

**Fact Check:
How Well Have Del Mar's NCTD Representatives, Terry Gaasterland and
Dave Druker, Protected Del Mar's Interests?**

The STB Petition, Fencing, and a Safe Crossing

With two recent surprise actions by NCTD – legal action against Del Mar in the form of an STB petition, and revival of plans to fence 1.4 miles of the tracks in Del Mar, it appears that Del Mar's relationship with NCTD under the leadership of our representatives on the NCTD Board, Terry Gaasterland and Dave Druker, is in tatters, and our prospect for a safe crossing on the bluffs will be addressed instead by fencing.

STB Petition:

On August 28, NCTD filed a petition against the City of Del Mar and the Coastal Commission, seeking a ruling from the federal Surface Transportation Board exempting NCTD from all Del Mar and Coastal Commission jurisdiction over the rail line through Del Mar: no review of fencing, seawalls, bluff work, no local mitigation for any such work, and no say in relocating the rail line off the bluffs. The NCTD Board authorized the filing of the STB petition. Del Mar's representatives on the NCTD Board are Terry Gaasterland (primary) and Dave Druker (alternate).

Bottom line: Councilmember Druker recused himself from an NCTD Board closed session on "initiation of litigation" against Del Mar, and neither he nor Deputy Mayor Gaasterland informed the Council or City staff of this closed session agenda item so that the City could investigate or undertake discussions with NCTD to try to resolve the issues short of litigation. The City did not learn of the STB Petition until August 28, more than 3 months after the closed session.

Facts relating to the STB Petition:

1. The NCTD Board held a closed session on the STB petition at its May 21, 2020 meeting. The agenda for the closed session was described as "one potential case, initiation of litigation based on existing facts and circumstances." According to NCTD spokeswoman Kimy Wall, "the Del Mar representative had a direct agency conflict that precluded participation in the Closed Session. The Del Mar Representative was informed and voluntarily recused."
2. Despite being informed of this "direct agency conflict," which clearly indicated that the "initiation of litigation" involved the City of Del Mar, neither Druker nor

Gaasterland informed the Council or staff that the NCTD Board had a litigation matter against Del Mar on its May 21 closed session agenda.

3. NCTD records show that Terry Gaasterland left the May 21 Board meeting at 3pm. NCTD board records do not show that she recused herself or was excluded from the closed session, which started a half-hour after she left the meeting. When she left at 3pm, she was immediately replaced by Dave Druker.

4. The closed session began at approx. 3:30 pm, at which point Druker said this in recusing himself, according to the audio recording of the meeting: "Before you go into closed session, this is Dave Druker from Del Mar and because this is based upon a letter that we did send in, I will be recusing myself from this closed session."

5. The City Manager confirmed to the Sandpiper that she first learned of the STB petition on August 28, the date it was filed and served. "Prior to that I had no formal notice nor informal discussions from anyone about NCTD's effort." Nor did Druker or Gaasterland ever report to the Council that NCTD had held a closed session on "initiation of litigation" that involved Del Mar.

6. The filing of the STB petition triggered a 20-day time to respond. Del Mar lost more than three months' time, from May 21 to August 28, to investigate the "initiation of litigation" agenda matter, and to undertake discussions with NCTD to try to seek compromise or to resolve the issues short of litigation.

Fencing the Tracks and Getting a Safe, Legal Crossing:

In 2019, NCTD began plans for potential fencing on the Del Mar Bluffs. The Council acknowledged legitimate safety concerns, but contended that there were solutions other than fencing. Del Mar asked NCTD to look at all options, not just fencing, and NCTD agreed. **On October 9, 2020, NCTD surprised Del Mar by dropping a completed study supporting the proposed fencing and demanding a 15-day response.**

The study: In the months leading up to the October 9 "surprise," neither of Del Mar's NCTD Board representatives, Druker or Gaasterland appear to have reported any details to City Council about the status of the study, despite requests from other Councilmembers for a status update. Indeed, when the safety study was discussed at the June 3, 2019 Council meeting, Councilmember Worden stated, "It's important that...you two [Druker and Gaasterland] as the subcommittee stay on top of this so we don't get surprised with – oops, here's the study and it's a fence that we know everyone hates." It does not appear from their reports to Council that Druker and Gaasterland did "stay on top of it" to promote Del Mar's perspective as part of the study, or to ensure that non-fencing options were fully considered.

Our NCTD reps appear to have dropped the ball on this important issue.

Nor have they made any reported progress on the task of getting a safe and legal crossing across the tracks, which they had primary responsibility for based on Council action and their status as Del Mar's NCTD reps. Druker was quoted on October 2018, when he was Del Mar's primary representative on the NCTD Board, that "the city is 'working diligently' to create bluff access in Del Mar." The Coast News reported, "There is currently only one legal crossing at 15th street. He [Druker] said the city is considering crossings at 8th and 11th streets." (Coast News, Oct. 18, 2018). In the time since then, Druker and Gaasterland have apparently made no progress on this issue.

Bottom line: On the important issues of fencing and safe crossing across the tracks along the bluffs, as well as the STB petition, Druker and Gaasterland's leadership appears to be missing in action. They owe the Del Mar community an explanation.