiveness of such a project. It is not clear to the City what the Grand Jury's definition of a "sealed corridor" is. As mentioned above, all of the recent fatalities within the City limits have occurred near railroad crossings, and were determined as suicides. There is no practical way to keep trespassers from entering the UP ROW at these crossings. Within

six months, the City will coordinate with SBCAG to approach Union Pacific, Goleta and the County to determine each of these respective organizations' interest in pursuing a feasibility study about the development of a sealed corridor for the section of the rail corridor identified by the Grand Jury as a high-fatality zone.

The City recently completed two safety projects consistent with the FRA's definition of "sealed corridor" at Milpas Street and State Street railroad crossings. Enhanced safety features installed include median islands on the approaches to prevent drivers from circumventing the gates, additional railroad flashers, pre-signals to prevent queuing over the railroad tracks from the nearby traffic signals, enhanced traffic signal to railroad signal circuitry, and channelization to guide pedestrians through the crossing area. The design of both projects was approved by the California Public Utilities Commission, who have jurisdiction over railroad crossings in California. However, due to the openings required for the train movements, there is no practical way to prevent pedestrians from entering UP ROW at these and other at-grade crossing locations.

Finding 3

There is a need for increased security presence to reduce trespassing within the High Fatality Zones, and in other communities this has been achieved through Memoranda of Understanding between Union Pacific Railroad and local law enforcement.

The City agrees with Finding 3.

Recommendation 3

That the Santa Barbara County Sheriff and City of Santa Barbara Police Department negotiate Memoranda of Understanding with Union Pacific Railroad to provide enhanced security within their respective High Fatality Zones.

The City's Response:

This has been implemented. The MOU between the City and UP already provides for enhanced security of the UP ROW, and a cooperative agreement to allow access for the Santa Barbara Police Department to conduct limited code enforcement.

Finding 4

Fencing along the railroad right-of-way in the High Fatality Zones is inadequate or nonexistent.

The City disagrees partially with Finding 4.

While some sections of the rail corridor identified as high fatality zones have porous or no fencing, other sections in the same zones have well maintained, effective fencing.

Recommendation 4

That the Cities of Santa Barbara and Goleta, the County of Santa Barbara, and Santa Barbara County Association of Governments collaborate with Union Pacific Railroad to repair and install fencing, to prevent easy access to the Union Pacific Railroad right-of-way in the High Fatality Zones.

The City's Response:

This has been implemented. The current MOU between UP and the City provides for the installation of new fencing as determined cooperatively between the City and UP. The MOU also provides for the maintenance of existing fencing. The City, in cooperation with UP, will continue to evaluate the existing fencing within the City limits in HFZ1, and determine if more or different fencing is needed.

Finding 5

Overgrown foliage and trees provide a natural shelter for homeless encampments.

The City agrees with Finding 5

Recommendation 5

That the County of Santa Barbara and the Cities of Santa Barbara and Goleta encourage Union Pacific Railroad to cut back or remove overgrown trees and foliage within the Union Pacific Railroad right-of-way in the High Fatality Zones.

The City's Response:

This has been implemented. The current MOU provides a cooperative process between the City and UP to identify and manage vegetation in the UP ROW. The City will continue to work with UP to identify and manage vegetation in HFZ1 that could provide shelters for homeless encampments.

Finding 6

Video surveillance cameras provide increased observation of activity by pedestrian trespassers and homeless encampments within the Union Pacific Railroad right-of-way.

The City agrees with Finding 6

Recommendation 6a

That the Cities of Santa Barbara and Goleta, the County of Santa Barbara, and Santa Barbara County Association of Governments encourage Union Pacific Railroad to install and monitor video surveillance cameras on poles every mile within the High Fatality Zone.

The City's Response:

This recommendation requires substantial further analysis. The recommendation deals directly with UP's operations, and only UP can determine the effectiveness and feasibility of any remote monitoring technology, and its integration into rail operations. Within six months, the City will approach UP to discuss the feasibility of installing video surveillance cameras and their effectiveness in reducing trespasser fatalities within HFZ1, and will encourage UP to implement any practical solution to enhance safety in HFZ1.

Recommendation 6b

That County of Santa Barbara and the Cities of Santa Barbara and Goleta, together with Union Pacific Railroad, establish a schedule to monitor the video surveillance cameras between 11 a.m. and 7 p.m.

The City's Response:

This recommendation will not be implemented. This operational recommendation is solely the responsibility of UP, and lies outside the City's responsibility and understanding of UP operations to establish this specific schedule, or to recommend a particular technology to improve safety. It also introduces possible significant liability for the City. The MOU between the City and UP states the following:

Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

The City does not have the right nor the desire to establish safety protocols for UP operations.

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Sincerely,

Cathy Murillo, Mayor
City of Santa Barbara

Attachment: Memorandum Of Understanding

cc: City of Santa Barbara Councilmembers
Pamela Olsen, Foreperson, 2019-2020 Santa Barbara County Grand Jury

26461

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SANTA BARBARA
AND UNION PACIFIC RAILROAD COMPANY**

This Memorandum of Understanding (“MOU”) is made and entered into this 18th day of April, 2019, by and between the City of Santa Barbara, a municipal corporation, hereinafter referred to as “City”, and Union Pacific Railroad Company, a Delaware corporation, hereinafter referred to as “UP”.

RECITALS

A. The City is an oceanfront community located on the Central California coast north of Los Angeles. Residents enjoy local resources that include beaches, an active arts and crafts community, parks and recreation programs, a University of California campus, a zoo, and the Mission Santa Barbara. To promote public health and safety and quality of life for residents, the City endeavors to abate blight and nuisance on public and private property.

B. UP owns and operates approximately 5.9 miles (in distance) of mainline railroad right of way in the City of Santa Barbara (hereinafter referred to as the “Railroad Corridor”), as shown on the map attached as Exhibit “A”. Both freight and passenger trains operate on the Railroad Corridor.

C. Due to its location and nature, the Railroad Corridor experiences trespassing, unlawful encampments, dumping, graffiti, and other illegal activities by third parties despite UP’s efforts to protect against these activities. City police officers and railroad special agents provide law enforcement on the Railroad Corridor.

D. In furtherance of their shared interest in reducing illegal activity and improving public safety, the City and UP entered a Memorandum of Understanding dated April 17, 2007 (as later amended, the “2007 MOU”) to establish a cooperative process for removing trash, debris, illegal encampments, graffiti, and vegetation from the Railroad Corridor. To improve these efforts, the parties now wish to terminate the 2007 MOU and enter a new agreement to memorialize updated terms for their cooperative process.

Now, therefore, City and UP express their understanding as follows:

AGREEMENT

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this MOU.

Section 2. Termination of 2007 MOU.

The parties hereby terminate the 2007 MOU.

Section 3. Cooperative Process.

To help reduce trash, debris, illegal encampments, graffiti, and vegetation from the Railroad Corridor, the parties will do the following:

3.1 City's Participation.

3.1.1 The City will oversee and manage one-day quarterly clean-ups based upon an annual clean-up plan to be prepared by the City, and periodic on-demand clean-ups as necessary not to exceed 15 in one City fiscal (July 1st through June 30th) year. A quarterly clean-up is defined as a City-sponsored clean-up at or along the Railroad Corridor, including but not limited to trash, debris, homeless encampments, graffiti, vegetation and weed removal. An on-demand clean-up is a City-sponsored clean-up that focuses on specific locations that need immediate response to public safety issues or public concerns. The City will provide 10 business days' notice to UP of the dates of the quarterly clean-ups. City will provide a status report to the UP contact person after each clean-up.

3.1.2 The City will regularly provide graffiti removal, including equipment supplies and labor costs. City will provide an annual report to UP on the incidents of graffiti removal.

3.1.4 The City will provide enforcement for areas of the Railroad Corridor in which cars are illegally parking.

3.1.5 The City will conduct joint, periodic inspections of the UP properties located in the City and record the location of any blighted conditions found in such inspections. The City will make available the information concerning location of sites inspected and conditions found for review by UP upon reasonable request.

3.1.6 The City will support and partner with UP on any Railroad Corridor safety awareness.

3.1.7 The City will identify on an ongoing basis areas along the Railroad Corridor that would benefit from fencing or landscaping to reduce criminal activity and provide the specifications for new fencing and existing fencing improvements. All new fencing will be installed on the Railroad Corridor property line.

3.1.8 The City will repair fencing, gates, and barriers protecting the Railroad Corridor from unauthorized entry.

3.1.9 The City will attempt to coordinate City enforcement efforts with UP. In addition, City will make reasonable efforts to work with the UP contact person when

there is an enforcement action in the Railroad Corridor. The City will provide notice for the cleanup of homeless encampments during all City-sponsored clean-up events.

3.1.10 The City will present to UP an annual budget, not to exceed \$82,000.00, by May 30th preceding each City fiscal year for City work on the Railroad Corridor. The budget will include unit cost breakdowns for all work. The City will cease all work in the Railroad Corridor and notify UP when budgeted funds are exhausted in the given fiscal year. Work will continue if UP approves additional work and provides adequate additional funding.

3.1.11 The City will submit bills for reimbursement to UP on a monthly basis.

3.1.12 As needed, the City will attend meetings with UP to discuss this MOU.

3.1.14 The City will work with UP on surveillance, sweeps, and "stings" along the Railroad Corridor related to enforcement, including specifically drug activity, graffiti, and other criminal behavior.

3.2 UP's Participation.

3.2.1 At no cost to the City, if needed UP will provide rail equipment to City, required flagging, and labor to assist in City clean-ups as set forth in this MOU.

3.2.2 UP will reimburse the City, up to the maximum amount set forth in Section 3.1.10 above, for the cost of clean-ups and graffiti removal from UP owned structures, and for the cost of repairing and maintaining fencing, gates, and barriers protecting the Railroad Corridor from unauthorized entry. The City will perform work as specified above and will not exceed the annual budget provided to UP without UP's prior approval. UP will pay reimbursement within 30 days of receipt of an invoice from the City.

3.2.3 UP will work with City to develop ways to prevent illegal parking on the Railroad Corridor (e.g., use of boulders, signage, etc.).

3.2.4 UP will conduct joint, quarterly inspections of the UP properties located in the City and record the location of any blighted conditions found in such inspections. The information concerning location of sites inspected and conditions found will be made available for review by the City upon reasonable request.

3.2.5 UP will install and maintain "No Trespassing" and "No Dumping" signs at designated UP locations adjacent to City property to be determined in consultation with City representatives. The signs will provide contact information for UP and the City to report illegal dumping and will be printed in English and Spanish.

3.2.6 UP will install fences or adequate barriers at specified UP properties to be determined in consultation with City representatives. The fences or barriers must be of a type, design, and material mutually acceptable to both parties.

3.2.7 UP will work with the City with surveillance, sweeps, and "stings" along the Railroad Corridor related to enforcement, including specifically drug activity, graffiti, and other criminal behavior.

3.2.8 UP will instruct UP employees to report to the City any criminal activity and areas with graffiti, trash, and encampments that UP the UP employees may observe.

3.2.9 Upon request from the City, UP will provide updated police authorization letters to the City so that the City's Police Department may cite illegal trespassers, tow illegally parked vehicles, and perform other law enforcement activities on UP's property.

3.2.10 As needed, UP will attend meetings with the City to discuss this MOU.

Section 4. City Access to UP Property.

4.1 By this MOU, UP grants the City a limited right of entry to the Railroad Corridor for the City to perform Clean Ups, graffiti removal, and law enforcement activities as outlined in this MOU.

4.2 Notwithstanding Section 4.1, the City may not have personnel, equipment, materials, or vehicles within 25 feet of a track on the Railroad Corridor unless and until a railroad flagman is present and any additional safety measures required by UP have been met. The City may request a flagman by calling the UP representative identified in Section 8.7 at least 48 hours before the City's proposed entry.

4.3 Notwithstanding anything to the contrary in this agreement, City law enforcement personnel are not required to request a flagman before entering the Railroad Corridor or coming within 25 feet of a track for purposes of enforcing criminal laws, including the pursuit of graffiti vandals or others involved in criminal activity on or about railroad property.

Section 5. UP Compliance

The parties agree that UP's compliance with all of the substantive terms of this MOU will be deemed to constitute good faith compliance with the City's laws and regulations regarding abatement of vegetation, graffiti, and trash.

Section 6. Indemnity.

Each party to this MOU will be responsible for its own acts and omissions in relation to its performance of the MOU, including, without limitation, death or injury to employees or third parties, damage to property, and compliance with applicable laws. The party responsible for such a loss will indemnify, defend, and hold harmless the other party from and against any claim arising from such an incident, except to the extent that such a claim arises out of the acts or omissions of the party seeking indemnity. Nothing in this MOU is meant to be or will be construed to be a modification

or waiver of any defense or immunity against a claim that is available to either party under applicable law.

Section 7. Term.

This MOU will be effective when signed by the City and UP. The parties will review this MOU at least once every three years to determine whether it should be revised, updated, or terminated. Either party may terminate this MOU by providing 90 days written notice to the other party.

Section 8. GENERAL PROVISIONS.

8.1 Governing Law. Except on subjects preempted by federal law, this MOU will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UP because of its status as a common carrier regulated by the federal government.

8.2 Interpretation. The section and paragraph headings in this MOU are for convenience only and will not be used for any purpose in the interpretation of this agreement. When the context requires, the plural will include the singular and the singular the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this MOU, except where the context requires otherwise.

8.3 Amendments. This MOU may only be modified or changed by written amendment signed by authorized representatives of the parties.

8.4 Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

8.5 Assignment. This MOU and any rights and obligations created by it may not be assigned in whole or in part by either party without the prior written consent of the other party.

8.6 Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this MOU must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by either party of any breach will be deemed a waiver of any other or subsequent breach.

8.7 Notices. Any communication, notice, or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

UPRR: Union Pacific Railroad Company
Attn: Kristina Stonner
Manager II Programs
1400 Douglas Street, Mail Stop 1080
Omaha, NE 68179
Telephone: (402) 544-8007

With a copy to:

Patrick R. McGill

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
Telephone: (402) 544-5761

City: Jim Dewey
City of Santa Barbara
Public Works Department, Attention Streets Operations &
Infrastructure Manager 630 Garden Street
Santa Barbara, CA 93101
Telephone: (805) 564-5599

Without requiring an amendment to this MOU, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

8.8 No Third-Party Beneficiaries. This MOU is for the exclusive benefit of the parties to it and not for the benefit of any third party.

8.9 Entire Agreement. This MOU constitutes a single, integrated, written contract expressing the entire agreement of the parties on the subjects addressed herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by either party, except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and superseded by, this MOU.

8.10 Authority and Binding Effect. Each individual executing this MOU affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this MOU and, through his or her execution, bind the party on whose behalf he or she is executing the MOU.

8.11 Counterparts. This MOU may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

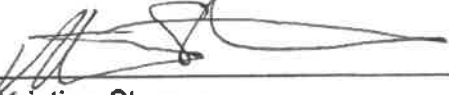
[Signature Page Follows]

The parties have executed this MOU on the date first written above.

CITY OF SANTA BARBARA

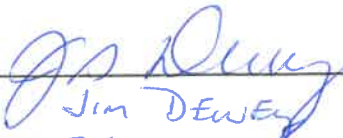
UNION PACIFIC RAILROAD COMPANY

BY: 
Paul Casey
City Administrator

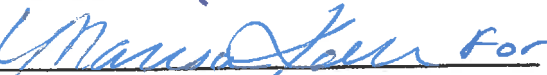
BY: 
Kristina Stonner
Manager II Programs

Dated 4-18-19

APPROVED AS TO CONTENT:

BY: 
Jim DEWEY
STREETS OPERATIONS MGR.

APPROVED AS TO INSURANCE:

BY: 
Mark Howard
Risk Manager

APPROVED AS TO FORM:

Ariel Calonne
City Attorney

BY: 
John Barnes
Assistant City Attorney