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January 4, 2022

The Honorable Dwight Worden
Mayor
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014
Via electronic mail: dworden@delmar.ca.us

RE: NCTD Board Agenda Item regarding Del Mar Fencing

Dear Mayor Worden:

Since the mid-1990s, the North County Transit District (NCTD, or the “District”) and the City of Del Mar (City) have had ongoing discussions about railroad trespassing incidents and the need for the City to create safe and legal access along the railway on the Del Mar bluffs. San Diego County was identified as one of the top ten national locations for railroad trespasser casualties from November 2013 to October 2017, per the results of the Federal Railroad Administration’s analysis. The Del Mar bluffs were identified in *NCTD’s Trespasser Risk Reduction Study* as one of the top three locations within San Diego for trespassing events and incidents.

NCTD is focused on improving safety, railroad on-time performance, and mitigating liability/risk. The potential impacts of trespassing events are significant and include, but are not limited to:

- Injuries and fatalities
- Damage to railroad equipment and infrastructure
- Emotional trauma for rail employees and first responders
- Service delays that on average exceed 120 minutes per incident
- Liability claims

NCTD, as the property owner and railroad operator that is responsible for system safety, advanced steps to install fencing to reduce trespassing incidents. The installation of fencing was recommended by *NCTD’s Trespasser Risk Reduction Study*. The City of Del Mar and the California Coastal Commission provided significant negative feedback and indicated belief that local or state regulations restricted NCTD’s ability to implement certain railroad improvements.

On August 28, 2020, NCTD filed a Petition with the Surface Transportation Board (STB), which provides regulatory oversight for the movement of interstate

commerce via rail. The Petition sought confirmation that rail maintenance and upgrades are not subject to the Coastal Zone Management Act's Federal Consistency Review and the Coastal Act's permitting requirements.

In December 2020, NCTD, the City of Del Mar, and the California Coastal Commission executed an agreement to delay regulatory review by the STB and determination of NCTD's rights as a rail carrier related to maintenance and safety projects as requested in the Petition. The agreement to delay was intended to allow the parties time to work in good faith to reach an agreement that would eliminate the need for a review and determination by the STB. As part of the Agreement to work in good faith, the parties established a Working Group to discuss, evaluate, and work towards a final agreement by December 31, 2021.

On October 15, 2021, NCTD released the project mapping and visual impact analysis of fencing options. The original fencing plan was refined based on feedback from the City of Del Mar and California Coastal Commission Working Group while advancing NCTD's requirements for increased safety. The modified fencing plan significantly reduced the overall length of the fencing, continued access to the trails on the upper bluffs, and refined the fencing height and type to reflect feedback received from the City of Del Mar and the California Coastal Commission. To date, NCTD is unaware of any public action that has been taken by the City of Del Mar related to the fencing proposal negotiated by the Working Group and now the agreement to delay separate actions related to the installation of fencing and the STB has lapsed.

Accordingly, the NCTD Board of Directors has voted to place the consideration of fencing within the City of Del Mar on the agenda for its January 20, 2022 meeting. NCTD has also requested expedited consideration of its Petition for Declaratory Order before the STB. Before the District takes final actions on these matters, NCTD is confirming by this letter that the offers and negotiated positions from the Working Group are rejected by the City of Del Mar and the matters are closed. To reiterate, the only offer acceptable to NCTD is:

1. The implementation of the modified fencing plan developed in collaboration with the City and the California Coastal Commission working group.
2. The cost of construction of the fencing will be funded 100% by NCTD.
3. The City of Del Mar will be solely responsible for maintenance of the fence and the portions of the right-of-way covered under the license agreement.
4. The City of Del Mar will assume liability for use of NCTD's right-of-way as originally written in NCTD's November 1, 2021 agreement.

As there is no other proposal that will be considered, NCTD staff will move forward with a Board agenda item at its January 20, 2022 meeting that will support the consideration of various fencing options to include, but not limited to, NCTD's standard fence design requirements that is used in circumstances where there is no agreement with another agency that supports alternative design with

assumption of risk unless the City of Del Mar accepts the final terms offered by NCTD.

I am requesting a formal response prior to January 20, 2022. Please advise if you have any questions or would like to discuss.

Sincerely,

A handwritten signature in blue ink that reads "A. J. Kranz". The signature is written in a cursive style with a large, looping "K".

Tony Kranz
NCTD Board Chair

cc: NCTD Board of Directors
Del Mar City Council
Ashley Jones, City Manager, City of Del Mar
John Ainsworth, Executive Director, California Coastal Commission
San Diego Association of Governments Board of Directors
San Diego County Board of Supervisors