



CITY OF DEL MAR™

January 11, 2022

Chair Kranz and Board of Directors
North County Transit District
810 Mission Avenue
Oceanside, CA 92054
mtucker@nctd.org

SENT VIA EMAIL

Re: North County Transit District (NCTD) Board Item Regarding Del Mar Fencing

Dear Chair Kranz and Members of the Board of Directors:

This letter is sent on behalf of the City of Del Mar, with the endorsement of the full City Council, in response to your recent letter dated January 4, 2022, and in anticipation of the upcoming NCTD Board item on January 20, 2022, regarding Del Mar fencing. We appreciate the opportunity to provide some insight on this matter from the City's perspective and to confirm the City's position with regard to the installation of fencing along the railroad right-of-way in Del Mar.

As you noted in your letter, staff from the City of Del Mar (City), California Coastal Commission (CCC), and NCTD (collectively "Parties") spent the entirety of a year engaging in good faith discussions working toward mutual agreement with regard to a proper process for review of NCTD projects, including fencing, and to develop a modified fence and enhanced safety proposal that would achieve the mutual goals and priorities of the Parties.

The attached document titled, "*City of Del Mar Priorities for Addressing the Rail Right-of-Way Through the Del Mar Bluffs*" was adopted by the City Council at a public meeting on November 23, 2020, and details the City's priorities including public safety and access; reducing liability for all public entities; environmental review and compliance; avoiding or minimizing impacts to neighbors; preserving trails and viewpoints; and ensuring cooperation among government entities and opportunity for public input.

In keeping with the identified City priorities, the City consistently requested the following throughout the collaborative discussion process among the Parties and asks for NCTD Board consideration of the same:

- 1. Enhanced Safety Through Targeted Fencing at Track Level.** The City proposes that NCTD limit the installation of fencing to the area from Coast Boulevard to 13th Street, or potentially as far as 11th Street, with increased safety signage. This

would enhance public safety and avoid impacts to adjoining public and private property, viewpoints, and overlooks along the natural, scenic, and sensitive Del Mar Bluff.

This proposal is supported by NCTD's data, which identifies the number of fatal and non-fatal incidents per mile that occurred from Oceanside to San Diego during 2010 to 2020, with milepost and date. NCTD's data shows the number of fatal and non-fatal incidents that occurred between Coast Boulevard and 13th Street in Del Mar was higher in comparison to the number and frequency of incidents that occurred in other stretches of coaster track within North County. This data also indicates a comparatively very low incident rate for the stretch of track between 13th Street and the City's southern border. These statistics support concentrating fencing and other increased public safety measures specifically in the area from Coast Boulevard to 13th Street, or as far as 11th Street, at track level.

Another particular concern remains NCTD's proposed fencing of the entire eastern upper bluff in Del Mar. This is unnecessary because the vast majority of the upper bluff does not allow for track level access. Fencing the upper bluff will not address legitimate safety concerns or reduce liability exposure for on-track incidents. Demarcation fencing and safety signage could be installed rather than the proposed 4-foot post and cable fencing. Demarcation fencing and safety signage would still achieve the goal of enhancing safety and decreasing liability while avoiding impacts to existing drainage systems, and adjoining public and private property, preserve viewpoints and overlooks, and mitigate unnecessary environmental and geotechnical impacts to the fragile and sensitive upper bluff.

- 2. Completion of Coastal Connections Study.** The City continues to request that the need for additional fencing beyond the area between Coast Boulevard and up to 13th or 11th Street be deferred for consideration until the San Diego Association of Governments (SANDAG) Coastal Connections Conceptual Planning Study has been completed. Legal crossings and access improvements would allow for safe public access across the tracks and to the beach, which is a critical consideration when planning for fencing along the rail right-of-way.

The Coastal Connections Study is currently underway and expected to be complete in summer 2022. Among other things, study outcomes will provide 4-6 potential pedestrian access improvements including conceptual design, implementation plans, and potential funding sources. This information will be presented to the City Council, and SANDAG and NCTD Boards at the completion of the study.

- 3. License Agreement.** The City cannot agree to consider accepting maintenance and liability for the fencing improvements within the License Area as required by NCTD, or fully evaluate the impacts to the City in doing so, without more substantive information. To better understand and evaluate the proposed fencing,

and terms of the related NCTD License Agreement, the City has repeatedly asked, and reiterates its request for the following:

- Construction drawings related to proposed fencing along the Del Mar Bluffs;
- Material and manufacturer specifications related to the proposed fencing;
- Licensed professional civil or structural engineered designs or plans related to the proposed fencing;
- Licensed professional geotechnical, drainage, or hydrological studies or reports related to the proposed fencing; and
- Licensed professional surveys, maps, or legal descriptions related to the proposed fencing.

4. Environmental Review and Compliance. The City has consistently requested additional environmental review and geotechnical analysis of the potential impacts the fencing project would have on the fragile Del Mar bluffs.

The approved 2018 Caltrans grant funding application submitted by LOSSAN, NCTD, and SANDAG, included \$200,000 for environmental review related to the fencing project; however, it appears that the grant was subsequently amended in September 2020 to reallocate those funds to project construction, and the comprehensive and critically needed environment review for this project was never completed.

It should also be noted that although NCTD has consistently indicated that SANDAG is not a party to the fencing project, we disagree. SANDAG was a co-applicant with NCTD for the Caltrans funding that was approved for the fencing project, and there is a strong nexus between the SANDAG Del Mar Bluffs 5 project and NCTD's fencing project.

The City asks that NCTD work with SANDAG to complete the environmental review for the fencing in conjunction with the Del Mar Bluffs 5 project to ensure that any environmental impacts resulting from the fencing are identified and properly mitigated prior to finalizing the fence design and installation.

5. Collaboration. All government entities with a stake in these issues should continue to cooperatively participate in their resolution, including NCTD, CCC, SANDAG, and the City of Del Mar. The City and Coastal Commission have consistently requested that SANDAG be included in the discussions related to the fencing project as their input and coordination between the Del Mar Bluffs 5, Coastal Connections Study, and fencing project is essential.

In closing, The Del Mar bluffs are one of the last remaining native coastal bluffs in San Diego. The bluffs are sensitive and must be preserved. The City of Del Mar, through the California Coastal Commission, wants to protect the bluffs as a valuable natural resource to the public. Del Mar also recognizes the need for safety measures along the rail line that traverses the Del Mar bluffs. Fencing in some areas may improve safety. Legal

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crossings coupled with other safety measures, such as signage and advanced warning systems, could greatly enhance public safety and are viable options instead of installing fences in areas where it is already difficult, if not impossible, to access the railroad tracks. Del Mar fails to understand why NCTD's current position is such a harsh "take it or leave it" posture after all the progress we have made so far.

Sincerely,

A handwritten signature in black ink that reads "D. Dwight Worden". The signature is written in a cursive, flowing style.

Dwight Worden
Mayor

Enclosures: City of Del Mar Priorities in Addressing Rail ROW in Del Mar 11-23-20

cc: Del Mar City Council
Ashley Jones, City Manager
Leslie Devaney, City Attorney
Bill Pate, Assistant City Attorney
Jack Ainsworth, CCC Executive Director
Matt Tucker, NCTD Executive Director

City of Del Mar Priorities in Addressing the Rail Right-of Way Through the Del Mar Bluffs

Adopted November 23, 2020 by the Del Mar City Council

The City of Del Mar seeks cooperative resolution of rail safety and access issues on the Del Mar Bluffs in conformance with the following City priorities:

1. **SAFETY.** Public safety is the number one criterion.
2. **PUBLIC ACCESS.** The ability of the public to safely access the coast, including Del Mar's bluff-top trails, is a priority.
3. **LIABILITY.** Reducing the liability exposure of all agencies and entities involved in rail operations on the Del Mar bluffs is a priority.
4. **ENVIRONMENTAL.** All rail related activities on the Del Mar bluffs should be done in conformance with applicable environmental standards, including the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), the California Coastal Act, and Del Mar's certified Local Coastal Program (LCP), and should include appropriate mitigation.
5. **IMPACTS TO NEIGHBORS.** Avoiding or mitigating impacts to adjoining public and private property is a priority as to noise, vibration, view impacts, and privacy.
6. **TRAILS AND VIEWPOINTS.** Viewpoints, overlooks, and access trails to and along the railroad right-of-way should be preserved, augmented, or replaced where feasible.
7. **COOPERATION.** All government entities with a stake in these issues should participate in their resolution, including participating in discussion of funding options and constraints. Agencies involved should include: the North County Transit District (NCTD), the California Coastal Commission (CCC), SANDAG, AMTRAK, BNSF, the California Transportation Commission (CTC), and the City of Del Mar.
8. **PUBLIC INPUT.** Input from the public, including from organizations and individuals, should be welcomed and considered in the decision-making process.