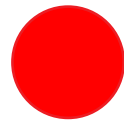


# Del Mar City Council Special Meeting Agenda

Del Mar City Hall – Via Teleconference Only  
1050 Camino del Mar, Del Mar, California

**January 25, 2022 City Council Special Meeting**

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**From:** Laura DeMarco <laurastanleydemarco@yahoo.com>  
**Sent:** Tuesday, January 25, 2022 10:23 AM  
**To:** City Clerk Mail Box  
**Subject:** Red dot supporting geological report to address 1/25 closed session items: 1) STB petition and 2) NCTD fence liabilities

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Dear Council Members and Staff,

The city of Del Mar needs a thorough geotechnical inspection of NCTD's right of way on Del Mar's eroding bluffs to provide safer and less damaging alternatives to the fencing approved at NCTD's January 20 board meeting as well as to limit the city's liability.

The public and the city of Del Mar need to be protected from NCTD's fencing project that potentially creates a 1.5-mile long geological "time bomb" that threatens the safety of train passengers and crews as well as crowds of beachgoers. Leighton's cursory 2-page geotechnical report provided by NCTD is insufficient and too full of disclaimers to substantiate its conclusion that the fencing will not cause more bluff erosion.

Since NCTD stated at the board meeting that Del Mar's geotechnical expert would be allowed to inspect the property, we urge you to follow through with an inspection and report. It will show that NCTD's proposed installation of two 1.5-mile long, 6-ft high, heavy chain-link fences on or near the vulnerable edges of Del Mar's eroding sandstone bluffs accelerates their erosion and destabilizes them. This fencing requires drilling 1,400 3-ft-deep x 1-ft-wide post holes and adding over 600,000 lbs. of weight from heavy cement footings and fencing. It creates 1,400 new stress points and sources of water intrusion on the fragile bluffs that are so unstable that there have already been 8 large bluff failures like the one which killed three family members in Encinitas in 2019.

The report will likely prohibit fencing on the seaward side of the lower bluff because it is too damaging to one of the most unstable sections of the bluff. Since the narrow seaward side of the lower bluff is already dangerously eroding at a long-term average of 6 inches/year, bluff retreat would be 10 feet in 20 years and 15 feet in 30 years so there is no room for any fencing.

Ignoring warnings from geologists and engineers about a bluff's unsafe condition is what led to the catastrophic Encinitas tragedy. The victims' families filed suit against the city of Encinitas and the state of California which tried to invoke Gov. Code 831.2 barring liability for a "natural condition" of "unimproved public property." However, a judge refused to dismiss the case against them so it is proceeding to a jury trial with potential claims far exceeding \$10M for the three victims.

Here are the relevant excerpts from the Encinitas lawsuit that applies to NCTD's fencing, a man-made installation that increases the risk of bluff failure and, consequently, potential liability for any public body that approves it:

“Defendants state of California and city of Encinitas were repeatedly warned by scientists and engineers of these dangers, and were explicitly told what was needed to mitigate the risks of block falls and cliff collapse. These defendants, however, failed to do even the bare minimum to keep families and beach-goers safe, and instead allowed man-made changes to increase the instability and risk of collapse over the years. By doing so, defendants made the risk of collapse inevitable and created a time bomb for the beach-going public. The only question was when it would occur and who would be injured or killed.”

Thus, the geological report will confirm that any modifications to NCTD’s proposed fencing is a necessity which limits Del Mar’s potential liability to future claims by those killed or injured by bluff slides and train strikes.

The report will determine what type and location is the least damaging long-term, especially with the additional stresses of the expected 6.5-6.9 earthquake from the nearby Rose Canyon Fault. Note that once installed, the fencing should not be removed as it creates a permanent source of destabilizing water intrusion that causes bluff slides.

Look at the limited fencing that geotechnical engineers permit at the nearby Torrey Pines State Natural Preserve which also has dangerously unstable sandstone bluffs. Note there are no damaging 6-ft high, heavy chain link fences requiring drilling thousands of 3-ft deep and 1-ft wide post holes. As shown below, the permitted fences are short, light weight and not visually intrusive.



In summary, Del Mar's geotechnical report will be useful in substantially modifying NCTD's damaging fencing project which endangers the lives of hundreds of innocent train passengers traveling along Del Mar's crumbling bluffs and families enjoying the popular beach below. In addition, the report helps protect the city of Del Mar from long-term liability, especially when the property reverts back to city ownership after the train tracks are moved off the bluff.

Thanks,

Laura