

# City of Del Mar Statement regarding North County Transit District's Proposed Rail Fencing Project in Del Mar

January 11, 2022

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## Background

The rail line through Del Mar traverses the Del Mar bluffs from Seagrove Park to the City boundary with San Diego to the south. The rail line has been in its current location since 1909. For decades, pedestrians have crossed the tracks to access the beach. Scenic trails and overlooks along the tracks are also used for jogging and other recreational activities. The North County Transit District (NCTD) considers this trespassing. The City continues to cooperate with NCTD on effective safety measures.

About 60 trains per day pass through Del Mar. That number is planned to double by 2030. NCTD reports that train strikes and near misses remain a safety problem.

In August 2020, NCTD filed a Petition with the Federal Surface Transportation Board (STB) against the California Coastal Commission and the City of Del Mar. The Petition seeks to preclude Del Mar and the Coastal Commission from having any say over NCTD rail projects on the Bluffs (such as bluff stabilization and fencing). Del Mar and the Coastal Commission contested the Petition. Other interested parties also filed briefs with the STB. The full rundown of filings can be found here: <https://prod.stb.gov/proceedings-actions/filings/>. The Petition was stayed to allow the parties to attempt to negotiate a compromise and resolution. The stay expired on December 31, 2021.

## The City of Del Mar's Position

The attached statement was issued by the Del Mar City Council in November 2020. This remains Del Mar's official, steadfast position. Del Mar's November 2020 policy position statement provided the lens through which the City has approached the collaborative process with NCTD and the Coastal Commission over the course of the past 16 months.

## Outcome

The City endeavored to work collaboratively with NCTD. This included, frequent and regular meetings at the staff level, site walks by City Councilmembers and staff, a view shed analysis, a modified fence design proposal, and extensive work on a draft license agreement between the City and NCTD for continued pedestrian use of an area known as the "upper bluff" recreational trail. Throughout the process, City staff updated the City Council who, in turn, provided feedback and direction to guide staff-level discussions. Unfortunately, the parties were unable to reach agreement. The primary unresolved issues concern: (1) NCTD's conceptual fencing locations, materials, and dimensions; (2) the apparent lack of professional architectural and engineering design and drawings; (3) lack of sufficient geotechnical analysis; and (4) overarching liability and maintenance responsibilities.

The attached letter from the City of Del Mar to the NCTD Board (dated January 11, 2022) further elaborates the City's concerns with NCTD's "best and final" fencing proposal and license agreement terms and conditions.

In the letter to NCTD, endorsed by the full Del Mar City Council, Mayor Dwight Worden states, “The Del Mar bluffs are one of the last remaining native coastal bluffs in San Diego. The bluffs are sensitive and must be preserved. The City of Del Mar, through the California Coastal Commission, wants to protect the bluffs as a valuable natural resource to the public. Del Mar also recognizes the need for safety measures along the rail line that traverses the Del Mar bluffs. Fencing in some areas may improve safety. Legal crossings coupled with other safety measures, such as signage and advanced warning systems, could greatly enhance public safety and are viable options instead of installing fences in areas where it is already difficult, if not impossible, to access the railroad tracks. Del Mar fails to understand why NCTD's current position is such a harsh ‘take it or leave it’ posture after all the progress we have made so far.”

### **Next Steps**

On December 30, 2021, NCTD filed a status update with the STB as required. NCTD requested STB to place the Petition in active status because negotiations were not successful. NCTD plans to bring a “fencing project” for Board consideration on January 20, 2022.

Del Mar, through the City Attorney’s office, has retained special counsel in Washington, DC, who specialize in defending public entities before the Surface Transportation Board.

Del Mar and the California Coastal Commission continues to advocate that NCTD must uphold its legal responsibilities, both in terms of regulatory requirements and self-governance as a public agency. This includes consistency review through the Coastal Commission to preserve public access, protect the sensitive coastal bluffs, and minimize adverse impacts. Fencing must be limited, properly designed, constructed and located where it will serve as a targeted, effective measure that directly addresses legitimate safety concerns.

With the Caltrans grant-funded Coastal Connections Study underway through summer 2022, in partnership with NCTD and SANDAG, and the design phase in progress by SANDAG for the Bluff Stabilization 5 project, there is tremendous synergy for designing and constructing these improvements holistically for the stability of the bluffs, preserving coastal access, and enhancing public safety.