

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 36433

**NORTH COUNTY TRANSIT DISTRICT -  
PETITION FOR DECLARATORY ORDER**

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**SUPPLEMENTAL STATUS UPDATE**

North County Transit District (“NCTD”) respectfully submits its Supplemental Status Update to advise the Surface Transportation Board (“STB”) of recent relevant events with respect to the above-captioned proceeding since its last Status Update on December 30, 2021. These recent events make NCTD’s request for expedited consideration of its petition for declaratory order even more urgent at this time for the safety fencing project which the NCTD Board directed the project to commence following its January 20, 2022 Board meeting.

As background, on August 28, 2020, NCTD filed a petition for declaratory order relating to certain actions of the City of Del Mar, Cal. (“City”) and the California Coastal Commission (“Commission”) regarding NCTD’s rail line maintenance and other upgrading activities in its rail right-of-way, specifically two separate projects for safety fencing and bluffs stabilization. Numerous filings were received in response to the petition. On November 6, 2020, NCTD filed a motion to hold this proceeding in abeyance, stating that it recently had constructive discussions with the City and the Commission and that the three parties agreed that they should engage in further discussions to attempt to resolve the matters at issue. The STB granted NCTD’s

unopposed request and held this proceeding in abeyance until March 30, 2021, and directed NCTD to file a status update by that date. On March 29, 2021, NCTD filed a status report, stating that it, the City, and the Commission had engaged in further constructive discussions and that the parties had agreed that settlement discussions should continue. (NCTD Status Report 2-3.) As such, NCTD, with the concurrence of the City and the Commission, requested that the STB continue to hold this matter in abeyance until December 31, 2021. (*Id.* at 1, 3.) The STB stated that it favors the private resolution of disputes whenever possible and granted the request, continuing to hold this matter in abeyance until December 31, 2021. The STB directed NCTD to file a status update by December 31, 2021.

For more than a year, the City, Commission, and NCTD attempted to resolve the issues regarding these projects raised in NCTD's petition, including talks about the terms of a license agreement that included a modified safety fencing plan in the City. Unfortunately, the parties failed to reach an agreement by the December 31, 2021 deadline.

As a result, on December 30, 2021, NCTD filed its status update pursuant to the order served on April 7, 2021 and moved the STB to lift the order holding this proceeding in abeyance and to place this proceeding in active status because the negotiations had not been successful. NCTD also explained that because the railroad projects at issue will begin soon, it requested that the STB expedite this proceeding to ensure the parties understand their obligations under the applicable laws.

On January 14 and 18, 2022, the City and the Commission each respectively filed responses to the status update, including motions for the STB to order the matter into its mediation program. NCTD opposed the request for STB mediation because it believed the

parties were at an impasse in their negotiations. The STB has not ruled on this request by the City and Commission.

### ***Safety Fencing Project on Del Mar Bluffs***

On January 20, 2022, the NCTD held a Board Meeting during which its Board approved a contract for the railroad right-of-way safety fencing installation in the City. The Board approved the installation of a modified fencing plan contingent on the City executing a license agreement that would include the acceptance of liability for use of NCTD's right-of-way for an upper bluff trail and maintenance by February 28, 2022. In the event the City failed to enter into a license agreement by that date, the Board authorized the NCTD Executive Director, Matthew Tucker, to proceed with the standard fencing plan in the right-of-way.<sup>1</sup>

Following the NCTD Board decision, NCTD reached out to the City expressing a willingness to consider further modifications to the terms of the license agreement in hopes of reaching agreement prior to the February 28, 2022 deadline. Following meetings between executive staff and legal counsel from NCTD and the City, which also included representatives of the Commission, a revised license agreement was agreed to by NCTD and the City subject to the City Council's approval.

On February 28, 2022, the City Council held a special meeting to consider the license agreement between NCTD and the City for public use of the NCTD right-of-way. The license agreement addressed the safety fencing project, public access to the upper bluff within the right-

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<sup>1</sup> Minutes of the Special and Regular Meetings of the NCTD's Board of Directors, Jan. 20, 2022, at 7, <https://lfportal.nctd.org/weblink/0/edoc/194186/Board%20Minutes%20-%2001202022%20-%20Special%20%20Regular%20Meeting.pdf>

of-way, maintenance of the fence, liability, and other matters.<sup>2</sup> The City Council rejected the license agreement at the special meeting.<sup>3</sup>

Moreover, on February 28, 2022, the Commission issued a letter and a corrected version of the letter to the City Mayor and Council fully supporting the license agreement. (Attached hereto as Exhibits A and B). However, the letters provided that “prior to the installation of any fencing, the project must be reviewed and approved pursuant to a Coastal Development Permit or concurrence in a Federal Consistency Certification.” Because there is no federal action related to this safety fencing project, the Commission is asserting that NCTD must obtain a state permit to build this rail safety enhancement in its railroad right-of-way. This assertion is at the heart of NCTD’s petition to the STB.

As noted in NCTD’s reply to the City’s and Commission’s motions for STB-sponsored mediation, NCTD has not proceeded with the safety fencing project in the interest of encouraging resolution of this matter over the sixteen months this proceeding has been held in abeyance. During this time, there have been 1,828 train incidents involving trespassers on the NCTD rail line in the City, including 1 fatality. From June 2016 through June 2021, there have been 6 deaths and 3 serious injuries on the NCTD rail line in the City. On March 2, 2022, a person fell from the bluffs at a location where the safety fencing will be located and required first responders to extract the person from the bluffs. There was a risk to the person falling onto the

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<sup>2</sup> Special Meeting Agenda, Feb. 28, 2022, <https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/02282022-2932>

<sup>3</sup> San Diego Union-Tribune, *Del Mar Rejects Modified Plan for Railroad Fence*, Mar. 1, 2022, <https://www.sandiegouniontribune.com/communities/north-county/del-mar/story/2022-03-01/del-mar-rejects-modified-plan-for-railroad-fence>

active rail tracks. NCTD cannot emphasize enough how dangerous this rail line is in the City and how important this safety fencing project is to safe rail operations and the public.

Safety is the number one priority of NCTD regarding its rail operations. It works tirelessly to protect the safety of San Diego County citizens and visitors, the Amtrak and NCTD passengers on its rail line, and the Amtrak, NCTD, and BNSF employees who work on this rail line. The Federal Railroad Administration requires in 49 CFR Part 270 – System Safety Program that, “passenger rail operations...establish a system safety program that systematically evaluates railroad safety hazards and the resulting risks on their systems and manages those risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities.” The Federal Transit Administration requires in 49 CFR Part 673 - Public Transportation Agency Safety Plan that, “a transit agency must establish methods or processes to identify hazards and consequences of the hazards,” and “identify mitigations or strategies necessary as a result of the agency’s safety risk assessment to reduce the likelihood and severity of the consequences.” Both respective NCTD Safety Plans based on the regulations above state that the NCTD will identify hazards and perform safety risk evaluation activities to “eliminate or mitigate the safety risks of the consequences of the hazards resulting from transportation activities to the point that is As Low As Reasonably Practical (ALARP).” NCTD cannot in good faith further delay the safety fencing project and risk any additional unnecessary loss of life or injuries on its watch. As a result, NCTD plans to begin construction of this safety fencing as directed by its Board.

NCTD has recently built and/or has an approved project for safety fencing in its right-of-way on its rail line in the nearby cities of Oceanside and Encinitas and received no opposition from the governing bodies of these communities. In addition to helping to prevent these devastating accidents involving trespassers, these safety fencing projects help to lessen rail

service delays, traumatization of rail employees, and railroad property damage as a result of trespasser incidents on the rail line<sup>4</sup>.

Despite the clear danger of this rail line, NCTD is faced with elected officials from the City of Del Mar and Commission staff and legal representatives who disregard the fact that it is illegal for the public to trespass on these rail tracks to reach the beach at points that are not legal for crossing and consistently state that public access over the rail line is a right that NCTD cannot impede with its safety project.

On March 3, 2022, the Commission sent a letter to NCTD putting it on notice that a Cease and Desist Order is forthcoming from the Commission as it relates to the safety fencing project if NCTD fails to commit that it will not begin work on the installation of fencing along the Del Mar bluff in the rail right-of-way without a Coastal Development Permit (CDP) that is in full force and effect by March 7, 2022.<sup>5</sup> (Attached hereto as Exhibit C). The Commission is taking the position that NCTD's safety fencing wholly within its railroad right-of-way is "development" subject to the Commission's regulatory authority requiring a CDP and compliance with the Coastal Act and the City's Local Coastal Program. The letter also included a Notice of Intent to Commence Proceedings for the Issuance of a Cease and Desist Order, an Advance Notice of Restoration Order, and an Advance Notice of Administrative Civil Penalties and Exemplary Damages, The letter gives NCTD until March 7, 2022 to respond in order to

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<sup>4</sup> See Federal Railroad Administration, "National Strategy to Prevent Trespassing on Railroad Property." *Report to Congress*, October 2018

<sup>5</sup> The Commission sent this letter to NCTD despite the 2002 STB and federal court decisions finding preemption of the Coastal Act state permitting process by the Interstate Commerce Commission Termination Act (49 U.S.C. § 10501(b)) involving NCTD and the City of Encinitas, CA. See *City of Encinitas v. North San Diego County Transit Development Board, et al.*, 2002 WL 34681621 (S.D. Ca. 2002); *North San Diego County Transit Development Board – Petition for Declaratory Order*, FD No. 34111 (STB served Aug. 21, 2002).

prevent the issuance of a cease and desist order and until March 23 to provide a Statement of Defense to the allegations with a Commission hearing, if required, to be held in June 2022. The Commission is threatening to levy penalties and other actions if NCTD were to advance activities to reduce trespassing on its railroad right-of-way without providing any evidence that it has the authority to waive State law that expressly makes it illegal to trespass on railroad right-of-way or regulations promulgated by the Federal Railroad Administration, the Federal Transit Administration, or the California Public Utilities Commission. (See Exhibit C). Accordingly, the need for a decision on this preemption issue that has been placed before the STB regarding the safety fencing project has become urgent.

### ***Del Mar Bluffs Stabilization Project***

There are operational risks associated with operating rail service on the Del Mar bluffs due to bluff failures.<sup>6</sup> As it relates to the stabilization of the bluffs, significant safety risks have been created and are ongoing due to the actions of the Commission in collaboration with the City. Since 2003, the San Diego Association of Governments (“SANDAG”) and NCTD have completed four stabilization projects along the coastal bluffs between Coast Boulevard and Torrey Pines State Beach. Bluffs Project 4 was initiated in late February 2021 due to a bluff collapse that required emergency repairs which included installing support columns into the bluffs to protect the tracks, rebuilding the bluff slope from the bottom up, installing sea walls to protect the toe of the bluffs, and installing drainage infrastructure to prevent further erosion. It is well documented that the pace of bluff erosion is accelerating and that no one knows if or when a significant failure could occur. Accordingly, NCTD and SANDAG collaborated with local,

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<sup>6</sup> See Amtrak OIG Report, *Safety and Security: More Active Engagement with Regional Partners Would Improve Awareness of Potential Operational Risks on the Pacific Surfliner Route*, Dec. 6, 2021. (Attached hereto as Exhibit D).

state, and federal stakeholders to identify funding to support safety improvements to address the accelerating failure events that were being experienced that caused both delays and shutdowns of rail operations.

NCTD and SANDAG have secured sufficient funding to stabilize the bluffs for 50 years. The Commission and the City are engaging in activities that will delay the implementation of the project, reduce the useful life of the project, and require NCTD to redirect critical funding to build pedestrian crossing for one of the most affluent communities in the United States.<sup>7</sup> NCTD is not willing to accept the risk of delay, redirecting of critical safety funding that is not consistent with its Transit Asset Management plan, or be subjected to future failures based on an assumption that a multi-billion-dollar tunnel will be built to move the rail traffic off the bluffs and sufficient funding will be provided to support its maintenance at some point in the future.

Specifically, the Commission, through purported regulatory authority, is engaging in the following activities in collaboration with the City:

1. Actively delaying the issuance of a permit under a Federal Consistency Review for a safety critical project within the railroad right-of-way to stabilize a portion of NCTD's track bed that sits on bluffs in Del Mar without a commitment from NCTD to commit over \$8 million in taxpayer funding to create a pedestrian crossing over the rail where no such crossings exist today.
2. Conditioning the approval of a permit to initiate construction of the bluff stabilization project by requiring changes in the project design that reduced the useful life of improvements from 50 to 30 years and an agreement to build a multi-billion-dollar

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<sup>7</sup> See Letters between Commission and SANDAG in Jan. 2022. (Attached hereto as Exhibits E and F).

tunnel. The modified scope required the implementation of seawalls which now the Commission is using as a basis to extract \$8 million from NCTD far beyond the stabilization project costs for loss of recreational activities at beach level at the toe of the bluff.

3. Inviting residents and visitors to illegally trespass on NCTD railroad right-of-way property, including scaling unsafe bluffs and crossing railroad tracks where no safe and legal crossings exist by consistently referring to railroad trespassing as “public access”; and specifically conditioning the approval of a permit to initiate construction of the bluff stabilization project by requiring public access across the railroad track to “mitigate” the impacts to the stated “public access”<sup>8</sup>.

Based on the foregoing, NCTD respectfully urges the STB to issue a decision on the preemption issues it raised in its petition herein as soon as possible especially with respect to the safety fencing project which NCTD will commence construction of imminently.

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<sup>8</sup> See Federal Consistency Review letter from Commission, Oct. 29, 2021. (Attached hereto as Exhibit G).

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott  
GKG Law, P.C.  
1055 Thomas Jefferson St., NW  
Suite 500  
Washington, DC 20007  
(202) 342-5248  
[delliott@gkglaw.com](mailto:delliott@gkglaw.com)

Attorney for North County Transit District

Dated: March 4, 2022

**Certificate of Service**

I certify that I have, this 4th day of March 2022, served by email copies of the foregoing document on all parties of record in this proceeding.

/s/ Daniel R Elliott  
Daniel R. Elliott  
Attorney for North County Transit District

# **Exhibit A**

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



February 28, 2022

Mayor Dwight Worden and Councilmembers  
Del Mar City Council  
1050 Camino Del Mar  
Del Mar, CA 92014

Re: Del Mar Bluffs License Agreement

Dear Mayor Worden and Councilmembers:

The California Coastal Commission (Commission) staff understands that the City of Del Mar is considering a license agreement with North County Transit District (NCTD) to maintain public access to the upper bluffs in Del Mar within NCTD's rail right-of-way. Commission staff acknowledge that the license agreement is an important step toward ultimately addressing issues surrounding public access and safety in the rail corridor and fully supports these efforts. However, Commission staff also understands that the proposed agreement requires NCTD to install fencing along the rail corridor. Please note that prior to the installation of any fencing, the project must be reviewed and approved pursuant to a Coastal Development Permit or concurrence in a Federal Consistency Certification.

Commission staff has been working closely with City and NCTD staff to identify a fence design that will minimize coastal resource impacts. While we recognize the modified fence plan is an improvement upon the original fence plan proposed by NCTD, Commission staff must note that all coastal resource issues will need to be addressed during the coastal permit or federal consistency review process, including but not limited to the minimization of visual resource impacts, protection of sensitive habitat and the provision of public access to the beach.

We look forward to continuing our collaboration with the City and NCTD to ensure the project is implemented consistent with the Coastal Act.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ainsworth".

John Ainsworth  
Executive Director

Cc: Ashley Jones, City of Del Mar (email)  
Matthew Tucker, NCTD (email)

# **Exhibit B**

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



February 28, 2022  
[Corrected Version]

Mayor Dwight Worden and Councilmembers  
Del Mar City Council  
1050 Camino Del Mar  
Del Mar, CA 92014

Re: Del Mar Bluffs License Agreement

Dear Mayor Worden and Councilmembers:

The California Coastal Commission (Commission) staff understands that the City of Del Mar is considering a license agreement with North County Transit District (NCTD) to maintain public access to the upper bluffs in Del Mar within NCTD's rail right-of-way. Commission staff acknowledge that the license agreement is an important step toward ultimately addressing issues surrounding public access and safety in the rail corridor and fully supports these efforts. However, Commission staff also understands that the proposed agreement acknowledges NCTD's plans to install fencing along the rail corridor. Please note that prior to the installation of any fencing, the project must be reviewed and approved pursuant to a Coastal Development Permit or concurrence in a Federal Consistency Certification.

Commission staff has been working closely with City and NCTD staff to identify a fence design that will minimize coastal resource impacts. While we recognize the modified fence plan is an improvement upon the original fence plan proposed by NCTD, Commission staff must note that all coastal resource issues will need to be addressed during the coastal permit or federal consistency review process, including but not limited to the minimization of visual resource impacts, protection of sensitive habitat and the provision of public access to the beach.

We look forward to continuing our collaboration with the City and NCTD to ensure the project is implemented consistent with the Coastal Act.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ainsworth".

John Ainsworth  
Executive Director

Cc: Ashley Jones, City of Del Mar (email)  
Matthew Tucker, NCTD (email)

# **Exhibit C**

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 228  
SAN FRANCISCO, CA 94105  
FAX (415) 904-5400  
TDD (415) 597-5885

**VIA CERTIFIED AND ELECTRONIC MAIL**

March 3, 2022

Mathew Tucker  
Executive Director  
North County Transit District  
810 Mission Avenue  
Oceanside, CA 92051  
(Certification No. 7015 1730 0000 9497 3329)

- Subject:** Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Proceedings for the Coastal Commission's Issuance of a Cease and Desist Order.
- Property Location:** The railroad corridor of the LOSSAN railroad between Coast Boulevard (Mile Post 244.1) and North Torrey Pines Road (Mile Post 245.7) in the City of Del Mar in San Diego County. This area includes the properties currently identified by the San Diego County Assessor's Office as APNs 299-240-24-00; 300-073-01-00; 300-95-01-00; 300-175-01-00; 300-183-03-00; and 300-174-14-00.
- Threatened Violation<sup>1</sup>:** The proposed installation of a large-scale fencing project along the Del Mar bluffs without a Coastal Development Permit.

Dear Mr. Tucker:

The purpose of this letter is to provide written confirmation of the oral notice given to you on March 3, 2022, via a voicemail at the number provided for you by the North County Transit District ("NCTD") web contact page, of my intent, as the Executive Director of the Commission, to take the enforcement actions described below related to the above-described, proposed construction activity on the property located within the rail corridor along the Del Mar bluffs between Coast Boulevard (Mile Post 244.1) and North Torrey Pines Road (Mile Post 245.7) of the LOSSAN railroad ("the Property") if NCTD fails to respond to this notice in a "satisfactory manner." First, as my staff explained in the voicemail earlier today, unless the actions described below are taken in

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<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all unpermitted development on the Property that is in violation of the Coastal Act. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other unpermitted development on the Property as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that the term "violation" as used throughout this letter refers to alleged violations of the Coastal Act.

the timeframe listed below, I intend to issue an Executive Director Cease and Desist Order ("EDCDO") directing NCTD to: (1) cease and desist from conducting any unpermitted development on the Property without obtaining a Coastal Development Permit ("CDP"), including, but not necessarily limited to, the installation of fencing along the Del Mar bluffs; and (2) take necessary affirmative steps to avoid irreparable injury. Second, this letter also provides notice that I intend to commence proceedings for issuance by the Commission of its own Cease and Desist Order to direct NCTD to cease and desist from undertaking any development on the Property without first obtaining a CDP.

These enforcement actions are in response to NCTD's representations that it intends to commence the construction of a large-scale fencing plan along the Del Mar bluffs without first obtaining a CDP. In addition to the above enforcement actions, and as described briefly, below, depending on how NCTD responds, the Commission may also commence Restoration Order Proceedings pursuant to Section 30811 of the Coastal Act, Administrative Penalty proceedings pursuant to Section 30821 and/or 30821.3 of the Coastal Act, and proceedings to record a Notice of Violation of the California Coastal Act against the Property, pursuant to Section 30812 of the Coastal Act.

#### **History of Commission Staff's Efforts to Coordinate with NCTD on a Fencing Plan**

In October 2020, Commission staff received formal notice that on August 28, 2020, NCTD had filed a Petition for Declaratory Order (Petition) with the federal Surface Transportation Board (STB). In the Petition, NCTD sought an order to prohibit the Commission and the City of Del Mar from being able to regulate NCTD's development along the Del Mar bluffs, including projects such as the fencing plan at issue here. On October 5, 2020, the Commission, along with the City of Del Mar, concerned Del Mar residents, and the Surfrider Foundation, filed oppositions to NCTD's Petition.

In October 2020, NCTD presented its intention to the City of Del Mar to construct a 6-foot tall chain link fence at the track level and along the upper bluffs in Del Mar based on a "Trespasser Risk Reduction Study" that NCTD had recently published. NCTD did not seek approval for the project; rather, NCTD informed the City that it would be agreeable to negotiating with the City to construct a different type and size of fencing if the City would pay for the modified fence and fully assume liability for the fencing.

On October 15, 2020, I sent a letter to the NCTD Board of Directors and expressed my surprise and disappointment that NCTD, suddenly and without any notice except for the formal service of NCTD's Petition, took action to end its collaboration with the Coastal Commission on transportation projects in the San Diego region. I noted the long cooperative history between NCTD and the San Diego Association of Governments (SANDAG) on the planning, review, and approval of numerous transportation projects in San Diego related to railroad infrastructure and the value of this coordination to all parties. I additionally expressed my concern regarding NCTD's representation to the City of Del Mar that it would unilaterally proceed with a project to fence the Del Mar

bluffs without any state or local review. At this time, I requested that NCTD withdraw its Petition before the STB and work with the Commission on the fencing plan to find alternatives that would protect public safety, ensure public access to bluff trails and the beach, and protect coastal resources.

On December 10, 2020, the City, NCTD, and the Commission entered into a Settlement Discussions Agreement for the purpose of facilitating confidential negotiations and discussions to reach a Settlement Agreement regarding the STB matter. And in March 2021, in order to continue good faith discussions, the parties agreed to a stay of the STB matter through December 31, 2021.

From March 2021 to November 2021, Commission staff met with NCTD staff on a monthly or bimonthly basis in an attempt to come to an agreement on how Commission staff and NCTD would collaborate on NCTD LOSSAN corridor development projects, including the Del Mar bluff fencing plan, to ensure that these projects are consistent with the Coastal Act and receive all necessary authorizations. Commission staff also attempted to work with NCTD specifically on the design of the fencing plan for the Del Mar bluffs in an attempt to limit the project's negative impacts to public access and coastal resources.

Despite Commission staff's extensive efforts, on December 30, 2021, NCTD filed a report with the STB seeking to reopen and expedite its Petition against the Commission and Del Mar. On January 14 and 18, 2022, Del Mar and the Commission each respectively filed responses, including a motion for the STB to move the matter into its mediation program. On January 19, 2022, NCTD opposed the request for mediation, stating that it does not believe an agreement could be reached. The STB has not yet issued a ruling on this matter.

Then, on January 20, 2022, NCTD's Board of Directors approved Job Order No. 21009-005, to hire general contractor Exbon Development Inc. for the installation of the Del Mar bluffs fencing plan. The NCTD Board approved the fencing project to go forward without the authorization of a CDP, despite the fact that NCTD had been advised for several years by Commission staff that such development requires a CDP before any such work can commence.

Despite Commission staff's advice that the fencing plan cannot be implemented without a CDP, NCTD has indicated its intent to move forward with the fencing plan without Coastal Act authorization.

### **Executive Director Cease and Desist Order**

Section 30809 of the Coastal Act authorizes the Executive Director to issue an order: (1) directing "any person or governmental agency" to cease and desist and to take actions necessary to avoid irreparable injury if that party is threatening to undertake an activity without securing a necessary permit from the Commission, or (2) to enforce any

requirements of a certified local coastal program ("LCP"), when the local government requests the Commission to assist with, or assume primary responsibility for, issuing such an order.

Under Section 30600(a) of the Coastal Act, and Section 30.75.040 of the City of Del Mar Municipal Code, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP, in addition to any other permit required by law. Development is broadly defined by Section 30106 of the Coastal Act and, similarly, by Section 30.75.030 of the City of Del Mar Municipal Code, as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

NCTD has represented that it intends to construct fencing along the Del Mar bluffs without obtaining a CDP, clearly "threatening" to undertake development without a CDP. The installation of this fence constitutes development, as the placement of solid material and a change in the intensity of use of land, and therefore is subject to the permit requirements of the Coastal Act and the Del Mar LCP. Additionally, in a March 2, 2022 telephone conversation and confirmed in writing on the same day, the City of Del Mar has requested that the Commission assume responsibility for enforcement in this matter.

Section 30809(b) of the Coastal Act states:

*The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity.*

Section 13180(a) of the Commission's regulations (Title 14, Division 5.5 of the California Code of Regulations (CCR)) defines the term "satisfactory manner," as that term is used in Coastal Act Section 30809(b) as being, in part, "a response which is made in the manner and within the timeframe specified in the notice." Therefore, as stated in the voicemail left for you at the number provided for you by NCTD's web contact page and confirmed by this letter, I am informing you that to prevent the issuance of the Executive Director Cease and Desist Order ("EDCDO") to you, you must provide a response that complies with the requirements listed below, within the timeframe listed below. If NCTD fails to comply with one or more of these requirements, an EDCDO will be issued to

NCTD. Any violation of that EDCDO could subject NCTD to administrative and civil penalties under Chapter 9 of the Coastal Act. To prevent issuance of the EDCDO, you must immediately cease all unpermitted development, and respond in writing by noon on Monday, March 7, 2022, and your response must include the following:

1. A commitment that NCTD will not begin work for the installation of fencing along the Del Mar bluff without a Coastal Development Permit that is in full force and effect.
2. A plan detailing the steps NCTD will take in order to receive a Coastal Development Permit, including a date by which NCTD will submit a Coastal Development Permit application.

If Commission staff do not receive a written response from NCTD by noon on Monday, March 7, 2022, or that response does not provide the elements outlined above, "satisfactory" assurances as set forth above and in 30809 of the Coastal Act, will not have been met and we will be required to act accordingly.

#### **Notice of Intent to Commence Proceedings for the Issuance by the Commission of a Cease and Desist Order**

I am also notifying you of my intent to commence proceedings for issuance by the Commission of a Cease and Desist Order to direct you to, among other things, cease and desist from undertaking unpermitted development on the Property without a CDP. Additionally, if NCTD proceeds with its plans to install fencing on the Del Mar bluffs, the Commission may commence proceedings for a Restoration Order and Administrative Civil Penalties and proceedings to record a Notice of Violation of the California Coastal Act against the Property.

#### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program ... under any of the following circumstances:  
(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

As explained above, NCTD has represented that it intends to construct fencing along the Del Mar bluffs without obtaining a CDP. This fencing clearly constitutes "development" within the meaning of the above-quoted definition and therefore is subject to the permit requirements of section 30600(a) and the LCP. And again, the City of Del Mar has requested that the Commission assume responsibility for enforcement in this matter. For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met, and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material.

#### **Advance Notice of Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

*In addition to any other authority to order restoration, the commission ... may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission ... the development is inconsistent with this division, and the development is causing continuing resource damage.*

NCTD's plan to install fencing along the Del Mar bluffs without obtaining a CDP denies the opportunity for the City and/or the Commission to ensure that NCTD's fencing project is consistent with the LCP and the Coastal Act. Without this review, it is likely that the installation of fencing along the Del Mar bluffs will be inconsistent with the Coastal Act's resource protection provisions, such as Section 30251 (scenic and visual qualities), Section 30240 (environmentally sensitive habitat areas), Section 30231 (protection of biological productivity and water quality), Section 30253 (hazards/geologic stability), and Sections 30210 and 30212 (provision of public access). Should the fencing block public views of scenic resources, harm habitat, negatively impact water quality, cause bluff erosion, or prevent public access, this would meet the definition of continuing resource damage under Section 13190 of the Commission's regulations, which defines damage as "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." For these reasons, if NCTD goes forward with its plan to install fencing along the Del Mar bluffs without a CDP, the Commission may commence proceedings for the issuance of a Restoration Order to restore the Property to the condition it was in before the unpermitted development occurred.

The procedures for the issuance of Restoration Orders are described in Section 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the Property to the conditions that existed prior to the occurrence of the unpermitted development described above.

### **Advance Notice of Administrative Civil Penalties and Exemplary Damages**

The Coastal Commission is also authorized to impose administrative civil penalties by a majority vote of the Commissioners present at a public hearing under Section 30821 of the Coastal Act, for cases involving violations of the public access provisions of the Coastal Act, and under Section 30821.3, for cases involving the violation of any provision of the Coastal Act other than public access, including, but not limited to, damage to archaeological and wetlands resources and damage to environmentally sensitive habitat areas. In this case, the installation of fencing will likely result in significant violations of the public access provisions of the Coastal Act by changing the intensity of use of trails along the bluff. The fencing may also violate additional provisions of the Coastal Act by causing bluff instability and impeding views of coastal resources.

The penalties imposed may be in an amount of up to \$11,250, for each violation, for each day in which each violation has persisted or is persisting, for up to five (5) years. If a person fails to pay an administrative penalty imposed by the Commission, under Coastal Act Section 30821(e), the Commission may record a lien on that person's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgement lien.

The Coastal Act also includes a number of other penalty provisions that may be applicable as well. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development. Civil liability under Section 30820(b) shall be imposed in an amount not less than \$1,000 per day and not more than \$15,000 per day, for each violation and for each day in which each violation persists. Section 30821.6 also provides that a violation

of a Cease-and-Desist Order of the Commission can result in civil liabilities of up to \$6,000 for each day in which each violation persists. Lastly, Section 30822 provides for additional exemplary damages for intentional and knowing violations of the Coastal Act or a Commission Cease and Desist Order.

### **Response Procedure**

In accordance with Sections 13181(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Commission Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. The SOD form must be directed to the attention of Sarah Salvini, at the address listed below, no later than March 23, 2022.

California Coastal Commission  
Attn: Sarah Salvini  
455 Market Street, Suite 288  
San Francisco, CA 94105

If such a hearing is required, Commission staff intends to schedule the hearing for the Cease and Desist Order during the Commission's hearing of June 2022.

This notice letter does not preclude NCTD from still reaching a cooperative resolution with the Commission for addressing the longer term situation at the site. Should this matter be resolved via mutual agreement, an SOD form would not be necessary. We remain willing to resolve this matter amicably and without the need for a contested hearing and would like to work with you to achieve that end. The Consent Order process provides an opportunity to resolve these issues through mutual agreement. While requiring compliance with the Coastal Act and the LCP, Consent Orders give you additional input into the process of the resolution of the violation. Consent Orders would provide for a permanent resolution of this matter and thereby resolve the complete violation without any further formal legal action.

If you are interested in discussing the possibility of agreeing to Consent Orders, please contact Sarah Salvini, Statewide Enforcement Analyst at [sarah.salvini@coastal.ca.gov](mailto:sarah.salvini@coastal.ca.gov).

### **Resolution**

As stated above, in order to address the short term situation and to prevent the issuance of the EDCDO, you must immediately cease all unpermitted development, and respond in writing by noon on Monday, March 7, 2022, and your response must include the following:

1. A commitment that NCTD will not begin work for the installation of fencing along the Del Mar bluff without a Coastal Development Permit that is in full force and effect.

2. A plan detailing the steps NCTD will take in order to receive a Coastal Development Permit, including a date by which NCTD will submit a Coastal Development Permit application.

If Commission staff do not receive a written response from NCTD by noon on Monday, March 7, 2022, or that response does not provide the elements outlined above, "satisfactory" assurances as set forth above and in 30809 of the Coastal Act, will not have been met and we will be required to act accordingly.

Please direct your response to this Notice of Intent to Issue an Executive Director Cease and Desist Order to my staff via Sarah Salvini, Statewide Enforcement Analyst at the address on the letterhead or at (415) 904-5220. My staff continues to work, for the most part, remotely so the best way to reach Ms. Salvini is by email: [sarah.salvini@coastal.ca.gov](mailto:sarah.salvini@coastal.ca.gov). If you have any questions, please feel free to contact her at that email. Thank you very much for your attention to this matter and we look forward to working this matter out with you.

Sincerely,



JOHN AINSWORTH,  
Executive Director

Attachment: Statement of Defense form

cc: Lisa Haage, Chief of Enforcement, CCC  
Alex Helperin, Assistant Chief Counsel, CCC  
Aaron McLendon, Deputy Chief of Enforcement, CCC  
Justin Buhr, Statewide Enforcement Supervisor, CCC  
Sarah Salvini, Statewide Enforcement Analyst, CCC  
Ashley Jones, City Manager, City of Del Mar  
Hasan Ikhata, Executive Director, SANDAG  
Exbon Development Inc.

Attachment

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 228  
SAN FRANCISCO, CA 94105  
FAX (415) 904-5400  
TDD (415) 597-5885

**STATEMENT OF DEFENSE FORM**

**DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.**

**YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.**

This form is accompanied by a notice of intent to initiate enforcement proceedings. This notice of intent indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it no later than **March 23, 2022** to the Commission's enforcement staff at the following address:

California Coastal Commission  
Attn: Sarah Salvini  
455 Market Street, Suite 288  
San Francisco, CA 94105

If you have any questions, please contact **Sarah Salvini** at **(415) 904-5220** or, preferably, by email at [sarah.salvini@coastal.ca.gov](mailto:sarah.salvini@coastal.ca.gov).

**1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):**

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**2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):**

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**3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

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4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

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5. **Any other information, statement, etc. that you want to offer or make:**

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6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding**

**(Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

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# Exhibit D



**OFFICE *of* INSPECTOR GENERAL**  
NATIONAL RAILROAD PASSENGER CORPORATION

## **SAFETY AND SECURITY:**

More Active Engagement with Regional Partners Would Improve Awareness of Potential Operational Risks on the *Pacific Surfliner* Route

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**OFFICE of INSPECTOR GENERAL**  
**NATIONAL RAILROAD PASSENGER CORPORATION**

## Memorandum

**To:** Scot Naparstek  
Executive Vice President/Chief Operations Officer

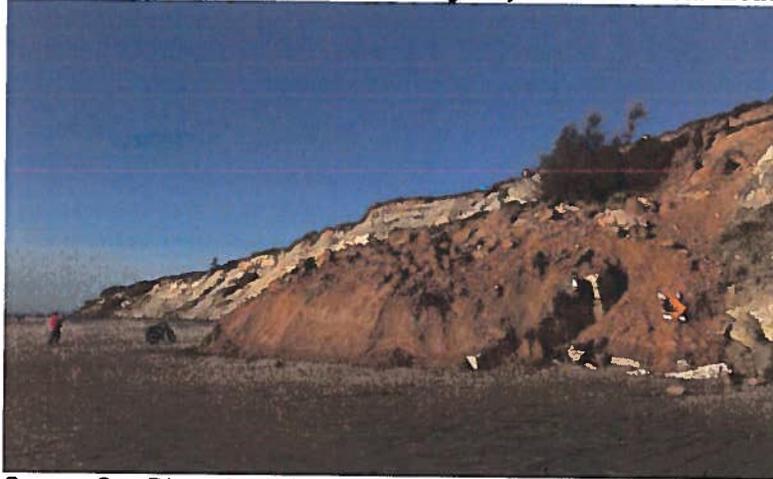
**From:** Jim Morrison *Jim Morrison*  
Assistant Inspector General, Audits

**Date:** December 6, 2021

**Subject:** *Safety and Security: More Active Engagement with Regional Partners Would Improve Awareness of Potential Operational Risks on the Pacific Surfliner Route (OIG-MAR-2022-002)*

Since 2018, at least six bluff failures have occurred in the Del Mar Bluffs area just north of San Diego, California, resulting in temporary closures on the railroad tracks that traverse the area and speed restrictions on Amtrak's (the company) high-volume *Pacific Surfliner* route.<sup>1</sup> The most recent failure occurred in February 2021, when a 60-foot seawall collapsed at the base of a 1.7-mile-long section of the tracks that run along the bluffs. Figure 1 shows the site of the February Del Mar collapse.

**Figure 1. Beachside View of the February 28, 2021 Del Mar Bluff Collapse**



Source: San Diego Association of Governments

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<sup>1</sup> Prior to the pandemic, the company operated 26 daily *Pacific Surfliner* trains on 351 miles of track in California from San Diego to San Luis Obispo, moving 2.78 million passengers a year. Under normal conditions, the *Pacific Surfliner* is the busiest state-supported route in the country, and its daily traffic is second only to the Northeast Corridor.

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Also, in late September 2021, coastal erosion and high tides caused the railroad tracks near San Clemente, California to shift 14 inches, leading to a 3-week partial shut-down of the *Pacific Surfliner*.<sup>2</sup>

Our initial objective for this report was to assess the extent to which the company is evaluating the risks associated with operating service on tracks on the Del Mar bluffs. Because the service disruption in San Clemente involved similar issues along the same route and occurred during our work, we also performed a limited review of company actions in response to that event.

To do this work, we reviewed the company's System Safety Program Plan (safety plan) and federal regulations governing safety and railroad responsibilities. We also interviewed managers in the Finance and Safety departments regarding safety risks and managers in the Engineering, Strategy and Planning, and Transportation departments to discuss *Pacific Surfliner* operations and understand the relationships between the company and host railroads. In addition, we visited the Del Mar Bluffs area to observe the tracks and emergency repairs and met with representatives from the North County Transit District (NCTD), the San Diego Association of Governments, the state of California, and other regional partners to gain their perspectives on the company's safety role in the Del Mar region. Finally, we sought perspectives from Federal Railroad Administration (FRA) and the National Transportation Safety Board regarding the company's regulatory and safety responsibilities when operating in host railroad territory. For additional details on our scope and methodology, see Appendix A.

## **SUMMARY OF RESULTS**

The company met its regulatory obligations in response to the conditions in Del Mar by complying with speed restrictions and track outages enforced by the host railroad.<sup>3</sup> Company officials and other stakeholders in the region stated that host railroad actions and restrictions in response to the bluff failures ensured safe operating conditions at all times. The company, however, may be missing opportunities to gather all the information it needs to identify circumstances where it may decide to obtain further

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<sup>2</sup> San Clemente is about 40 miles north of Del Mar. On September 16, the company suspended service between Oceanside and Irvine and provided buses for passengers.

<sup>3</sup> Outside the Northeast Corridor, the company's trains travel primarily on tracks that other "host" railroads own. The company, operating in this capacity as a "tenant," pays these host railroads for use of the track and services required to support operations. Host railroads assume primary responsibility for providing safe track operating conditions under 49 C.F.R. Part 213.

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safety assurances. Specifically, the company is not participating in regional stakeholder working groups focused on understanding and planning both short- and long-term mitigation efforts like the Del Mar bluff failures along the *Pacific Surfliner* route. Participating in such groups would likely put the company in a better position to identify and manage risks on host railroads, consistent with the commitment in its safety plan to operate at the highest levels of safety by exceeding the regulatory requirements when circumstances indicate that further actions are warranted.<sup>4</sup>

When the company identifies conditions that necessitate a more proactive response, the company's safety plan prescribes a formalized process to identify, assess, and mitigate risks. For example, after reports of unsafe track conditions in San Clemente, the company determined that circumstances warranted a more proactive response. As a result, it suspended rail service until it could complete an internal review and seek its own assurances that it was safe to resume operations. The Vice President for Operational Safety attributes the company's actions in San Clemente in part to the progress the company is making in implementing its new risk-based approach to safety.

The company acknowledges it can increase its role in ensuring the safety of its passengers and employees when it is operating as a tenant railroad. To do so, it should consider participating in ongoing discussions with regional stakeholders about track and other conditions along the *Pacific Surfliner* route. Such participation would help it stay current on emerging risks and options under consideration that could affect company operations.

In commenting on a draft of this report, the Executive Vice President/Chief Operations Officer acknowledged the importance of our observation and identified a specific action to address our observation. Management will assign an Operations department official to participate in stakeholder discussions on evolving coastal conditions, short- and long-term remediation efforts, and potential re-alignment of the *Pacific Surfliner* route. For management's complete response, see Appendix B.

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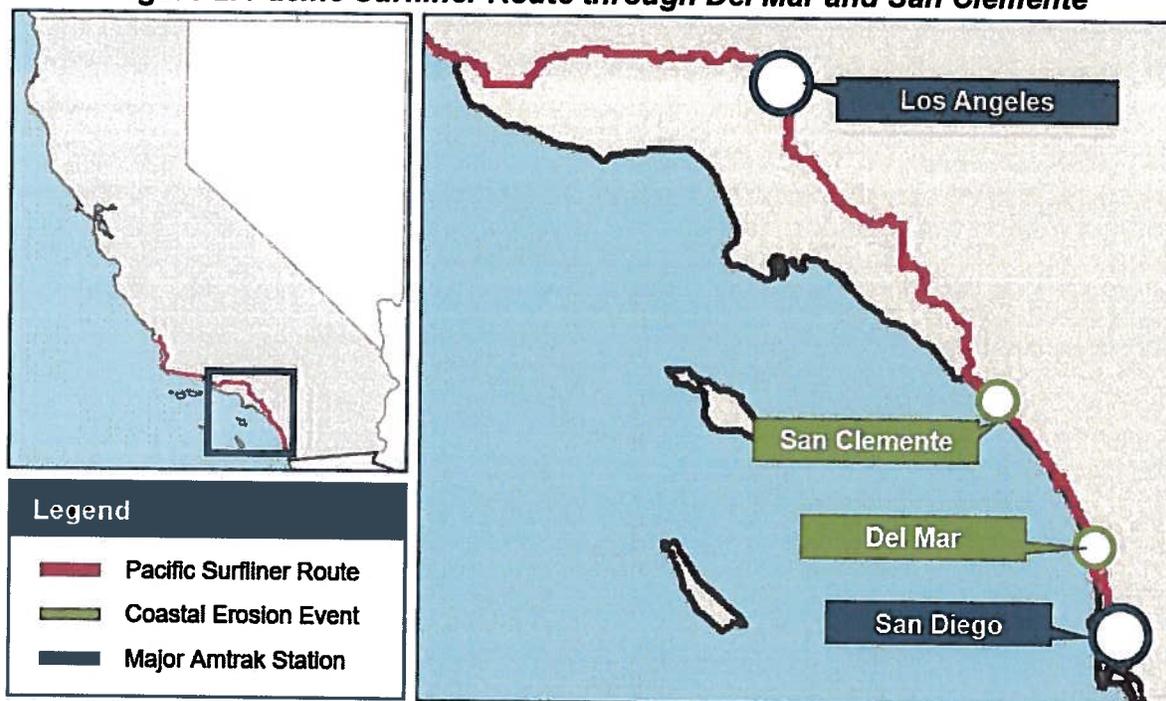
<sup>4</sup> Through adoption of its Safety Management System, which includes developing and implementing a System Safety Program Plan, the company outlines its plans to proactively manage risks—including those on host railroads—that could result in harm to its customers, employees, and property. The Federal Railroad Administration approved the company's System Safety Program Plan in June 2021, and the company has three years to fully implement it.

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## BACKGROUND

In Del Mar and San Clemente, trains operate on a single track adjacent to the coastline, which is subject to ongoing erosion. Figure 2 illustrates the *Pacific Surfliner* route and the locations of both sites.

**Figure 2. Pacific Surfliner Route through Del Mar and San Clemente**



Source: Amtrak OIG Analysis of Company Data

**Del Mar Bluffs.** NCTD owns the section of track through the Del Mar Bluffs where the February 2021 collapse occurred. As the host railroad, it is primarily responsible for inspecting and maintaining the tracks, and by regulation, has responsibility for establishing safe operating conditions. In addition to the company and freight railroad Burlington Northern Santa Fe (BNSF), which operate as tenants, NCTD runs the *Coaster* commuter service over this track.

As a result of the February 2021 bluff collapse, NCTD imposed temporary speed restrictions of 15 miles per hour for passenger trains during the emergency repair work. Figure 3 shows emergency work to repair the tracks following the February 2021 collapse.

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**Figure 3. Trackside View of the February 28, 2021 Del Mar Bluff Collapse**



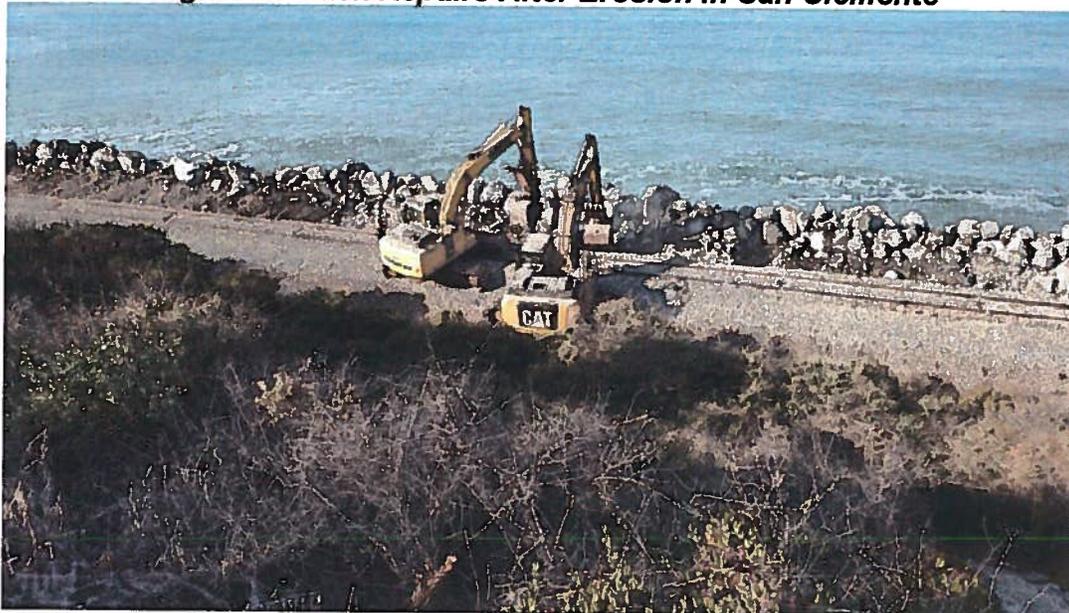
Source: San Diego Association of Governments

In addition to emergency repairs, NCTD and its regional partner, the San Diego Association of Governments, have completed four projects since 2003 to help reinforce and protect the Del Mar bluffs and they plan to complete a fifth stabilization project over the next five years. Stakeholders have also begun to study long-term options for the corridor, including realigning the track off the Del Mar bluffs altogether.

**San Clemente.** The Orange County Transit Authority owns the section of track in the San Clemente area where the recent erosion occurred and, as the host railroad, is similarly responsible for maintaining safe operating conditions. In addition to the company, tenants on this section of track include Metrolink and BNSF, which combine to operate a normal schedule of more than 50 trains through this region. As a result of the recent ground shift, the company and Metrolink both curtailed passenger service while the Orange County Transit Authority performed additional inspections and worked with BNSF to bring in boulders to reinforce the railbed. Figure 4 shows track repairs at the site of recent erosion in San Clemente.

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**Figure 4. Track Repairs After Erosion in San Clemente**



Source: Amtrak Engineering department

**FRA's Role in Track Safety.** Under FRA regulations, each railroad has primary responsibility to ensure its track meets or exceeds the federal safety standards. This includes railroad inspectors performing track inspections at varying frequencies based on the class of track, the type of track, the annual gross tonnage operated over the track, and whether it carries passenger trains. The primary duty of FRA's federal track safety inspectors, along with certified State inspectors, is to strategically monitor, inspect, and assess track conditions to determine whether a railroad is complying with federal safety standards.

### **THE COMPANY COULD IMPROVE AWARENESS OF LOCAL ISSUES BY PARTICIPATING IN REGIONAL WORKING GROUPS**

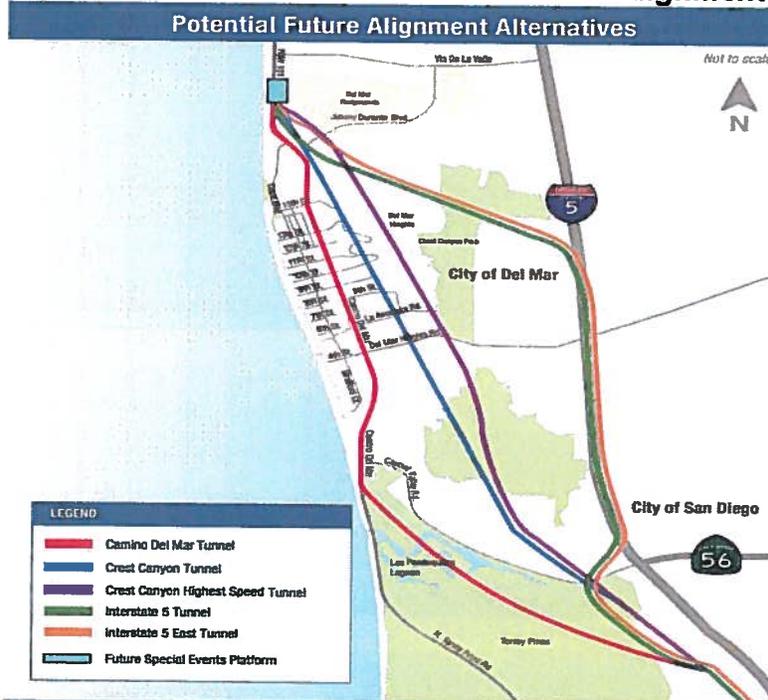
The company's adherence to operating restrictions in Del Mar was consistent with its regulatory obligations, but it has an opportunity to more fully understand the specific geological conditions, risks, and short- and long-term mitigation efforts underway by participating in regional forums dedicated to addressing Del Mar bluff issues.

Stakeholders in the region told us they are confident that the ongoing actions and mitigation efforts on the bluffs are sufficient to sustain continued safe operations. In addition, company officials and regional stakeholders in the Del Mar area told us that all parties cooperate well on routine operational decisions such as scheduling and

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planned maintenance outages. The company has not, however, routinely engaged in broader forums to discuss other issues, including the conditions and work along the bluffs. For example, after a major bluff slide in late 2019, the California State Transportation Agency organized a year-long effort to examine short- and long-term bluff stabilization issues that included more than 70 participants. Although NCTD, BNSF, and FRA took part in the working group, the company—the largest passenger operator on the bluffs—did not participate. A follow on study began in the summer of 2020 to analyze alternative route alignments, compare the benefits and costs in terms of safety, ridership, and speed, and assess impacts on service plans. The company is not participating in these discussions either, although any decisions to realign the route could affect the company’s service plans and its revenue/ridership. Participation in such groups would likely put the company in a better position to identify and manage risks on host railroads, consistent with the commitments in its safety plan to operate at the highest levels of safety by exceeding the regulatory requirements when circumstances indicate that further action is warranted. Figure 5 shows the potential route alignments under consideration.

**Figure 5. Pacific Surfliner Potential Route Alignments**



Source: Los Angeles - San Diego - San Luis Obispo Coastal Rail Corridor

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## **THE COMPANY DETERMINED SAN CLEMENTE TRACK CONDITIONS WARRANTED A MORE PROACTIVE RESPONSE**

When the company learned of the conditions along the *Pacific Surfliner* route in San Clemente, it determined that the incident warranted seeking further assurances regarding the safety of the track and the host railroad's efforts to mitigate risks. The company halted service along a portion of the route, and executives in the Transportation, Safety, and Engineering departments initiated a formal risk assessment of the track conditions. As part of this assessment, the Engineering department sent its subject matter expert in slope stability and drainage onsite to meet with the host railroad and its contractors to understand the risks and planned actions needed to restore service. A company manager told us that, through this exchange, they were able to establish an effective working relationship with the host railroad, and the Engineering department was able to share its expertise from addressing similar conditions on its *Empire* route along the Hudson River in New York. Based on its reviews of the incident reports, geo-technical assessments, and mitigation plans and its discussions with the host railroad regarding continued monitoring, the company confirmed that it received the necessary assurances to resume full service on October 4, 2021.

The Vice President for Operational Safety told us the formalized process the company used to assess safety risks in San Clemente indicates that the company's approach to safety is maturing. He expressed hope that this risk-based response, which is one of the four pillars of the company's safety plan, will help set a precedent for how the company responds to future conditions that the company determines warrant additional action.<sup>5</sup> Further, the Executive Vice President for Operations and the Vice President for Transportation confirmed that the structured risk assessment process prescribed in the company's safety plan provided an effective framework for evaluating the risks and gave them added confidence in their decision to safely restart service.

## **CONCLUSIONS**

Within the past year, two separate and significant track events on host-railroad owned tracks caused service interruptions along the *Pacific Surfliner* route. Both events raise concerns about evolving coastal conditions and are spurring high level discussions

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<sup>5</sup> The four pillars of the safety plan are Safety Risk Management, Safety Policy, Safety Assurance, and Safety Promotion.

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among stakeholders about long-term remediation efforts. Because the company has not been actively participating in ongoing working groups or discussions with stakeholders about these and other issues along the *Pacific Surfliner* route, it may not be receiving the most current information on the conditions, mitigation plans, and short- and long-term actions under consideration. Without current information on these efforts, the company may not be well positioned to determine when circumstances warrant additional company actions.

## **CONSIDERATIONS FOR MANAGEMENT**

Going forward, the Executive Vice President / Chief Operations Officer should consider designating company personnel to participate in ongoing discussions with stakeholders about evolving coastal conditions, short- and long-term remediation efforts, and potential realignment of the *Pacific Surfliner* route.

## **MANAGEMENT RESPONSE AND OIG ANALYSIS**

In commenting on a draft of this report, the Executive Vice President/Chief Operations Officer acknowledged the importance of our observation and identified a specific action to address our observation. Management will assign an Operations department official to participate in stakeholder discussions on evolving coastal conditions, short- and long-term remediation efforts, and potential re-alignment of the *Pacific Surfliner* route. For management's complete response, see Appendix B.

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## APPENDIX A

### Objective, Scope, and Methodology

This report provides the results of our review of the company's response to coastal erosion along the *Pacific Surfliner* route in southern California. Our initial objective was to assess the extent to which the company is evaluating the risks associated with operating service on tracks on the Del Mar bluffs. Because a similar erosion event along the same route occurred during our work, we also performed a limited review of company actions in response to a service disruption in San Clemente. Our scope covered the company's actions to ensure safe operations over the Del Mar bluffs and in San Clemente. We performed our work from May to October 2021 in Del Mar, Los Angeles, and Oceanside, California, and Washington, D.C.

**Del Mar.** To assess the company's actions, we reviewed its safety plan and federal regulations governing safety and railroad responsibilities. We interviewed managers in the Finance and Safety departments regarding safety risks, as well as managers in the Engineering, Strategy and Planning, and Transportation departments to (1) discuss *Pacific Surfliner* operations and (2) understand the relationships between the company and host railroads. In addition, we visited the Del Mar Bluffs area to observe the tracks and emergency repairs and met with representatives from NCTD, the San Diego Association of Governments, the state of California, and other regional partners to gain their perspectives on the company's safety role in the Del Mar region. Finally, we sought perspectives from FRA and the National Transportation Safety Board regarding the company's regulatory and safety responsibilities when operating in host railroad territory.

**San Clemente.** To assess the company's actions, we interviewed managers in the Safety department to determine the role they played in the company's response to the service disruption. In addition, we interviewed managers in the Engineering and Transportation departments who met with the host railroad and other operators on the section of track where the incident occurred to understand the circumstances that led to the service disruption and the assurances needed before the company reinstated service.

We conducted our work in accordance with standards we developed for alternative products.

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## Internal Controls

We reviewed the internal controls the company had in place to identify and assess the risk associated with operations on the Del Mar bluffs. We assessed the internal control components and determined that the following component was significant to our objective:

- **Risk Assessment.** Management should assess and respond to the risks facing the company as it seeks to achieve its objectives.

We developed steps to ensure that we reviewed this control area, including assessing the following:

- existing mechanisms by which the company identifies and assesses risk to operations
- risk assessments and mitigations related to the program

Because our work was limited to this one component of internal control, it may not have disclosed all of the internal control deficiencies that may have existed at the time of this review.

## Computer-processed Data

Our analyses and findings did not rely on computer-generated data from any company information systems.

## Prior Reports

In conducting our analysis, we reviewed the following Amtrak OIG reports:

- *Safety and Security: Amtrak Expects Positive Train Control will be Interoperable with Other Railroads but Could Better Measure System Reliability* (OIG-A-2021-004), December 11, 2020
- *Safety and Security: Expanded Random Drug Testing Could Help Further Detect and Deter Prescription Opioid Misuse* (OIG-A-2021-003), October 27, 2020

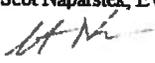
*Amtrak Office of Inspector General*  
**Safety and Security: More Engagement with Regional Partners Would Improve  
 Awareness of Potential Operational Risks on the *Pacific Surfliner* Route**  
 OIG-MAR-2022-002, December 6, 2021

**APPENDIX B**  
**MANAGEMENT COMMENTS**

NATIONAL RAILROAD PASSENGER CORPORATION

# Memo



Date December 2, 2021 From Scot Naparstek, EVP COO  


To Jim Morrison, Assistant Inspector General, Audits Department Operations

cc William J. Flynn, CEO  
 Stephen Gardner, President  
 Eleanor Acheson, EVP General Counsel  
 Michelle Caudill, AVP Transportation SW  
 Carol Hanna, VP Controller  
 Roger Harris, EVP Marketing & Revenue  
 Shawn Gordon, VP Transportation  
 Laura Mason, EVP Major Program Delivery  
 Justin Meko, VP Operational Safety  
 Dennis Newman, EVP Strategy & Planning  
 Steven Predmore, EVP CSO  
 Mark Richards, Sr. Director Amtrak Risk & Controls  
 Qiana Spain, EVP CHRO  
 Tracie Wimbler, EVP CFO  
 Christian Zacariassen, EVP CIO

Subject: Management Response to *Safety and Security: More Active Engagement with Regional Partners Would Improve Awareness of Potential Operational Risks on the Pacific Surfliner Route* (Draft Management Advisory Report for Project No. 010-2021)

This memorandum provides Amtrak's response to the draft management advisory report titled, "More Active Engagement with Regional Partners Would Improve Awareness of Potential Operational Risks on the Pacific Surfliner Route". Management appreciates the opportunity to respond to the OIG's observations. Amtrak takes our duty and responsibility to proactively manage risk very seriously. The two separate and significant track events on host-railroad owned tracks causing service interruptions along the *Pacific Surfliner* route highlighted additional opportunities available to Amtrak to proactively manage risks. Effective immediately, the Executive Vice President/Chief Operations Officer has mandated that an Amtrak representative from the Operations Department will participate in ongoing discussions with stakeholders about evolving coastal conditions, short-and long-term remediation efforts, and potential realignment of the Pacific Surfliner route. The representative will communicate and involve the information gathered from these discussions with the appropriate Amtrak subject matter experts to identify actions, if any, Amtrak will take based upon the information that is presented.

Amtrak is confident that the measures outlined here address the OIG's considerations and support Amtrak's proactive risk management strategy.

*Amtrak Office of Inspector General*  
**Safety and Security: More Engagement with Regional Partners Would Improve  
Awareness of Potential Operational Risks on the *Pacific Surfliner* Route**  
OIG-MAR-2022-002, December 6, 2021

## **APPENDIX C**

### **Abbreviations**

BNSF	Burlington Northern Santa Fe
FRA	Federal Railroad Administration
NCTD	North County Transit District
OIG	Amtrak Office of Inspector General
safety plan	System Safety Program Plan
the company	Amtrak

*Amtrak Office of Inspector General*  
**Safety and Security: More Engagement with Regional Partners Would Improve  
Awareness of Potential Operational Risks on the *Pacific Surfliner* Route**  
OIG-MAR-2022-002, December 6, 2021

## **APPENDIX D**

### **OIG Team Members**

Eileen Larence, Deputy Assistant Inspector General, Audits

Leila Kahn, Senior Director

Todd Kowalski, Senior Audit Manager

Clare Shepherd, Senior Auditor

Joshua Stearns, Senior Auditor

Alison O'Neill, Communications Analyst

# OIG MISSION AND CONTACT INFORMATION

## Mission

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The Amtrak OIG's mission is to provide independent, objective oversight of Amtrak's programs and operations through audits and investigations focused on recommending improvements to Amtrak's economy, efficiency, and effectiveness; preventing and detecting fraud, waste, and abuse; and providing Congress, Amtrak management, and Amtrak's Board of Directors with timely information about problems and deficiencies relating to Amtrak's programs and operations.

## Obtaining Copies of Reports and Testimony

Available at our website [www.amtrakoig.gov](http://www.amtrakoig.gov)

## Reporting Fraud, Waste, and Abuse

Report suspicious or illegal activities to the OIG Hotline

[www.amtrakoig.gov/hotline](http://www.amtrakoig.gov/hotline)

or

800-468-5469

## Contact Information

**Jim Morrison**

**Assistant Inspector General, Audits**

Mail: Amtrak OIG

10 G Street NE, 3W-300

Washington, D.C. 20002

Phone: 202-906-4600

Email: [James.Morrison@amtrakoig.gov](mailto:James.Morrison@amtrakoig.gov)

# **Exhibit E**

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 300  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5202  
FAX (415) 904-5400



January 5, 2022

Hasan Ikhrata  
Executive Director  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, CA 92101

Re: **Effects of Del Mar Bluffs Projects on Coastal Access and Recreation**

Dear Mr. Ikhrata:

On August 12, 2021, California Coastal Commission (Commission) staff received documents and information from the San Diego Association of Governments (SANDAG) in support of Consistency Certification (CC) application no. CC-0005-21. This CC was submitted on behalf of SANDAG for the Del Mar Bluffs Stabilization 5 and 6 Project and also the follow-up authorization for the Del Mar Bluffs Emergency Repair Project at MP 245.2. The project consists of a continuation of the previous phases of bluff stabilization improvements and includes additional bluff stabilization measures, bluff toe protection measures, drainage improvements and access road improvements along a 1.6-mile section of the rail corridor. These improvements are intended to be the minimum necessary to preserve trackbed support and maintain the viability for passenger and freight rail operations until the tracks can be relocated off of the bluffs. In addition, Commission staff are aware of a proposal by North County Transit District (NCTD) to install security fencing along the length of the railroad right-of-way on the Del Mar bluffs, both landward and seaward of the railroad tracks, to limit access within the right-of-way due to safety concerns expressed by NCTD.

We appreciate the consideration and effort that SANDAG has put into refining the design of the proposed bluff stabilization improvements to minimize impacts to coastal resources; however, these stabilization and fencing projects collectively have the potential to result in significant adverse impacts to coastal access and recreation. The proposed stabilization measures would occupy a portion of the publicly available sandy beach that could otherwise be used for public recreation. They would also prevent the natural erosion processes that nourish beaches and impede the landward migration of the beach in response to sea level rise and coastal storms. They would interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands). Lastly, the proposed improvements and/or fencing would significantly disrupt or eliminate pedestrian access on existing, informal access trails along the bluffs and down onto the beach that have been heavily used by the public for decades to traverse the blufftop, enjoy scenic coastal views and access the beach and ocean. Together, these projects could have very significant impacts to existing and

historic public coastal access and recreation.<sup>1</sup> This is especially concerning because, even under the accelerated timeline for relocating the tracks off of the bluffs by 2035, the soonest that the railroad improvements could be removed and the area returned to passive access and recreation would be upwards of fifteen years, and more likely closer to thirty years if the rail corridor is not relocated until 2050, which is a more realistic timeframe for relocation based on recent conversations with SANDAG.

For any project under the purview of the Commission, the standard of review is the Chapter Three Policies of the Coastal Act. Sections 30211 and 30221 require new development to not interfere with public access and recreation, while Section 30210 requires the provision of maximum public access. Other policies, including Sections 30212 and 30214, recognize the need to consider public safety, topography, site geography, natural resources, and private residences when providing public access. Taken together, these policies illustrate the need for comprehensive planning and a robust mitigation approach in order to address site-specific issues while also maintaining and enhancing public access and recreation.

Previous Commission approvals for work along the bluffs have identified these complex public access and recreation concerns in light of the need to protect the railroad. In its approval of the Del Mar Bluffs Stabilization 4 Project (CC-0004-18), the Commission found that public access planning and coordination with other agencies and the public to identify appropriate access improvements was the best way to provide maximum, long-term public access. SANDAG agreed with this approach and committed to organize and participate in the development of a plan for long-term public access improvements in Del Mar that would be submitted concurrently with the improvements considered in the Del Mar Bluffs Stabilization 6 Project. This plan, identified as Coastal Connections Conceptual Planning Study (Study), is currently underway but is not expected to be complete until the summer of 2022. Any funding necessary for the implementation of public access improvements identified by the Study would be determined at a later date.

As of the date of this letter, the Del Mar Bluffs Stabilization 5 and 6 project and the fencing project are progressing independently of one another and independent of the Study. Continuing to proceed in this manner is disjointed and inefficient. It will not result in maximum public access and could result in significant adverse impacts to coastal access and recreation that will last for decades. Additionally, it precludes the ability of SANDAG and Commission staff to consider and evaluate holistic solutions and mitigation approaches to these impacts. Please let me know if you concur that the stabilization and fencing proposals are integrated and should be considered together in order to analyze and mitigate for their cumulative, interrelated impacts. If so, I request that you help ensure that SANDAG and the Commission can review these proposals together. Your assistance in ensuring that our agencies can appropriately review these related projects is also crucial given that NCTD has requested expedited consideration of its petition to the Surface Transportation Board for an order that rail maintenance and upgrade activities are not subject to the Coastal Zone Management Act's federal consistency review and the Coastal Act's permitting requirements. We have worked successfully with SANDAG for many years to ensure

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<sup>1</sup> The projects would also have impacts to other coastal resources, including visual and biological resources, although the focus of this letter is on access and recreation issues.

that important transportation projects can proceed in a manner that is consistent with the Coastal Act, and we request your assistance in helping ensure that this collaboration will continue.

Commission staff understand the significant engineering and regulatory requirements that the railroad must meet. This situation creates significant challenges, but it also presents significant opportunities for SANDAG and the Commission to work together to leverage available resources and momentum to create a synergistic and lasting system of access and recreation for the public. Thus, Commission staff encourage SANDAG to look for holistic opportunities to address the issues with the Del Mar Bluffs Stabilization 5 and 6 project, the fencing project, and public access and recreation. Commission staff also encourage SANDAG to incorporate the findings of the Study and also to incorporate input from other studies, agencies, and the public regarding public access and recreation. Finally, considering the magnitude of these efforts, Commission staff would like to offer its full assistance and resources to help develop a cohesive plan that maximizes public access and recreation, consistent with the Coastal Act.

We would like to sincerely thank SANDAG for its hard work and coordination on this and on past projects. We look forward to continued coordination and discussing the ways we can work together to improve public access and recreation in the area of the Del Mar Bluffs.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ainsworth". The signature is fluid and cursive, with a large initial "J" and "A".

John (Jack) Ainsworth,  
Executive Director

# **Exhibit F**



401 B Street, Suite 800  
 San Diego, CA 92101-4231  
 (619) 699-1900  
 Fax (619) 699-1905  
 sandag.org

Mr. Jack Ainsworth, Executive Director  
 California Coastal Commission  
 455 Market Street, Suite 300  
 San Francisco, CA 94105-2219

RE: Del Mar Bluffs Stabilization Project 5 (DMB5)

Dear Mr. Ainsworth,

I am writing in response to your letter dated January 5, 2022, requesting my concurrence on adding the North County Transit District's (NCTD) effort to fence the tracks along Del Mar Bluffs and the ongoing Del Mar Coastal Connections Public Access improvements into the federal consistency review for the Del Mar Bluffs Stabilization project.

The DMB5 project is an integral part of the 351-mile Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor, and a vital link for passenger and freight movements within San Diego County, as well as between San Diego, Los Angeles, and points farther north. The project will address seismic and stabilization needs for the Bluffs, while SANDAG simultaneously evaluates alternative strategies to move the tracks completely off the Bluffs. As you know, on August 12, 2021, SANDAG applied to the Coastal Commission for the federal consistency review, and we are waiting on your agency to deem the application complete. Our staff have been meeting over the last two years to discuss the various engineering solutions to stabilize the Bluffs for the near-term and to address the Commission's staff concerns. I want to stress the importance of starting the stabilization work as soon possible and to note that over the last three years there have been two Bluff failures (Nov 2019 and Feb 2021) that have required emergency repairs. We need to make these necessary improvements now to avoid more failures and more emergency repairs in the future. The slope stability analysis clearly shows the urgent need to stabilize these Bluffs. Assuming the DMB5 project receives the federal consistency certification, SANDAG anticipates advertising the project for bid in August 2022, and commencing construction in early 2023. Thus, SANDAG requests that the Commission consider this item as soon as possible, either at the March meeting in L.A./Orange County or the June meeting in San Diego.

Before I address your proposal, I want to reiterate that the Agency is committed to relocating the tracks off the Bluffs into a sustainable location. I have made it a priority this year to advance tunnel planning studies and find funding to start the environmental and engineering studies needed for the relocation effort. While the \$2.8 billion relocation effort is underway, we are still obligated to make sure that the rail line is safe for passenger and freight trains until the relocation can be completed.

Inclusion of NCTD's safety fencing project and the Del Mar Coastal Connections Public Access improvements in the federal consistency review for the DMB5 project will substantially delay the implementation of the DMB5 project's critical safety measures. As to NCTD's safety fencing project, I know you have been working with NCTD and the City of Del Mar to arrive at a mutually agreeable solution. It is unfortunate that all parties have not come to a consensus on a solution. As you stated in your letter, NCTD has asked the Surface Transportation Board to rule that rail maintenance projects are not subject to the Coastal Zone Management Act's federal consistency review. Even though NCTD has requested expedited consideration of its Petition, if the timing of the stabilization efforts is dependent on a final ruling on NCTD's Petition, the safety measures could be delayed indefinitely. In addition, NCTD has unequivocally expressed that SANDAG has no authority to interfere with rail maintenance, such as the safety fencing.

**MEMBER AGENCIES**

- Cities of*
- Carlsbad*
- Chula Vista*
- Coronado*
- Del Mar*
- El Cajon*
- Encinitas*
- Escondido*
- Imperial Beach*
- La Mesa*
- Lemon Grove*
- National City*
- Oceanside*
- Poway*
- San Diego*
- San Marcos*
- Santee*
- Solana Beach*
- Vista*
- and*
- County of San Diego*

**ADVISORY MEMBERS**

- Imperial County*
- San Diego County*
- Regional Airport Authority*
- California Department of Transportation*
- Metropolitan Transit System*
- North County Transit District*
- United States Department of Defense*
- Port of San Diego*
- San Diego County Water Authority*
- Southern California Tribal Chairmen's Association*
- Mexico*

State and federal law clearly provides that rail maintenance, Right-of-Way, and operations are solely under the control of NCTD. Thus, SANDAG cannot agree to include NCTD's safety fencing project in the federal consistency review for SANDAG's DMB5 project.

As to the request to include coastal access in the federal consistency review, the DMB5 project will not result in impacts to legal coastal access and thus, no mitigation for impacts to access is being proposed as part of the DMB 5 project. Road and access crossings are the responsibility of the local agency which has the responsibility for traffic control and law enforcement at the public roadway-rail grade crossings; not railroads or train operators (See 49 CFR Part 222). The City of Del Mar is ultimately responsible for identifying safe and legal crossings across the railroad tracks and applying to the California Public Utilities Commission (CPUC) pursuant to Public Utilities Code §§ 1201-1205. SANDAG remains supportive and willing to facilitate and collaborate with the City and NCTD to identify access locations for consideration by the CPUC.

While SANDAG and the City, with support from NCTD, Caltrans and the Coastal Commission, are moving forward with the Coastal Connections Study to assess the opportunities and constraints of potential pedestrian trails and crossings of the LOSSAN Rail Corridor, the implementation of the stabilization and safety measures in the DMB5 Project are independent from the Coastal Connections Study. The design and construction of additional coastal access points is complex, requiring environmental clearance and CPUC approval. I understand the Commission is deeply committed to seeing legal access to the beach be provided for the City of Del Mar, however, we cannot delay the DMB5 project's critical safety measures to address this access.

To move the DMB5 Project forward, here is my proposal for you to consider: Commission staff will move forward and deem the application complete for the stabilization project and bring the project to the Commission for approval by June 2022. SANDAG will prepare a Project Study Report (PSR) to identify the engineering and environmental work needed to clear the coastal access improvements along the bluff top and/or to the beach, as agreed between NCTD and the City of Del Mar. Once the Coastal Connections Study is complete, SANDAG will prepare the preliminary engineering and will perform the environmental review for the agreed upon legal Coastal access identified in the PSR. To accomplish these efforts, SANDAG will use the mitigation funds proposed in our application for the loss of beach sand and beach loss resulting from the DMB5 project. SANDAG and Commission staff can then collaborate with the City of Del Mar to identify grant funding for the final design and construction of the necessary improvements. At the June 2022 Commission meeting, staff can update the Commission on the first tangible progress towards providing legal beach access for the City of Del Mar in decades.

My main concern is to get the stabilization work done as soon possible to protect public safety, avoid more emergency repairs, and avoid cost escalation. The DMB5 stabilization project has a budget of \$65 million that needs to be used within specific time frames or be lost. Additionally, with construction inflation running at around 7% per year, it will cost approximately \$380,000 per month for every month of delay while we seek to permit this critical safety project.

Thank you for your consideration and I look forward to working with you on this issue.

Sincerely,



HASAN IKHRATA  
Chief Executive Officer

cc: SANDAG Board of Directors  
Tony Krantz, NCTD Board Chair  
Ashley Jones, Del Mar City Manager  
Matt Tucker, Executive Director NCTD  
Sharon Humphreys, Director of Engineering & Construction SANDAG  
Keith Greer, Principal Planner, SANDAG  
Bruce Smith, LOSSAN Corridor Director, SANDAG

# **Exhibit G**

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



October 29, 2021

Keith Greer  
Principal Regional Planner  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, CA 92101

**Re: Consistency Certification No. CC-0005-21 – Del Mar Bluffs Stabilization**

Dear Mr. Greer:

On October 1, 2021, California Coastal Commission (Commission) staff received documents and information from you in support of Consistency Certification (CC) CC-0005-21. This CC was submitted on behalf of the San Diego Association of Governments (SANDAG) for the Del Mar Bluffs Stabilization Projects 5 and 6 and also the follow-up authorization for the Del Mar Bluffs Emergency Repair Project at MP 245.2. The recently received documents and information were submitted in response to the request for additional application materials provided to SANDAG by the Commission staff in a letter dated September 11, 2021.

Thank you for the rapid response to that request and for your continuing efforts to complete your CC application.

After reviewing the recently received documents and information, the Commission staff has determined that the application remains incomplete because we need additional information and materials to adequately analyze the proposed project pursuant to Section 930.58 of the Coastal Zone Management Act (CZMA). Please provide the following to the Commission staff:

**Processes and Engineering**

1. *Processes and Timelines for Relocation of Railroad Corridor:* As stated in SANDAG's draft 2021 Regional Plan, the relocation of the railroad corridor along the Del Mar bluffs is targeted for completion in 2035. Please provide additional information regarding the processes and timelines for planning and implementing the relocation of the tracks including, but not limited to: funding, engineering, design, environmental review, permitting, construction, and initiation of rail service on the relocated corridor.
2. *Necessity of Project Components:* There are multiple locations within the project footprint where retrofits or new development are proposed, but based on the anticipated bluff retreat rate, the railroad would not be threatened prior to the planned relocation of the corridor by 2035. For instance, at DMB3 SP3, the existing piles are not expected to be exposed to design height for an estimated 50 years (past 2070), which is significantly beyond the expected date of relocating the rail corridor. Considering the anticipated date

of relocation, please identify all project components proposed for locations where there is not an immediate need for protection prior to 2035.

3. *Engineering Alternatives:* Because the mid- to long-term plan is to relocate the railroad from the bluff by 2035 and then remove as many of the support structures installed to protect the rail line as possible, there is an argument that prioritizing temporary bluff toe seawall construction over irremovable upper bluff pile stabilization systems and permanent bluff material removal and recontouring (including the proposed removal of the berm from Station 1518+85 to Station 1528+28) would reduce the permanent effects of the project on the bluff and natural beach processes. As such, a project alternative that substitutes temporary seawalls, where feasible, for the proposed permanent piles and berm removal warrants consideration and analysis. Please provide an analysis discussing whether additional placement of temporary seawalls only or temporary seawalls combined with limited bluff reconstruction would be feasible in general or at certain project segments, particularly for a project limited to the 2035 relocation date.
4. *Seawall Design:* Please provide additional information regarding the seawalls in response to the following questions:
  - Concrete cut-off walls are proposed for existing seawalls to address issues with scour, but how will the proposed new seawalls address scour?
  - How will the existing and proposed seawalls, and concrete cut-off walls, be removed once the rail corridor is relocated?
  - Please provide design details for the proposed vegetated mats and also information on the species used for planting.
  - Please describe any alternatives to the use of vegetated mats that were considered and explain why vegetated mats were chosen as the preferred approach.

#### **Other Information Requests**

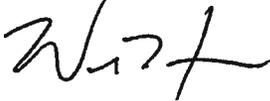
5. *Long-term Public Access Study and Mitigation.* As noted in the first notice of incomplete application letter for this project, Consistency Certification CC-0004-18 approved by the Commission on February 8, 2019 included the incorporation of a comprehensive long-term public access study to be completed by SANDAG and submitted to Commission staff within three years. Additionally, as part of that consistency certification, SANDAG also agreed to identify mitigation measures including coastal access improvements, recreation improvements, sand supply mitigation measures, and/or funding for those measures prior to submittal of any future consistency certifications. We received your response regarding the status of the long-term public access study and mitigation measures. However, additional coordination between the CCC and SANDAG is necessary to successfully implement the access mitigation and CCC staff will be following up shortly with direction on next steps.

6. *Project Description and Project Plans.* Please provide an updated project description and project plans that do not include any Phase II components and are also modified to reflect any project components that can be changed or removed pursuant to the requests in Items Two through Four above.
7. *Visual Simulation of Berm Removal.* Please provide a visual simulation of the proposed berm removal at Station 1518+85 to Station 1528+28. The simulation should illustrate potential changes to public visual resources as seen from along the bluff top and along the beach.
8. *Wetlands Impacts Mitigation Ratio.* Table 6 of the Biological Resources Letter Report identifies a range of mitigation ratios for impacts to wetlands between 0:1 – 4:1. However, a ratio of 0:1 would imply no mitigation for any impacts to wetlands. Please clarify the proposed mitigation ratio of 0:1.
9. *Jurisdiction.* Multiple figures and plan sheets submitted in the CC application (Figure 12 and Sheets CT-02 and CT-06) depict proposed development outside of the railroad Right-of-Way (ROW) and on the beach. Additionally, the Biological Resources Letter Report states “Impacts to 0.09 acre of beach non-wetland waters below the HTL would result from construction of seawalls...”

Please specify the last time that the Mean High Tide Line (MHTL) was surveyed and if SANDAG has been coordinating with staff from the California State Lands Commission (SLC) staff regarding whether any portions of the project are below the MHTL and will require a lease of state tidelands. Additionally, please provide the contact information for any staff at SLC who have been contacted for this project.

Pursuant to 15 CFR §930.60(a), the 6-month time period for review of this submittal has not begun and will not begin until the Commission staff receives all of the information discussed in this letter. If you need any further assistance or have any additional questions, please contact me at (805) 585-1825.

Sincerely,



Wesley Horn  
Environmental Scientist  
Energy, Ocean Resources and Federal Consistency Division