



29 June 2025

Delivered via email to: lossancomments@sandag.org

Re: Scoping Comments re: NOP of an EIR for LOSSAN (SDLRR Project NOP)

To whom it may concern,

The Surfrider Foundation San Diego County Chapter (Surfrider) appreciates this opportunity to provide public comments in response to the Notice of Intent to prepare an Environmental Impact Report for San Diego-Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Realignment (SDLRR) Project (Project). Surfrider is a non-profit 501(c)(3) organization that is dedicated to the protection and enjoyment of our ocean, waves and beaches for all people. Towards this mission, Surfrider has been very engaged in the effort to relocate the railroad tracks away from the coast, in order to protect this area's beaches, public beach access, and public trust recreational resources from harmful armoring.

SANDAG's most recent Project documents raise several concerns about the scope and objectives of the Project, and these concerns must be addressed to meet CEQA requirements and for public safety and maintaining and improving public beach access.

Background

Surfrider San Diego chapter members have commented on Del Mar Bluffs Stabilization 5 project (DMB5) in several forums, including at California Coastal Commission, Del Mar City Council, and SANDAG meetings. Specifically, chapter members worked with SANDAG and California Coastal Commission staff on Consistency Certification No. CC-0005- 21 (DMB5). This project included the construction of upper bluff stabilization structures, seawalls with rip rap backfill, new and retrofit drainage infrastructure, and public access improvements. It also included grading and placement of fill to reduce bluff slopes and after-the-fact authorization for two recent emergency repairs in order to support the existing railroad and maintain its operations along a 1.7-mile corridor between Seagrove Park and Torrey Pines State Beach in Del Mar, San Diego County. Chapter members submitted written comments to SANDAG's previous LOSSAN scoping notice for the Project and attended various public hearings and meetings related to the Project. Chapter members have also engaged in numerous ad hoc meetings with SANDAG to provide feedback on both the Project and DMBS5.

Guiding principles and requirements of the California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires robust analysis of significant effects, alternatives to the project, and any feasible mitigation measures to mitigate or avoid those effects. CEQA was enacted to further legislative policies including:

- The maintenance of a quality environment for the people of California now and in the future, and preventing environmental damage (Cal. Pub. Res. Code § 21000) CEQA further declares that policies of the State include: taking “all action necessary to protect, rehabilitate, and enhance the environmental quality of the state” (Cal. Pub. Res. Code § 21001(a))
- Taking all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities (Cal. Pub. Res. Code § 21001(b)).

CEQA requires the preparation of an Environmental Impact Report (EIR) for projects that may have significant effects on the environment “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided” (Cal. Pub. Res. Code § 21002.1(a)). The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project (Cal. Pub. Res. Code § 21002.1(d)). Therefore, under CEQA, an EIR must consider all significant effects on the environment from the project, including any irreversible effects and cumulative effects from the project; and any potentially feasible alternatives and other measures to mitigate or avoid those effects (Cal. Pub. Res. Code § 21100; 14 Cal. Code Regs. § 15130). The EIR requirement is the heart of CEQA (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795).

Projects must be properly defined

CEQA requires a lead agency to initially determine the project’s purpose and objectives (CEQA Guidelines, § 15124(b)), and that the EIR “describe a range of reasonable alternatives to a project that would feasibly attain most of the project’s basic objectives while avoiding or substantially lessening any of the project’s significant effects” (CEQA Guidelines, § 15126.6(a)). A clearly written statement of objectives is required to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR (CEQA Guidelines, § 15124(b)).

SANDAG, the lead agency for this Project, has provided an Updated Notice of Preparation (NOP) which raises a lot of concerns, as it includes new “updated Project objectives” which could improperly and artificially constrain the alternatives considered and the analysis of how well the alternatives meet the purported objectives. The original NOP from 2024 demonstrated the agency’s clear objective of “improving rail service reliability by *relocating the existing railroad tracks away from the eroding coastal bluffs in Del Mar*” (emphasis added). In addition to a No Project alternative, the NOP included consideration of three inland realignments. While not labeled as a “goal” but rather as an “objective,” relocation away from the tracks was the clear ultimate goal of the project.

However, the new NOP improperly frames a newly labeled “goal” of the project as “to maintain and enhance passenger and freight service along the San Diego segment of the LOSSAN rail corridor,” and has removed the prior objective and any reference to relocating the existing tracks away from Del Mar’s eroding coastal bluffs. Additionally, the new NOP includes a new non-tunnel “Del Mar Bluffs Double Track Reinforced Alternative Alignment” that would keep railroad tracks along the coast.

The initial NOP had a clear objective to move the tracks away from the coast. When compared with the updated NOP’s new project objectives, it is clear that the new objectives are an artificially narrow pretext that could improperly lend support to the newly added coastal alternative.¹

By attempting to “update” the objectives, the agency is improperly constraining the alternatives considered and artificially limiting their potential ability to meet the new project objectives. Courts have held that project objectives are impermissibly narrow where they effectively describe the proposed project and therefore preclude informed decision making, public participation, and other reasonably feasible alternatives (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683).

Surfrider implores the agency to return to and uphold its original goal, which is needed for both the long term efficacy of the railroad and protection of our coastal resources.

The Environmental Impact Report must consider significant effects

An EIR must study impacts across many important areas, including aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, public services and recreation, and transportation and traffic. Surfrider submits that many of the new Project Alternatives have potential significant impacts to the above. Additionally, the “Del Mar Bluffs Double Track Reinforced Alternative Alignment” alternative has such significant impacts

¹ Other new purported objectives that could similarly and collectively skew the agency’s alternatives analysis include: “Minimize impacts to existing homes, businesses, tourism, and major economic generators, including the Del Mar Fairgrounds, and transportation facilities during and after construction;”

“Avoid and/or minimize impacts on biological, cultural, and recreational resources of national, state, or local significance, including publicly owned parks, beaches, wetlands, ecological reserves, wildlife or waterfowl refuges, and any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places” was changed to, “Avoid and/or minimize negative effects, and where possible enhance biological, cultural, and recreational resources of national, state, or local significance, including publicly owned parks, recreational trails, beaches, wetlands, ecological reserves, wildlife or waterfowl refuges, and any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places” (emphasis added; the agency should restore the emphasis on minimizing the negative impacts on biological, cultural, and recreational resources, as well as keep the goal of enhancing those resources, including parks and beaches); and

“Minimize impacts to existing homes, businesses, tourism, and major economic generators, including the Del Mar Fairgrounds, and transportation facilities during and after construction.” (This purported objective is impermissibly narrow, and not properly an objective of the project, the – newly asserted – purpose of which is “to maintain and enhance passenger and freight service along the San Diego segment of the LOSSAN rail corridor.”)

that it should be considered an alternative that is not feasible.² The alternative is not feasible for at least the following reasons:

1. **It violates land use planning required by California Coastal Consistency Certification No. CC-0005- 21, DMB5.** In a letter to SANDAG dated February 27, 2025, the California Coastal Commission agrees: *“In the application submittal to the Commission for CC-0005-21, SANDAG stated that it had identified the need for, and begun pursuit of, the relocation of the rail corridor off of the Del Mar Bluffs by as soon as 2035, at which point the seawalls proposed as part of the stabilization project would no longer be necessary to protect the rail line and could be removed. Shoreline structures, such as seawalls, generally result in a variety of adverse impacts on coastal resources, including on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on- and off-site, ultimately resulting in the loss of beach. In light of these impacts, the Commission staff was only able to recommend concurrence, and the Commission was able to concur, because SANDAG had committed to plan for relocation of the railroad and because SANDAG has designed the seawalls to be removed after relocation was complete. This approach was also found to be consistent with the Commission’s Sea Level Rise (SLR) Guidance for critical infrastructure (like the Los Angeles-San Diego-San Luis Obispo Corridor).”*

The Staff report for CC-0005-021 itself states *“SANDAG is currently in the process of planning to relocate the tracks consistent with the regional transportation plan; however, given the magnitude and complexity of that effort and outstanding funding needs for final design, environmental review, and construction, implementation of the relocation may extend beyond the target date of 2035.”*³

² Cal. Code Regs. Tit. 14, § 15126.6 - Consideration and Discussion of Alternatives to the Proposed Project “(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” ... (f) Rule of reason. The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553; see Save Our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745, 1753, fn.1).”

³ <https://documents.coastal.ca.gov/reports/2022/6/W7b/W7b-6-2022-addenda.pdf> page 1.

The Staff Report also includes Condition One, "Authorization Term":

a. Authorization for all seawalls included in this consistency certification (including those subject to emergency repairs in 2021) shall expire thirty (30) years from the date of Commission action (i.e., June 8, 2052) or upon relocation and legal abandonment of the sections of railroad at issue in this action, whichever occurs first. No less than six months prior to the expiration of the authorization, SANDAG shall submit to the Coastal Commission a complete coastal development permit application or consistency certification to remove all of the seawalls and rip-rap included in this consistency certification and to restore the affected areas to natural conditions, except as allowed pursuant to subsection (b). If a complete permit application or consistency certification is filed before the end of the authorization period, the authorization period shall be automatically extended until the time the Commission acts on the consistency certification or permit.

b. If relocation and legal abandonment of the rail line has not been completed in 30 years and SANDAG wishes to keep any portion of the seawalls or rip-rap in place beyond the 30 year time period, it must submit a complete, new consistency certification no less than six months prior to the expiration of the authorization. At that time, the Commission will need to consider authorization for the retention of the seawalls in light of the then-existing standard of review, including assessment of any needed mitigation for the ongoing impacts of the structure(s) and an evaluation of actions to reduce or eliminate those impacts. If a complete consistency certification is filed before the end of the authorization period, the authorization period shall be automatically extended until the time the Commission acts on the consistency certification."

2. **Even if SANDAG were to apply at the 30 year expiration for a new permit, nothing in conditions for CC-0005-021 authorizes the additions** of a new second track, a relocated primary track, and a trench for the new tracks as described in the Project's proposed Del Mar Bluffs Double Track Reinforced Alternative Alignment. These additions would be considered New Development under the Coastal Act. The project must comply with the Land Use authority of the Coastal Act in a new Consistency Determination and/or compliance with the Del Mar Local Coastal Program.

The Coastal Commission has already informed SANDAG in its letter dated February 27, 2025 that New Development is inconsistent with the Coastal Act in this location because the New Development will rely on shoreline protective devices such as seawalls and/or soldier piles as well as upper bluff reinforcement as described in the alternative for the Project. The letter reads (emphasis added):

"If implemented, the Del Mar Double Track Reinforce Alternative would be in direct conflict with the Commission's action in CC-0005-21, its SLR Guidance for critical infrastructure and SANDAG's commitment to relocate the tracks from the Del Mar Bluffs and remove the seawalls. In addition, this alternative would add 1.5 miles of new shoreline armoring to the beach in

southern Del Mar and, over the long-term, likely result in its permanent loss. Based on prior analyses of the significant bluff erosion and stability hazards to the existing railroad in Del Mar, the addition of a second track on the bluffs also appears to be inconsistent with Coastal Act Section 30253(b), which requires that new development assure stability and structural integrity without reliance on protective devices that substantially alter natural landforms along bluffs and cliffs. As such, Commission staff have serious concerns about the regulatory implications and challenges presented by the Del Mar Double Track Reinforce Alternative and do not consider it to be viable. We therefore strongly recommend that the SANDAG Board act to not move forward this alternative for further consideration in the Draft EIR."

The Coastal Commission's letter also points out that the addition of 1.5 miles of seawalls would substantially alter natural landforms inconsistent with both the Coastal Act and the requirement of CEQA to have a viable alternative with mitigated impacts to Land Use Planning and Aesthetics.

The Commission also points out that the Project alternative would result in "permanent loss" of "beach" which is inconsistent with the recreational policies of Chapter 3 of the Coastal Act, the California Constitution⁴, and the requirement of CEQA to have a viable alternative with mitigated impacts to Land Use Planning and Recreation.

3. **The Project's proposed Del Mar Bluffs Double Track Reinforced Alternative Alignment is inconsistent with previous CEQA analysis**, specifically the LOSSAN Programmatic EIR for the Rail Corridor, which eliminated double track in place from consideration ([Record of Decision Los Angeles to San Diego, California \(LOSSAN\)](#))⁵.

⁴ Sections 30210, 30211, 30212, 30220, 30221 of the Coastal Act and Section 4 of Article X of the California Constitution promote free and open access to the coastline and are part of the Recreation and Access policies of the Coastal Act.

⁵ https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/192/LOSSAN_ROD_FINAL_2009.pdf Department of Transportation Federal Railroad Administration Record of Decision Los Angeles to San Diego, California (LOSSAN) Proposed Rail Corridor Improvements See page 10

Table 1
LOSSAN Corridor Rail Improvements Alternatives Eliminated

Alignment	Reason for Elimination							
	Construction	Environment	Incompatibility	Right of Way	Connectivity/Accessibility	Revenue/Ridership	Train Performance	Environmental Concerns
San Juan Capistrano								
At-grade double-tracking in existing rail alignment		P	P	P				Historic resources
Downtown Cut-and-Cover Tunnel	P		P					
Dana Point/San Clemente								
At-grade double-tracking in existing rail alignment	P		P					
Short Trench	P	P	P				S	Beach aesthetics & access
Long Trench	P	P	P	S				Beach aesthetics & access
Long Single Tunnel (no station in San Clemente)	P					S		
Inland Bypass	P	P	S		P	P	P	Natural resources
Encinitas								
At-grade double-tracking in existing rail alignment	P		P					
Long Trench	P							
Del Mar								
At-grade double-tracking in existing rail alignment	P		P	P				
Trench in Bluffs	P	P	P	S				Beach aesthetics & access
Camino del Mar Tunnel #2		P	S	P				New crossing of lagoon
Notes: Reason: Primary (P) and Secondary (S) reasons for elimination. Construction: Includes engineering and construction complexity, cost and sub-optimal systems operations influence (i.e., slow train speeds). Environment: Includes any factor that can be assigned to the environmental disciplines studied as part of the EIR/EIS. Incompatibility: Incompatibility with current or planned local land use. Right-of-Way: Includes lack of available rights-of-way, extensive right-of-way needs, and high cost. Connectivity/Accessibility: Includes limited connectivity with other existing or future transportation modes (highway and/or transit systems). Ridership/Revenue: The alignment or station would have a negative effect on the revenue or ridership for the system. Train Performance: Includes impacts to reliability, running time improvement, and ability to accommodate freight. Environmental Concerns: Notes on specific environmental areas of concern.								

As shown in the table above, the alternative was eliminated at least primarily for Environmental Reasons including “beach aesthetics and access.” This reasoning is consistent with the position of California Coastal Commission's letter of February 27, 2025.

The Programmatic EIR has more detailed language about why the double track in place option was eliminated ([LOSSAN EIR 2007, page 78](#))⁶.

"An at-grade second track along the coastal bluffs in Del Mar would compound existing barrier and safety factors noted above for other locations. In addition, since the bluffs are continually eroding, it was apparent that any double-tracking alternative in this location

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https://railroads.dot.gov/sites/fra.dot.gov/files/2023-10/2.2.11%20LOSSAN%20Programmatic%20EIR-EIS%20%282007%29_PDFa.pdf

would require significant excavation work to stabilize the bluff-top. Stabilization would also require structures that would create substantial visual impacts and likely require significant on-going maintenance efforts to address erosion and drainage concerns. Therefore, this option was eliminated due to high construction and operational impacts and costs."

The Programmatic EIR was cited in the Coastal Commission's Findings and Declarations in Certification of Federal Consistency Determination CC-020-10, Construction of Del Mar Bluffs Railroad Track Stabilization Project 3 (DMB3). As the Commission found, DMB3 would not lead to double tracking along the Del Mar Bluffs or create a "hurdle" for moving the tracks inland⁷.

"With these commitments, the project can be constructed without adversely affecting the stability of the bluffs, the public beach at the foot of the bluffs, or railroad operations through this area. In addition, project implementation will not lead to double-tracking of the railroad through the Del Mar Bluffs area or serve as a hurdle to the eventual inland relocation of the track away from the bluffs, as SANDAG reported that the 2007 Final LOSSAN Program EIR/EIS eliminated any double track alternative along the Del Mar Bluffs. The project is necessary to protect an existing facility (the railroad tracks) from bluff erosion, is the least environmentally damaging feasible alternative for an interim (20 years) approach, and provides for future Commission review of future project elements or current elements that may become exposed over time. The project is consistent with the shoreline structures and geologic hazards policies of the California Coastal Management Program (CCMP)(Coastal Act Sections 30235 and 30253)."

4. **SANDAG's latest NOP contradicts their own previous assessments.** For example, in pages 69-70 of the [2023 Alignment Alternatives study](#) (emphasis added):

"3.7 Del Mar Bluffs Alternative

At a PDT meeting in March 2021, NCTD made a request to look at a double track alignment that would stay on the Del Mar Bluffs to show if it could be considered a viable alternative. ...

A 110-miles per hour alignment on the bluffs would result in more significant impacts compared with the other conceptual alternatives, where the alignments would move inland. In addition, retaining the alignment on the bluffs does not address the current safety risk presently being addressed with multiple bluff stabilization projects, which would have the potential to continue in perpetuity to maintain safe operations. These impacts combined with the direction from CCC to relocate the track off the bluffs leads to the conclusion that an alternative double track alignment along the bluffs is not a desirable solution. "

⁷ <https://documents.coastal.ca.gov/reports/2010/10/F6b-10-2010.pdf> Staff Report in Findings and Declarations in Certification of Federal Consistency Determination CC-020-10 at page 15.

Additionally, pages 4-47 to 4-48 of the [SANDAG February 2025 Value Analysis Report](#)⁸ state this alternative is not consistent with previous approvals and requires CCC approval and coordination:

"4.1.12 VA Alternative Concept No. 12 (IOC-04)

Stabilize bluffs and widen existing alignment to accommodate a second track

Estimated Cost: \$1.9 to \$2.5 billion

Description of Alternative Concept: The intent of this alternative concept is to maintain the location of the existing rail alignment and add a second track to the east of the existing tracks within the railroad right-of-way. The second track would pass under the existing Torrey Pines Overhead bridge.

...

Discussion of Additional Considerations:

This alternative concept is not consistent with prior approvals that require the tracks to be removed from the bluffs and sea walls to be removed. Additionally, CCC staff have expressed serious concerns with a concept explored in the past that would maintain the location of the existing rail alignment on the bluffs as it would hamper efforts to plan for sea level rise and erosion. Therefore, coordination and approval by the CCC would be required for the addition of a second track, the installation of new sea walls, and additional retaining structure along the Del Mar Bluffs. Specifically, a new federal consistency determination would need to be submitted to CCC for its concurrence."

Additionally, at the California Coastal Commission meeting on June 8, 2022 in Del Mar, SANDAG promised to remove the track off the bluff in seeking approval of Consistency Certification No. CC-0005- 21, DMB5 consistent with the eventual conditions of the issued determination. The following is a transcription of testimony from applicant SANDAG's Chief Executive Officer Hasan Ikhata for Consistency Certification No. CC-0005- 21, DMB5 (emphasis added):

*"Jack and his team and our staff have been working for almost 3 years to get to this point. You know, I got to know Jack, and he's a straight shooter, he's a tough negotiator, but I really do appreciate the dialogue in conversation we have. You know **I said this to you when you came to Chula Vista**, that we're going to do everything possible from SANDAG's standpoint to make sure this corridor is safe. **Environmental sustainability is really paramount to us. And I also told you at that time that we're gonna start***

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<https://www.sandag.org/-/media/SANDAG/Documents/PDF/projects-and-programs/featured-pf...bilization/loosan-sdsdvt-alternatives-analysis-2023-09-01.pdf>

the process, removing the track off the bluff. And I made that promise to people of San Diego, to my board and since then we completed the \$3 million study, corridor management study, almost complete, to recommend two alternatives. And now we're at the stage where we're ready to start the environmental and design work that's gonna cost about \$300 million to look at how we move that rail off of the bluff. So, we're committing to the long-term solution. In the meanwhile, we are doing that, we work with your staff to figure out how do we make sure it's safe, stabilized and also move forward with environmentally care. So we have a history. (Testimony audio and video available here as well as on the Coastal Commission website at https://cal-span.org/meeting/ccc_20220608/).

5. **The \$300 million in state funding to complete the environmental phase of this project was proffered on relocation and not a double track in place project.**

SANDAG accepted \$300m in State of California General Fund monies in the Transit and Intercity Rail Capital Program for the advancement of the San Dieguito to Sorrento Valley Double Track project (Capital Improvement Program No. 1239823). It is not permissible to use this money, which is funding this Draft EIR, to study leaving the tracks along Del Mar's bluffs.

The SANDAG Board of Directors voted to accept this funding at their September 9, 2022 Board meeting. The Staff Report that accompanied this Item explains the Project Scope as follows: ***"Completion of Project Approval and Environmental Document (PA&ED) phase re-aligning the LOSSAN rail corridor away from the Del Mar Bluffs with a double track system, and the advancement of the design and right-of-way phases (emphasis added)."***⁹ Similar language can be found in a December 2022 Memorandum to the California Transportation Commission, which states that the initial \$152m allocation to SANDAG must be used for "completion of the environmental phase for a project that will cover the realignment of railroad tracks facing failure due to erosion into a tunnel that will cut through Del Mar Hill."¹⁰

Additionally, the CA Dept of Transportation added language governing how the \$300m must be spent to their Master Agreement with SANDAG (Program Supplement 11SANDAGPS-04).¹¹ This document, signed by both CalSTA's Division of Rail and Mass Transportation Chief and SANDAG's Chief Financial Officer, states the following as its Project Summary, and goes on to detail over multiple pages that the money must be used to study realignment of the LOSSAN rail corridor away from the Del Mar Bluffs:

PROJECT SUMMARY: This program supplement allocates \$152,000,000 for the Project Approval and Environmental Document phase of a project to move a portion of the Los Angeles-San Diego-San Luis Obispo rail corridor in the City of Del Mar that faces risk of collapse from bluff erosion and realigns the rail corridor with a double track in an underground tunnel system through the coastal hill of Del Mar.

⁹ [Staff Report Item 1: LOSSAN Realignment, Sept 9 2020](#)

¹⁰ [Memorandum for Dec 8-9, 2022 CTC meeting](#)

¹¹ [San Diego Association of Governments Program Supplement 11SANDAGPS-04](#)

The stated project scope of the \$300m in state funding rests on the foundational infeasibility of double tracking in place due to the aforementioned irreversible negative impacts on the beach and coastal aesthetics, and also the unending battle of maintaining the tracks against a rapidly encroaching ocean and eroding bluffs.

Furthermore and based on the evidence above, Surfrider has concluded that studying the Del Mar Double Track Reinforced Alternative in this Draft EIR constitutes an improper use of state funds. Moving forward with studying this alternative could expose SANDAG to legal liability, and could jeopardize the remainder of the \$300 funding and/or compromise future state funding towards completion of the SDLRR Project.

The EIR must consider less harmful alternatives

Fortunately, the Updated NOP proposes three alternative alignments that can feasibly achieve the SDLRR Project's goals in accordance with CEQA: the San Dieguito Bridge to I-5 Alternative Alignment, the Under Crest Canyon Alternative Alignment, and the Under Camino Del Mar Alternative Alignment. Surfrider supports further study of these alternatives, all of which can be pursued in conformance with SANDAG's previous commitments *including* Coastal Commission Consistency Certifications, the Coastal Act, the state funding that is financing this environmental review, and the reality that double tracking in place would destroy almost 2 miles of irreplaceable bluffs and beach *while* necessitating an unending battle against Mother Nature in the form of an encroaching ocean upon rapidly eroding bluffs.

The EIR must consider mitigation measures

Below is a summary of some of the mitigation measures that must be considered in this Draft EIR:

- When the train is relocated as required by CEQA, the Coastal Act, and Consistency Certification No. CC-0005- 21, DMBS5, mitigation measures for the Project should include that the temporary seawalls and soldier piles and other shoreline protective devices are removed since they are no longer required, per Section 30235 of the Coastal Act, to protect an existing structure from erosion. Instead, additional shoreline accesses should be provided. The existing right of way should be dedicated for public access or deeded to Del Mar and/or CA State Parks for such purposes. SANDAG has previously agreed that removal of soldier piles was feasible and required under previous Coastal Commission Federal Consistency Determinations as shown below¹²:

"Can the soldier pilings be removed if/when the rail line is relocated inland?"

[SANDAG's answer to Coastal Commission] Yes, the soldier piles could be removed if and when the rail line is relocated inland. Note that as part of the conditions for CC-048-04,

¹² <https://documents.coastal.ca.gov/reports/2010/10/F6b-10-2010.pdf> Staff Report in Findings and Declarations in Certification of Federal Consistency Determination CC-020-10 at page 13.

SANDAG and NCTD agreed that when the environmental document for the removal of the tracks along the Del Mar Bluffs is prepared, as a portion of the project, the document will examine the removal of all visible concrete piling and in-fill walls.”

- Should the “Del Mar Bluffs Double Track Reinforced Alternative Alignment” remain under consideration, it would require considerable mitigation and ongoing maintenance. As is evident by the at least 6 SANDAG Stabilization projects in Del Mar, the area is subject to continued erosion and sea level rise impacts. Considerable sand nourishment projects to offset the impact of the continued presence of the seawalls and soldier piles required to stabilize the bluffs would be required in this Alternative. Nourishment via excavated bluff material from trench excavation would not be sufficient for several reasons: first, it would not be equal to the overall amount of sand that the bluffs would naturally provide over time via natural erosion. Additional nourishment via offshore dredging or from land-based sources would be required. More importantly, the excavated material would not be sufficient mitigation for additional beach space that bluff erosion would create over time, were the train to be removed from the bluffs so that the natural coastal process of landward beach migration could occur. Even with additional nourishment from offshore or another source, there is no equal mitigation for this permanent loss of future beach. The erosive forces of sea level rise would ultimately render sand nourishment ineffectual if the bluff line is artificially held in place. It is indisputable that the beach will be lost sooner under this alternative than those which propose moving the train elsewhere. Furthermore, sand nourishment has its own environmental consequences, including but not limited to the burial of reefs like the surfing reef at 8th Street, and the other reefs. Sand nourishment would also be upcoast of the littoral drift towards Penasquitos Lagoon, and could cause the lagoon mouth to be blocked, requiring additional dredging.

- The Project Alternative “Del Mar Bluffs Double Track Reinforced Alternative Alignment” must include costs and the impacts associated with ongoing mitigation as described, including the fact that the beach loss under this alternative cannot be fully mitigated. The costs and proposed mitigation must also include maintenance and repairs to seawalls and other similarly include shoreline protective devices, which will surely mount over time as sea levels rise into the 21st century. Would it even be feasible to maintain the seawalls after 2 or more feet of sea level rise, at which point a dry sand beach may no longer exist upon which crews and machinery may need to access in order to do repairs? Such eventualities must be considered and studied, including the potential that the Del Mar Double Track Reinforced Alternative would have a limited project life, thereby making eventual relocation away from the bluffs necessary at a future date.

- The Project Alternative “Del Mar Bluffs Double Track Reinforced Alternative Alignment” and “Under Camino Del Mar Alternative Alignment” include South Portals that impact the Penasquitos Lagoon. From the Updated NOP, pages 13-14:

“existing railroad alignment within Los Peñasquitos Lagoon would be double tracked, which would require raising and widening the existing berm in the lagoon to address flooding and sea level rise projections”

Filling precious lagoon resources and the additional impacts on wildlife during construction would have potentially unmitigated impacts.

Conclusion

Surfrider Foundation appreciates the opportunity to provide these comments. We urge SANDAG to remove the Del Mar Double Track Reinforced Alternative from consideration for the reasons explained in these scoping comments. Should you be unable to remove this non-tunnel alternative from consideration, we urge SANDAG to complete a full, extensive review of the environmental impacts of this alternative, including but not limited to mitigation for loss of beach and public access to the beach, whether such mitigation is even possible at this location considering the irreplaceable nature of coastal resources, and the as-of-yet unexplored mounting costs of unending maintenance and repair (including but not limited to sand nourishment) of the required stabilization elements to maintain a railroad atop eroding bluffs that will be subject to increasing wave runup *and* storm runoff due to climate change and sea level rise.

Sincerely,

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July 19, 2024

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San Diego, CA 92101
Attn: Tim Pesce

Re: Notice of Preparation of a Draft Environmental Impact Report for the San Diego-Los Angeles-San Diego-San Luis Obispo Rail Realignment Project located in the cities of Solana Beach, Del Mar, and San Diego, California

To whom it may concern,

The Surfrider Foundation is a nonprofit grassroots organization dedicated to the protection and enjoyment of our world's ocean, waves, and beaches, for all people, through a powerful activist network. Thank you for the opportunity to comment on this project. We have been actively involved in the planning for the rail realignment for over ten years, first serving on Del Mar's Sea Level Rise Technical Advisory Committee that led to sea level rise discussions related to Del Mar's Local Coastal Program Update, and more recently as a member of the Los Angeles – San Diego – San Luis Obispo (LOSSAN) Regional Rail Corridor Working Group and the San Diego Shoreline Preservation Committee.

We have provided extensive comments to SANDAG, the city of Del Mar, and the California Coastal Commission about the extreme impacts the continuing presence of the railroad tracks and the subsequent Del Mar Bluffs Stabilization projects have inflicted on the beaches of Del Mar and the need to relocate the tracks in light of Sea Level Rise (SLR). This includes the following documents:

- September 30, 2018: Item 12: Comments to Del Mar City Council on Del Mar's Plan to Address Projected Sea Level Rise, Flooding, and Erosion, including Local Coastal Program Amendments¹
- June 2, 2021: Comments to the California Coastal Commission regarding City of

¹ Appendix A, attached

Del Mar Major Amendment LCP-6-DMR-20-0005-1²

- July 26 2021: Comments to Del Mar City Council on Item 2, SANDAG's presentation to Del Mar City council concerning Del Mar Bluff Stabilization Project³
- September 20 2021: Comments to Del Mar City Council on Item 2 SANDAG's presentation to Del Mar City council concerning Del Mar Bluff Stabilization Project⁴
- June 3, 2022: Comments to the California Coastal Commission on Item W7b, CC-0005-2, Coastal Commission Federal Consistency Determination concerning Del Mar Bluff Stabilization Project⁵

Our goal has always been to see SANDAG and Del Mar plan for SLR to protect coastal access, coastal recreation, and marine resources in the most effective way, given current conditions affecting the safety and operability of the railroad. Relocation of the railroad tracks provides an extremely rare and important opportunity to allow space for Del Mar's coastline to migrate landward as sea levels rise. It will also secure public recreation, viewing, and access opportunities along the former rail corridor in the future. If successfully managed, this project will be a nationally significant case study, representing one step along an adaptation pathway towards managed retreat of critical infrastructure and restoration of an otherwise highly developed area on an eroding shoreline. The site is unique in San Diego County as one of the few areas along coastal bluffs where existing development would no longer be threatened once the rail is relocated.

The issues of importance to us when examining any project alternatives as part of the upcoming Draft Environmental Impact Report (DEIR) include:

- Developing a timeline and process for providing new access on Del Mar's bluff, as well as removal of the seawalls currently under construction as part of Del Mar Bluff Stabilization Project #5 (DMB5), once the tracks have been relocated. In addition, removal of both older existing and future planned stabilization structures must also be in the timeline. The timeline must include actionable demolition and construction milestones with planned funding and deadlines. This is required under CEQA as the removal of structures and improved access

² Appendix B, attached

³ Appendix C, attached

⁴ Appendix D, attached

⁵ Appendix E, attached

are project goals. In addition, the removal and access were mitigation measures in previous CEQA and/or Coastal Commission actions by SANDAG.

- The impacts of the potential undermining and/or flooding of the tunnels and/or floodwalls by seawater intrusion including under various sea level rise scenarios must be studied. Impacts of seawater intrusion from rising sea levels include direct intrusion, rising water tables due to pressure from sea level rise and an increase in wave overtopping or tidal impacts. In the case of tunnels under lagoons, rising water tables could impact the planned project alternatives. Similarly, floodwalls may be impacted by rising sea levels and the impacts on groundwater. The figure below shows the potential impact.

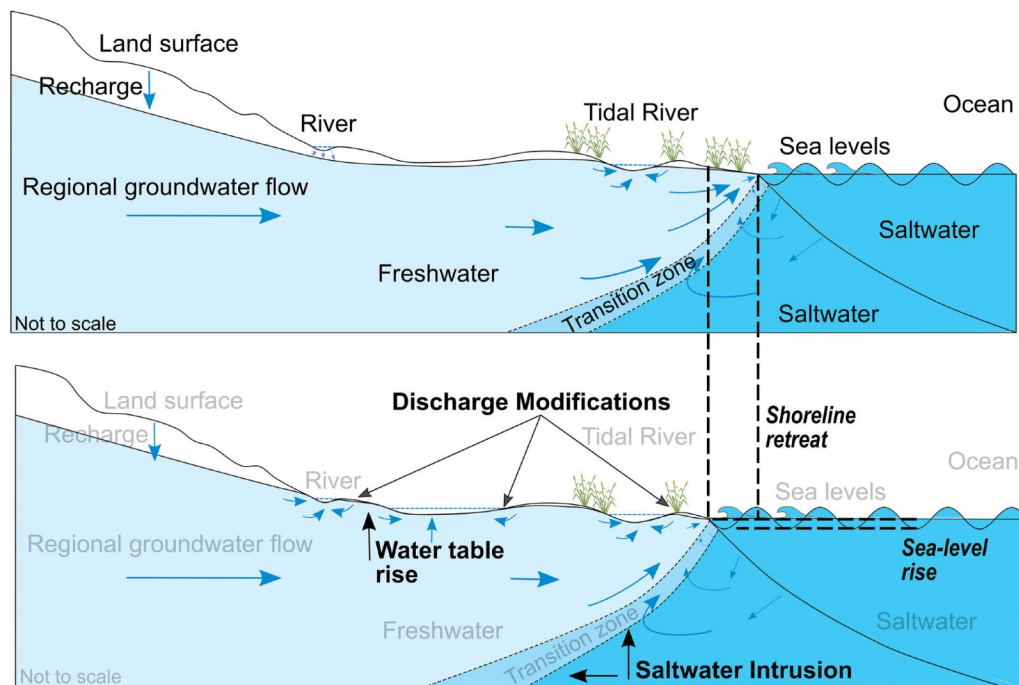


Figure 1: Comparison between current water levels (top) in the low-lying zone and potential changes (saltwater intrusion, levels/water table rise and discharge modifications) due to climate change induced sea-level rise (SLR) in coastal unconfined aquifers and shoreline retreat impacts on coastal shallow groundwater (bottom) with landward encroachment resulting in an eroded coastline, readjustment of the shoreline and bottom profile under SLR.⁶

⁶ Figure 1 and caption are copied from Bosserelle, Amandine L., Leanne K. Morgan, and Matthew W. Hughes. "Groundwater rise and associated flooding in coastal settlements due to sea-level rise: a review of processes and methods." *Earth's Future* 10:7 (2022): e2021EF002580. <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2021EF002580#:~:text=Groundwater%20can%20co>

- The impacts of the project alternatives on beach access and automotive, pedestrian, train, and bicycle traffic during construction must be studied and eliminated or mitigated as part of the project and DEIR. For example some alternatives would close or alter bicycle and pedestrian traffic on the Sorrento Valley Road Class 1 bike/pedestrian trail during construction. Alternative A may impact coastal bicycle and pedestrian access in Solana Beach during construction. These impacts must be studied and eliminated. In both of these areas, the only automobile-free bike lanes will potentially be impacted by project alternatives. CEQA requires study and mitigation of these impacts. These impacts are significant given the potential duration of construction.
- Long term impacts to coastal access must be studied and eliminated or mitigated as part of the DEIR and project. SANDAG has received approval and funding for a double tracking and events platform at the Del Mar racetrack. The Coastal Commission held a Federal Consistency Hearing on the project on June 7, 2017. As part of the consistency findings, a special events platform would provide improved coastal access by rail to Del Mar beaches and could further be enhanced. Alternative A would potentially eliminate this improved access during construction and long term. This impact must be studied. The following excerpt is from the Staff Report by the Coastal Commission on the federal Consistency determination⁷:

SANDAG states that the new double-track railroad bridge over the San Dieguito River is designed to accommodate a future pedestrian trail undercrossing of the railroad tracks along the south bank of the river. This trail is not an element of the subject consistency certification, but rather is a project proposed and supported by other agencies, including the San Dieguito River Park Joint Powers Authority (JPA), and would provide an alternate means of pedestrian and bicycle access to the shoreline from inland locations. However, until this future trail project is constructed, rail passengers could exit the proposed railroad platforms and walk across the Fairgrounds to Jimmy Durante Boulevard, which crosses the San Dieguito River and intersects an existing

[ntribute%20to%20surface,rises%20and%20flooding%20risk%20increases.](#)

⁷ <https://documents.coastal.ca.gov/reports/2017/6/w14a/w14a-6-2017-report.pdf> June 2017 CC-0001-17 (San Diego Association of Governments) Consistency Certification by SANDAG for San Dieguito River railroad bridge replacement, double-track extension, and Del Mar Fairgrounds special events rail passenger platform, Cities of Solana Beach and Del Mar, San Diego County. (LS-SF)

informal pedestrian pathway along the south side of the river (Exhibit 4). This path continues across the existing railroad track (notwithstanding that this is an unpermitted/illegal crossing of the railroad right-of-way) to Camino Del Mar and the shoreline at the mouth of the river. After construction of the proposed double-track bridge, the existing pathway would pass underneath the bridge, eliminating the current at-grade and unsafe crossing of the trackway. However, SANDAG notes in its consistency certification that currently there is no formal public access from the location of the proposed passenger rail platforms though Fairgrounds property to Jimmy Durante Boulevard. A proposal for such access across the Fairgrounds property is not an element of the proposed project or of this consistency certification. However, the consistency certification does reference the conceptual plan for the trail along the south side of the river:

A future trail, Reach the Beach Trail, is planned to be located adjacent to the Fairgrounds and Camino Del Mar on both sides of the railroad track, and that would cross the tracks. The planned trail is identified on the San Dieguito River Valley Conservancy trail plan. As identified on the San Dieguito River Valley Conservancy trail map, this future trail is planned to traverse under the railroad tracks to allow access to the beach from the east; however, the trail is only conceptual at this stage and there are no easements for the trail. In addition, the planned new San Dieguito River Railroad Bridge is being designed to accommodate a trail undercrossing of the railroad tracks along the south edge of the San Diego Dieguito River. The current design facilitates trail use below the railroad bridge on the south side of the San Dieguito River. In addition, the project includes a culvert below the railroad tracks for the Stevens Creek realignment that could allow development of a future trail (by others) below the tracks [on the north side of the river, near Via De La Valle]. Therefore, implementation of the Proposed Action would not preclude the future construction (by others) of the future Reach the Beach Trail.

The Commission agrees with SANDAG that the proposed double-track project would not adversely affect existing public access and recreational opportunities in the project area. In fact, project elements (double-tracking, the special events platforms, and the bridge across the existing pathway along the south side of the river) would improve public access in the project area. After completion of the project, the general public would be able to take the train to the Del Mar Fairgrounds platform and either enter the fairgrounds to attend special events or find their way to the shoreline via the fairgrounds, Jimmy Durante Boulevard, and the informal pathway on the south side of the San Dieguito River.

While the project does not include a public trail from the passenger platforms to the shoreline, the Commission has long advocated planning for and

development of a direct pedestrian and bicycle pathway from the platforms to the shoreline at the mouth of the San Dieguito River. Such a path could lead to the south side of the river (as described above or via a stand-alone bridge across the river) or could head north from the platforms, pass underneath the trackway through the Stevens Creek culvert (which is designed in part to not preclude use as a pedestrian and bicycle pathway underneath the trackway), and cross Camino Del Mar to the shoreline (Exhibit 4). Either pathway would require the agency sponsoring/proposing the trail to purchase property and/or obtain easements from several property owners, including the North County Transit District (NCTD), who owns the railroad right-of-way. While this effort is beyond the scope of the subject double-track project proposed by SANDAG, the Commission nevertheless continues to strongly support ongoing efforts to develop a direct route from the proposed rail passenger platforms to the beach for foot and bike traffic. Such a trail would allow users of the rail platform to not only enjoy direct access to the Del Mar Fairgrounds for special events during the June-November time period, but would also [sic (allow?)] users to directly access the shoreline during the peak summer recreation season on those days when the platforms are open. SANDAG reported to the Commission staff that

... the project design is sensitive to the possibility that a trail may be pursued by others in the future, and have thus ensured that the design not preclude trail access, and that the design allows for future development of a trail(s) ... SANDAG would continue coordination with the City of Del Mar and the JPA to support efforts for a future trail separately from the LOSSAN project.

The impact of Alternative A and other alternatives on the enhanced coastal access planned for the San Dieguito Double Track and Special Events Platform must be studied and eliminated or mitigated such that the new coastal access proposed is not eliminated. This new coastal access would be one of closest to the shoreline on the entire San Diego rail corridor and could be eliminated in the newer tunnel project. This must not be permitted to occur.

- Comprehensive study of the climate impacts of the rail relocation including the reductions in greenhouse gas (GHG) emissions and train travel times, as well as project timelines to most efficiently and effectively complete the rail relocation.
- Inclusion of the negative environmental impacts of DMB5 on beach access (Recreation), natural sand replenishment, habitat (Biological Resources), and Aesthetics in the Draft Environmental Impact Report (DEIR). This could mean, among other things, giving special attention to the estimated project timeline

for each proposed alternative. The sooner realignment is complete, the sooner the DMB5 seawalls can come down. Excluding other factors, the proposed alternative that results in the most efficient realignment should be deemed less environmentally damaging because it allows for the quickest restoration of the public beach.

We are concerned that Alternative A, one of the three project alternatives to be examined in the DEIR has not been examined or analyzed in any previous alignment studies carried out by SANDAG. Alternative A begins in Solana Beach and requires both a Cut-and-Cover tunnel by Via de La Valle and a much longer tunnel under the San Dieguito Lagoon to reach the I-5. Many possible railroad track realignments have been extensively studied by SANDAG since at least 2017, beginning with SANDAG's 2017 conceptual alignment study⁸, followed by the 2023 San Dieguito to Sorrento Valley Double Track Del Mar Tunnels Alternatives Analysis.⁹ The 2017 report analyzed 5 possible routes, including two Interstate 5 (I-5) alternatives, but neither of the I-5 alignments started in Solana Beach and went under the San Dieguito Lagoon. Likewise the 2023 alternatives analysis examined 10 possible alignments, including an I-5 alignment, but similarly this I-5 alignment did not involve any tunnels under the San Dieguito Lagoon.

Alternative A involves the longest route and therefore the most construction. We assume a longer route will result in increased GHG emissions both during construction and per train ride once construction is completed. The long stretch of cut and cover tunneling through downtown Solana Beach would inevitably disrupt traffic, aesthetics, and public services in an already congested area that is adjacent to public beach access. Additionally, the increased costs and construction requirements of this alternative leads us to assume it would take the longest to complete (it would also be the most difficult to fully fund, which could also lengthen the process). This concerns Surfrider because our main interest is in seeing the most expeditious realignment possible, so that Del Mar's bluffs and beaches can be restored to their natural state and again fully enjoyed by the public.

8

<https://www.sandag.org/-/media/SANDAG/Documents/PDF/projects-and-programs/featured-projects/lossan-rail-improvements-del-mar-bluffs/del-mar-bluffs-stabilization/alignment-alternatives-and-environmental-constraints-study-2017-2023-09-08.pdf>

9

<https://www.sandag.org/-/media/SANDAG/Documents/PDF/projects-and-programs/featured-projects/lossan-rail-improvements-del-mar-bluffs/del-mar-bluffs-stabilization/lossan-sdsvdt-alternatives-analysis-2023-09-01.pdf>



Both the aforementioned concerns and the lack of information on Alternative A makes it difficult to determine whether this Alternative is feasible and reasonable, especially when compared to the thorough previous studies that have led up to Alternatives B and C.

Thank you for considering our comments. We look forward to reviewing the DEIR once completed.

Sincerely,

Kristin Brinner & Jim Jaffee
Residents of Solana Beach
Co-Leads of the Beach Preservation Committee
San Diego County Chapter, Surfrider Foundation

Mitch Silverstein
Policy Manager
San Diego County Chapter, Surfrider Foundation



APPENDIX A

September 30, 2018: Item 12: Comments to Del Mar City Council on Del Mar's Plan to Address Projected Sea Level Rise, Flooding, and Erosion, including Local Coastal Program Amendments



**San Diego
County Chapter**

September 30, 2018

Delivered via email

To: Amanda Lee, MCP
Principal Planner/Long Range Planning Manager
Planning and Community Development
City of Del Mar

Re: Item 12 - Del Mar's Plan to Address Projected Sea Level Rise, Flooding, and Erosion, including Local Coastal Program Amendments (LCPA 16-005 and 18-002) and Zone Code Amendment (ZA 16-008)

Dear Ms. Lee,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. The Surfrider Foundation has over 250,000 members, activists and supporters and 83 chapters in the United States. With nearly 70 miles of coastline to protect, the Surfrider Foundation San Diego County Chapter is one of the largest and most active chapters in the world. We are a grassroots organization, which means the people working to protect our local ocean, waves and beaches are volunteers who care about the San Diego County coastline and want to make a difference. In the spirit of the voters in 1972 who voted to establish the Coastal Commission, as well as the Coastal Act of 1976 which extended the Coastal Commission's authority indefinitely, we are submit these comments on behalf of the beach-going public, whose voice has largely not been heard during these proceedings.

Background

We have previously submitted comments to the City Council and the Planning Commission and will summarize those comments here.

Our April 9, 2018 and May 21, 2018 letters to the City Council addressed the Sea Level Rise Adaptation Plan:

- Removal of managed retreat as an option from the Adaptation Plan was a mistake. Managed retreat, is legal and supported by the Coastal Act, and it has

already been practiced in Del Mar as part of the Beach Preservation Initiative (BPI).

- Given the landward migration of the high tide line due to sea level rise, Del Mar cannot find maintaining seawalls in the present location as consistent with the Coastal Act and the Del Mar BPI.
- The Draft Sedimentation Management Plan raises serious doubts that there will be adequate sand resources to sustain nourishment of Del Mar, northern beaches in Solana Beach and Encinitas. and Torrey Pines to the south.

Our August 14, 2018 letter to the Planning Commission addressed proposed amendments to the Land Use Plan (LUP) :

- Sand replenishment is not a panacea, and should not be so heavily relied on in the city's long-term planning for higher Sea Level Rise (SLR) scenarios.
- Managed retreat is supported by the Coastal Commission, the Coastal Act, and Del Mar's BPI.
- Proposed amendments discuss relocation of public infrastructure, but ignore relocation of private property. How can private property remain in place when roads, sewers, electrical lines, and other resources are being removed?
- Rip rap located in the Shoreline Protection Area (SPA) is currently in violation of the BPI. Unless the city deals with either removal of non-conforming structures via enforcement or an Local Coastal Program (LCP) amendment, the city may be subject to litigation.
- The BPI allows that protective structures may be developed on *private* property, landward of the SPA line. It does not grant anyone the right to a protective structure on *public* property. Shore protection does not stop the formation of public trust land behind it if the shore protection not been present. As sea level rises and the high tide line moves landward, protective structures previously allowed per the BPI will eventually be on public property and subject to removal.

Our September 11, 2018 letter to the Planning Commission addressed the staff report as well as proposed amendments to the Implementing Ordinances (IO):

- The staff report describing changes states the following: "*Clarified that the existing required waiver (for properties with coastal bluffs) does not preclude an owner from applying for future shoreline protection permits.*" For any new development, these changes are directly in conflict with Section 30253 of the Coastal Act, which states that new development for properties on the coastal bluffs does not have a right to future shoreline protection.
- We disagreed with the staff's assertion that "*The Coastal Commission may only reject the City's zoning code amendments if they do not conform with, or are*

inadequate to carry out the existing certified Land Use Plan.” The standard of review for any proposed amendments is the Coastal Act.

- We requested that any proposed amendments to the LCP or its Implementing Ordinances be unequivocal that future shoreline protection is in no way allowed for new development.
- We requested that the setback requirements in the Implementing Ordinances be strengthened. In addition to a minimum 40-foot setback, setback rules should also include requirements for maintaining safety over the 75-year economic lifetime. The setback must include SLR and a factor safety of 1.5.
- We requested that 30.55.060: C be changed as follows: *. In accordance with the California Public Resources Code Section 30010, this Chapter is not intended, and shall not be construed as authorizing any ~~public agency~~ **agent** acting pursuant to this Chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, **or public property for private use**, without payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*
- We requested that beach nourishment not be taken into consideration when determining risk associated with permitting (section 30.55.060).

We request that our previous comments included in these letters and public comment be incorporated by reference. We also want to remind the City Council of a key section of the Coastal Act. Section 30253 states:

New development shall do all of the following...

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

*(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area **or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Per 30253, any new development for properties on the coastal bluffs does not have a right to future shoreline protection. No proposed amendment to the LCP may violate this principle; otherwise, the proposed amendments are in violation of the Coastal Act and therefore should be considered invalid.

Setback rules must be strengthened

We are concerned that some of the amendments to the Local Coastal Program (LCP) are weakening protection of the beaches. The Public Trust provides that tide and submerged lands and are to be held in trust by the State for the benefit of the people of California. Most importantly, the language in the proposed LCPA will have grave

consequences for several key initiatives that are critical to the City of Del Mar, San Diego County, the State of California, Interstate Commerce, the National Defense, and beach visitors to the area.

Specifically, the proposed LCPA weakens setback rules required by the Coastal Act to prevent shoreline armoring by seawalls and other similar devices. The weakening of these setback rules may prevent relocation of the railroad tracks and allow the proposed Zephyr Del Mar Resort to be built in a more seaward location. Both situations defy the Coastal Act's setback rules and increase risk to public infrastructure and property.

The Draft LCPA Implementing Ordinances should strengthen the intent of the voters under the BPI. The proposed amendments make reference to strengthening setbacks in the LUP, but do not provide the corresponding strengthened language in the Implementing Ordinances.

Policy III-9 of the LUP requires an analysis of adequate setbacks:

“Policies:

III-9 Require all new development located on a coastal bluff or vulnerable slope to be setback from the coastal bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (minimum 75 years). Such setbacks must take into consideration projected long-term bluff retreat over the next 75 years, as well as slope stability. To assure stability, the development should maintain a minimum factor of safety of 1.5 against land sliding for the economic life of the structure. ***Alternative stability requirements may be approved to the satisfaction of the City Engineer and Building Official if an equivalent factor of safety is demonstrated.***”.

The bolded last sentence was added at the Planning Commission and should be further amended to include at least two third-party peer reviews to test the veracity of the proposed factor of safety (for litigation avoidance), and subject to public hearing.

Despite the language in Policy III-9 of the LUP, there no follow through in the Implementing Ordinances. As proposed, the Implementing Ordinances in 30.55.050 would leave ambiguous any setback requirement above the 40 feet and the required protection of the North Bluff.

“30.55.050 Development Regulations for the Coastal Bluff Overlay Zone

A. Proposed development shall be sited and designed to avoid impacts from erosion hazards over the economic life of the development (minimum 75 years) in accordance with the following:

1. A minimum 40-foot setback shall be provided between proposed development (including supporting structures and foundations) and a coastal bluff edge, ***except where otherwise provided below***.

It should be clarified that the “where otherwise provided” clause includes requiring a determination of the need for shoreline protection and the prohibition of such protection particularly for the North Bluff. Previous versions of the Ordinance had such inclusions.

Protection of North Bluffs should not be weakened

The BPI specifically directed that the bluffs in Del Mar are to be kept in natural condition and not altered. The bluff areas were broken into two distinct areas. The two areas are the North Bluff, the location of the proposed Del Mar Resort, and the South Bluff Area, mainly backed by the railroad right of way.

Construction of the Zephyr Resort, above the North Bluffs, at a more seaward location jeopardizes coastal views in Solana Beach, visual attributes of the shoreline, and the proposed park area on the western portion of the property, in addition to as lateral and vertical shoreline access. Even if the rezoning to allow the resort were not adopted, the current residential zoning permits residential development at this relatively pristine site. New residential development could also be located further seaward and similarly jeopardize both coastal and residential views and coastal access.

The policies voted on by the citizens of Del Mar require that development on the North Bluff be set back by adequate distances to accommodate natural erosion over the life of the structure. The BPI Guidelines specifically prohibit any alteration of the bluff face or toe as well:

“Section 16. North Bluff Section 16. Guideline: It is the general policy of the City to accommodate natural bluff erosion in the North Bluff area. To this end, the placement of rip rap, seawalls, sealing of sea caves, etc., shall, generally, not be permitted. ***Rather, it shall be the obligation of the property owner to setback any proposed development on the top of the bluff a sufficient distance to avoid the need for any bluff face or beach stabilization measures.*** With respect to protection of existing principle bluff top development any stabilization or other reinforcement shall be installed from the top of the bluff and anchored down, or back, as necessary to provide sufficient protection. ***Alteration of the bluff face, the bluff toe, or the beach shall not be permitted.*** In addition, any proposed project shall require the submittal of a signed certification by a licensed Geotechnical Engineer or Coastal Engineer certifying that the proposed project will not have an adverse impact to shoreline processes.”

Source: Implementation Guidelines Measure D – Beach Preservation Initiative
February 1, 1993 (***Emphasis added***).

The proposed definition of ‘existing development’ in the amendments to the Implementing Ordinances is directly in conflict with the intent of the voter-approved BPI as well as the Coastal Act.

Implementing Ordinance section 30.55.030 and 30.56.030: “Existing development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).”

Defining “existing development” as proposed above would conflict with the intent of the voter-approved BPI as well as the Coastal Act.

This new definition potentially allows future development to be classified as Existing Development on the North Bluff. This development may then be permitted and preclude the intended prohibition of the BPI and Section 30253 of the Coastal Act. The BPI is clear in its intent that ***it shall be the obligation of the property owner to setback any proposed development on the top of the bluff a sufficient distance to avoid the need for any bluff face or beach stabilization measures.*** The BPI is also clear in its intent that ***alteration of the bluff toe, bluff face or beach shall not be permitted.***

Removal of waivers and deed restrictions for future protection also jeopardizes the required setback and prohibition of any shoreline protection as intended in the BPI.

Relocation of the railroad should be a priority

We support amendments in the the LUP such as III-2.f, advocating relocation of the railroad tracks:

III-2 Conserve the natural character of land, water, vegetative and wildlife resources within the community by ensuring that future development minimizes the disturbance of existing or natural terrain and vegetation, and does not create soil erosion, silting of lower slopes, slide damage, flooding problems and/or cutting or scarring, through application of the following policies...

f. Support relocation of the railroad and other public infrastructure from vulnerable bluff areas.

With respect to the South Bluff, some of the proposed new Implementing Ordinances are in conflict with LUP goal III-2f. This could potentially allow the railroad to have shoreline protection, jeopardizing present ad-hoc coastal access and the shoreline

below. The proposed definition of existing development in the LUP is setting the city up to allow for shoreline protection in front of the railroad tracks:

“Existing development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).”

Additionally, proposed policies describing the “transitional subarea within the Coastal Bluff Overlay Zone” should not be removed from the proposed amendments. This includes language in LUP Section C, as well as 30.055.020 of the Implementing Ordinances. If the goal is to remove the tracks primarily due to hazards, then this area is indeed transitional. Removal of the policies describing the transitional subarea within the Coastal Bluff Overlay Zone weaken the arguments for removing the railroad tracks.

The LCP should not be weakened to permit sea walls in front of the South Bluffs to protect the railroad and allow it to stay in place indefinitely. Relocation of the railroad tracks has wide community consensus. All candidates supported the plan at the September 15, 2018 forum.

“All candidates agreed that the railroad tracks should be removed from the bluffs, and possibly redirected inland.” Source:
<https://www.thecoastnews.com/del-mar-city-council-candidates-address-issues-in-public-forum/>

Residents also supported railroad relocation following the most recent bluff collapse:

““If anyone was walking on the west side of the tracks or down below, that would have been game over,” Frank Stonebanks, founder of Citizens for Access to Del Mar Beach Bluffs and Trails, told FOX 5.

Stonebanks says he submitted a petition to the City of Del Mar two years ago to move the tracks further inland. He believes moving the track would give beachgoers and surfers, like local Devin Snider, better access to the water below.” Source:
<https://fox5sandiego.com/2018/08/23/residents-concerned-after-cliff-collapses-a-long-del-mar-train-tracks/>

In 2017 Del Mar City council unanimously supported railroad relocation:

“On Tuesday evening , the Del Mar City Council "unanimously supported adopting and accelerating this proposal to engage key stakeholders to both 1) assess feasibility and recommend a plan of putting in a pedestrian crossing between 6th and 12th streets and 3) accelerate getting the tracks off the bluffs in the next 10 years, and turn the area into a natural park. These were the

measures requested by our petition (600 people signed) submitted to the city in Sep 2016 and supported by council." Source:

<https://www.10news.com/news/del-mar-wants-to-get-trains-off-its-bluffs>

"DEL MAR GOALS

1. Remove the rails from the bluffs to either a tunnel or another alternate location, turning the bluff top ROW into an oceanfront trail and park.
2. In the interim provide safe and legal crossing opportunities"

"POTENTIAL ISSUES TO PURSUE"

- "1. The bluffs are unstable, subject to ongoing erosion and sea level rise, making the rail line unreliable now, only to get worse with time
2. Double tracking the bluffs does not appear feasible and would be extremely expensive and environmentally damaging
3. Grade separating Coast Blvd does not appear feasible and would require great expense with immense environmental damage
4. "Defending" the rail line on the bluffs will be expensive on an ongoing basis and is doomed to fail long-term
5. Maintaining the rails on the bluff is contra to important environmental and coastal goals to preserve sensitive bluffs, provide beach access, and protect sandy beaches"

From action plan adopted by consensus at January 17., 2017 City Council Meeting

Source http://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/_01172017-1324

The Adaptation Plan should be included in the LCP

In addition to the amendments to the LUP and IO, there is also the consideration of where to include the SLR Adaptation Plan (AP). Although City Council has approved the AP, the decision still remains concerning where and how the AP should be used. The City wisely sought an independent legal analysis of the various options for placement of the AP in the Community Plan, the LCP, or both. This independent legal analysis concluded that the AP can be part of the Community Plan in addition to but not in lieu of inclusion the LCP.

Those who argue against placing the AP in the LCP are arguing more generally that

the LCP should never be amended for fear of Coastal Commission overreach. For them to propose that an important regulatory document like the LCP should never be amended even in the face of changing environmental circumstances is extremely short-sighted. Without amendments to the LCP, the city will may be able to procure Sand Compatibility and Opportunistic Use Program (SCOUP) permits to obtain sand needed to replenish Del Mar's beaches. Without amendments to the LCP, the city will be unable to update its regulations in the face of increased risks to floods and other storm events related to climate change.

Additionally, the Planning Commission voted unanimously to approve the suggested amendments to the LCP. They did not heed the somewhat hysterical protests that putting the LCP up for amendment in front of the Coastal Commission would harm the city irreparably. If the Planning Commission is comfortable with amending the LCP, then City Council should take that as a vote of confidence in the process and vote to include the AP as an amendment to the LCP. If the LUP and IP are being amended, it is a logical conclusion to also add the AP to the LCP as an additional amendment.

Reality Check

We are generally concerned with the direction this process and the proposed amendments have taken. Several years ago, the Sea Level Rise Technical Advisory Committee (STAC) voted overwhelmingly to include managed retreat as an adaptation option. Managed retreat was only to be used when other options have failed, and the beaches were lost to the rising seas. Over time, as the STAC's process lost its scientific and technical perspective, managed retreat was stripped from the Adaptation Plan. As part of this weakening of the Adaptation Plan, there has been a persistent misinformation campaign mounted by members of the community and their paid geotechnical 'experts' and lawyers. This vocal minority of Del Mar is focused solely on hypothetical decreases in private property values, and have stated in public comment that they don't care if the public beaches and surfing resources are lost to the ocean due to coastal armoring.

We find this approach very short-sighted and not based in science or law. For this reason, we would like to reiterate that relying only on coastal armoring, and not allowing for the distant possibility of managed retreat, will lead to inundation of the Beach Colony, significant threats to public safety, and loss of the public's beach.

SANDAG and Caltrans prepared a report titled "San Diego Region Coastal Sea Level Rise Analysis" in September 2013 (available for download at http://www.dot.ca.gov/dist11/Env_docs/I-5PWP/Appendices/AppDSeaLevelRise.pdf). Page 43 Figure 7-1 of this report provides the following information concerning North American Vertical Datum of 1988 (NAVD), National Geodetic Vertical Datum of 1929

(NGVD), sea level and tides. Datum is simply a reference point for vertical surveys. The NGVD datum was recorded in the year 1929.

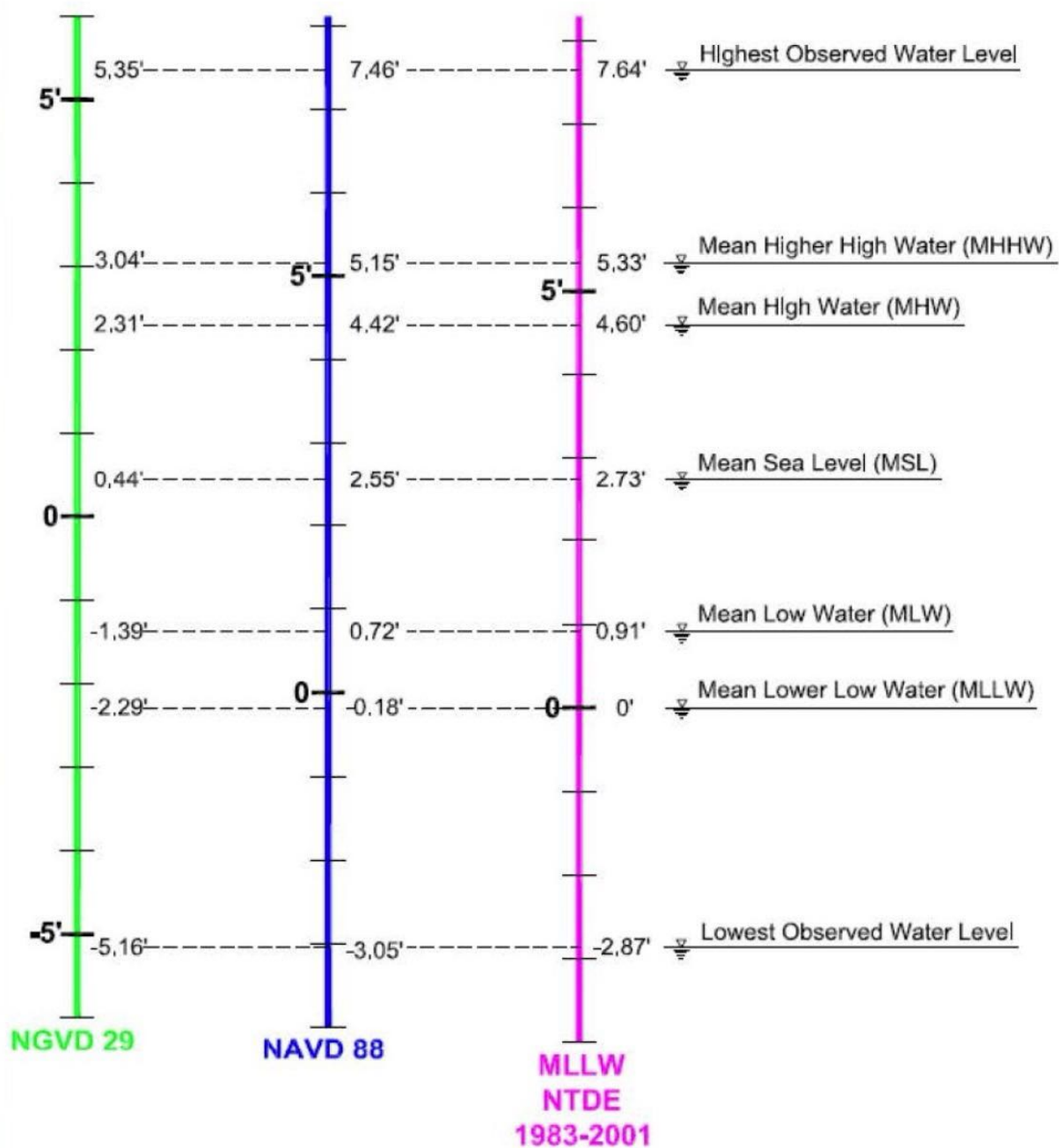


Figure 7-1: Vertical Tidal Datums at Scripps Pier in La Jolla

As of 2000, the mean sea level in La Jolla was at 0.44ft NGVD. An additional survey, NAVD, was done in 1988. The difference between NAVD and NGVD is 2.11 ft. In 2000, the mean sea level was 2.55ft in NAVD.

The Coastal Hazards, Vulnerability, and Risk Assessments document prepared for the STAC used NAVD for assessment of sea level rise and wave levels. Table 1 of this document reports the following SLR projections:

**TABLE 1
SEA LEVEL RISE (SLR) PROJECTIONS**

	2030	2050	2070	2100
Mid SLR	5 in	12 in	20 in (1.7 ft)	37 in (3.1 ft)
High SLR	12 in	24 in	38 in (3.2 ft)	66 in (5.5 ft)

Using these SLR projections in combination with the Vertical Tide Datums of Figure 7-1 of the San Diego Region Coastal Sea Level Rise Analysis report, we can calculate Mean Sea Level (MSL), Mean High Water (MHW), Mean Higher High Water (MHHW), and the Highest Observed Water Level (HOWL) for both the Mid and High SLR Projections.

	Current	2030	2050	2070	2100
Mid SLR	-	0.42	1	1.7	3.1
Highest Observed Water Level	7.46	7.88	8.46	9.16	10.56
Mean Higher High Water	5.15	5.57	6.15	6.85	8.25
Mean High Water	4.42	4.84	5.42	6.12	7.52
Mean Sea Level	2.55	2.97	3.55	4.25	5.65
High SLR	-	1	2	3.2	5.5
Highest Observed Water Level	7.46	8.46	9.46	10.66	12.96
Mean Higher High Water	5.15	6.15	7.15	8.35	10.65
Mean High Water	4.42	5.42	6.42	7.62	9.92
Mean Sea Level	2.55	3.55	4.55	5.75	8.05

Del Mar's current LCP Implementation Plan specifies the following in section 30.50.060 Authorized Protection Structures:

I. Will, if there is a riprap element in the proposed structure:

1. Have the riprap extending no more than 20 feet westward from the Shoreline Protection Area line.

2. Have a westward slope beginning no higher than a 5.7 foot elevation (NGVD) at the Shoreline Protection Area Line, decreasing in height at a minimum rate of one vertical foot for every one and one-half feet of lateral distance, the riprap extends westerly of the SPA line.

To translate from NGVD to NAVD, the Implementation Plan specifies that rip rap may not be any higher than 5.7 NGVD, or 7.81 NAVD. This means that under either the Mid or High SLR scenario, rip rap will regularly be under water. Under the Mid SLR scenario, rip rap will be under water at high tide sometime between 2050 and 2070. The height of the existing storm drain outlets in the Beach Colony is just as alarming. Many storm drains are currently below 8.11 NAVD, so these will also regularly be underwater. This presents a significant public safety threat, as water in the flooded Beach Colony will have nowhere to go if the drains are below the water level.

In Terra Costa's scientifically flawed and highly biased report titled "The Infeasibility of Managed Retreat for the City of Del Mar: A White Paper" Figure 1 provided a useful illustration for demonstrating the infeasibility of indefinite armoring of the beach. Elevations provided in this illustration were calculated using NGVD, so we have updated them to the NAVD as this is the standard used throughout the Vulnerability Assessment.

Figures 1 through 4 show the current situation and predictions for 2030, 2050, and 2070. They illustrate that riprap and storm drains will frequently be underwater, presenting a serious danger to public health and safety, in addition to a loss of the public's sandy beaches. Camino Del Mar itself will be under water frequently as well. One of the STAC's guiding principles was the maintenance of a walkable beach. If riprap is allowed on the beach at its current location, this guiding principle will soon be violated.

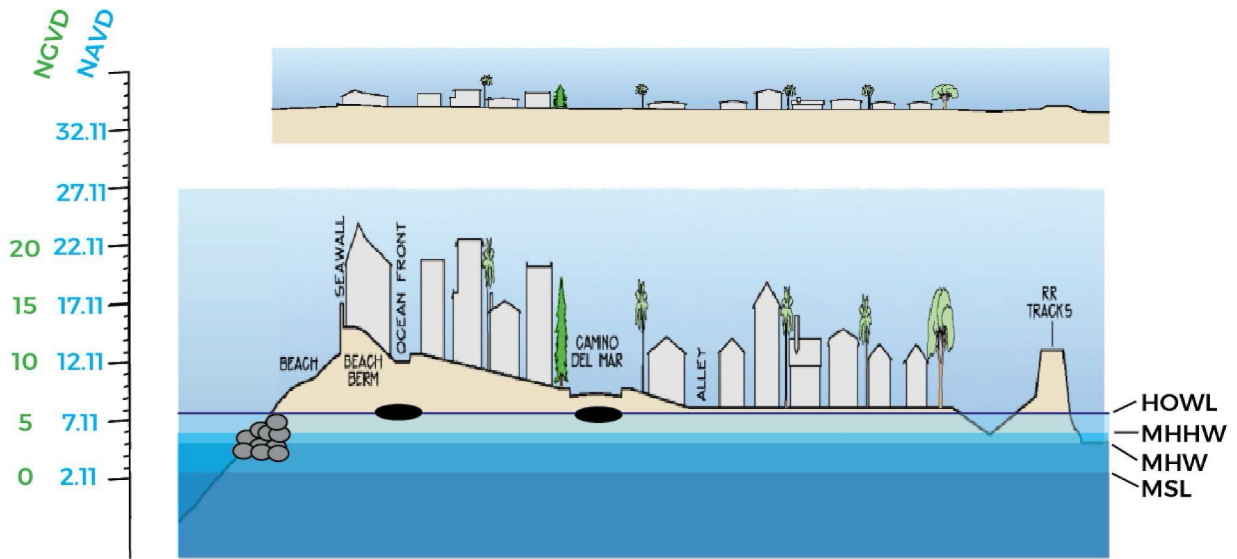


Figure 1 - Sea level and tides under current conditions
Riprap and storm drains

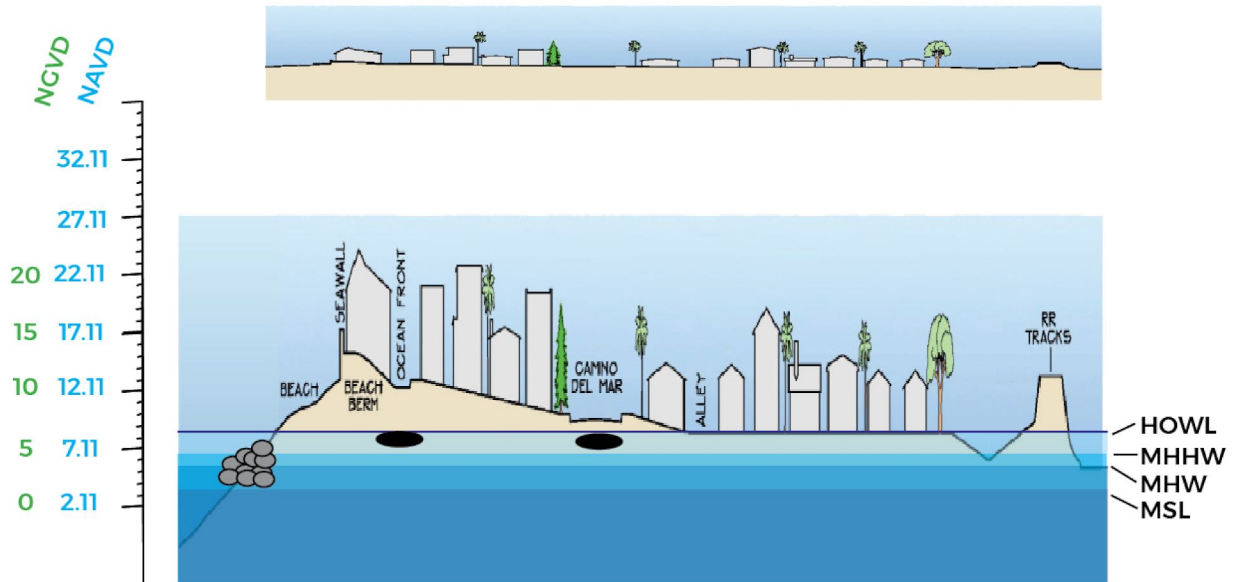


Figure 2 - Sea level and tides in 2030 (+1ft SLR)
Riprap and storm drains

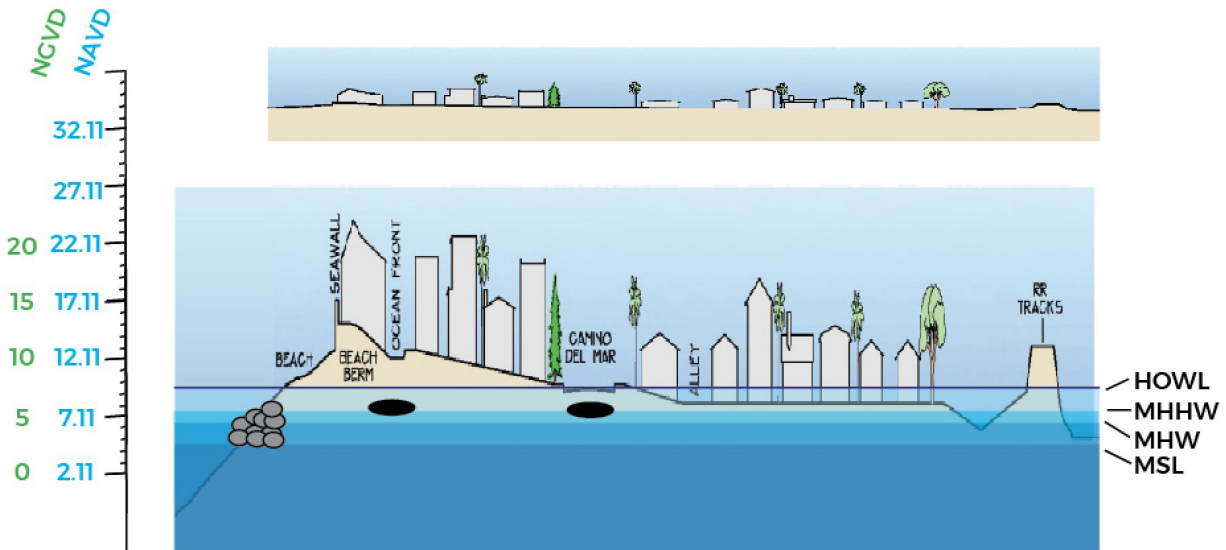


Figure 3 - Sea level and tides in 2050 (+2ft SLR)
Riprap and storm drains

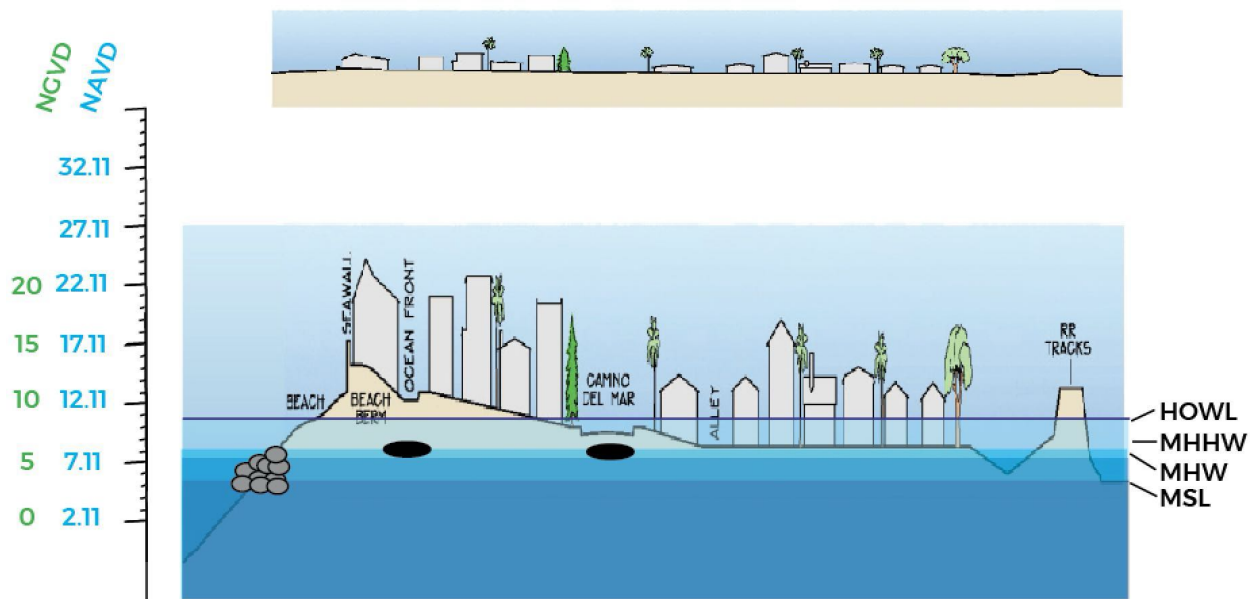
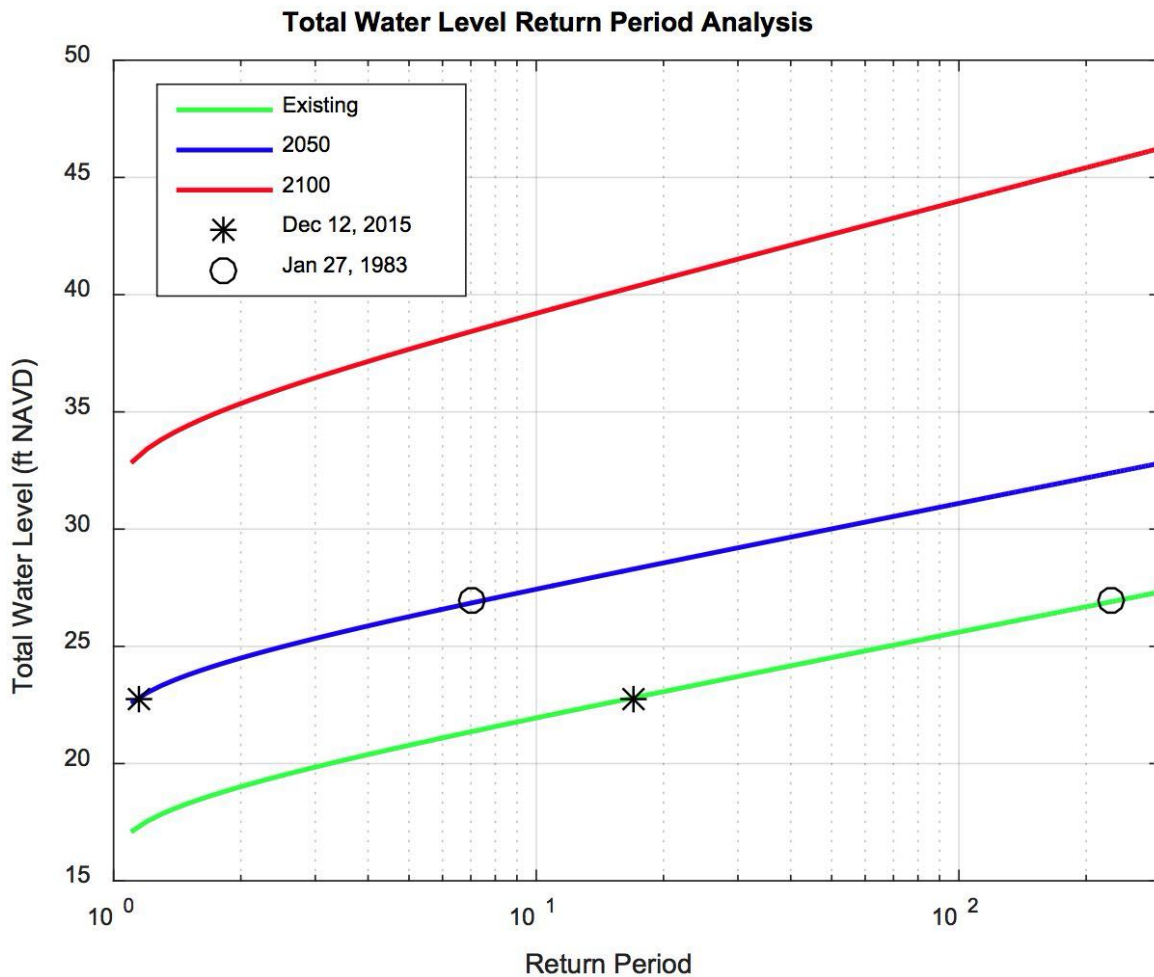


Figure 4 - Sea level and tides in 2070 (+3.2ft SLR)
Riprap and storm drains

Beyond the daily hazards posed by underwater storm drains and rip rap, storm events will be even more devastating as sea levels rise. The vulnerabilities report analyzed the Total Water Level (TWL) return period in Table 32.



To explain this chart in layman's terms, the 'return period' means the likelihood of an event. Total Water Level represents the maximum elevation of the water surface, accounting for still water level (tides) and wave runup. So a return period of 10^0 (equal to 1) means that there is a 100% chance the TWL could reach this level every year. A return period of 10^1 (equal to 10) means there is a 100% chance of an event occurring every 10 years, or conversely, there is a 10% chance of the TWL reaching that height in any given year. Lastly, a return period of 10^2 (equal to 100) means there is a 100% chance of an event occurring every 100 years, or conversely, there is a 1% chance of the TWL reaching that height in any given year. For reference, two historical storm events were included on the TWL Return Period Analysis (green line). The December 12, 2015 is similar to a predicted 10-year storm, and the January 27, 1983 event is similar to a predicted 100-year storm.

Figures 5 through 7 illustrate this information in the context of the Beach Colony. By 2050, it is predicted that the TWL will easily overtop the height of the sea walls on a

yearly basis.

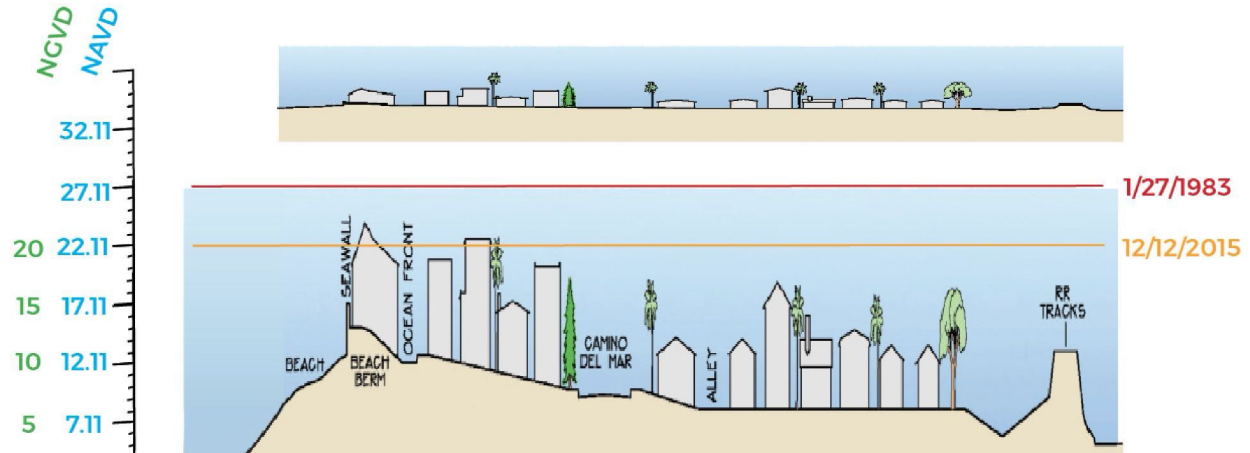


Figure 5 - Historical storm TWL

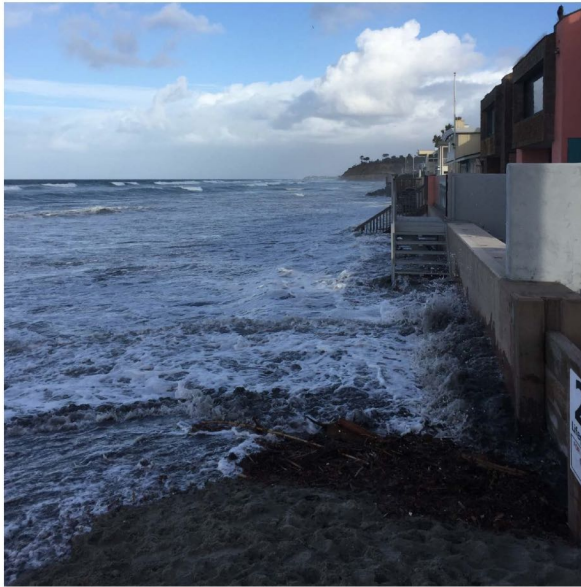
The Vulnerability and Risk Assessment Study prepared for the STAC provided historical photographs of the 1983 storm event as well as wave runup in 2016. These images show what it looks like when TWL reaches the levels depicted in Figure 5.



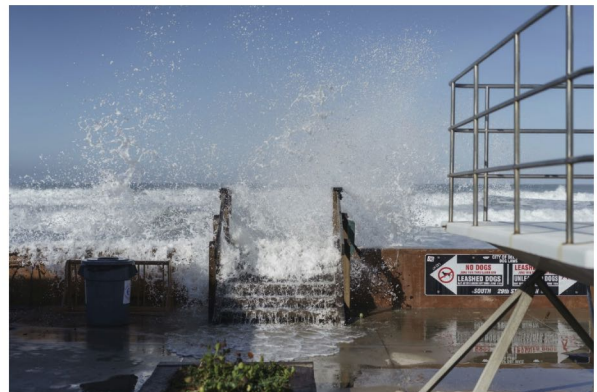
Coastal Damage following 1983 Storm



Large Waves during 1983 Storm



Overtopping in Del Mar, 3/8/16



Wave Runup in Del Mar, 2/12/2016

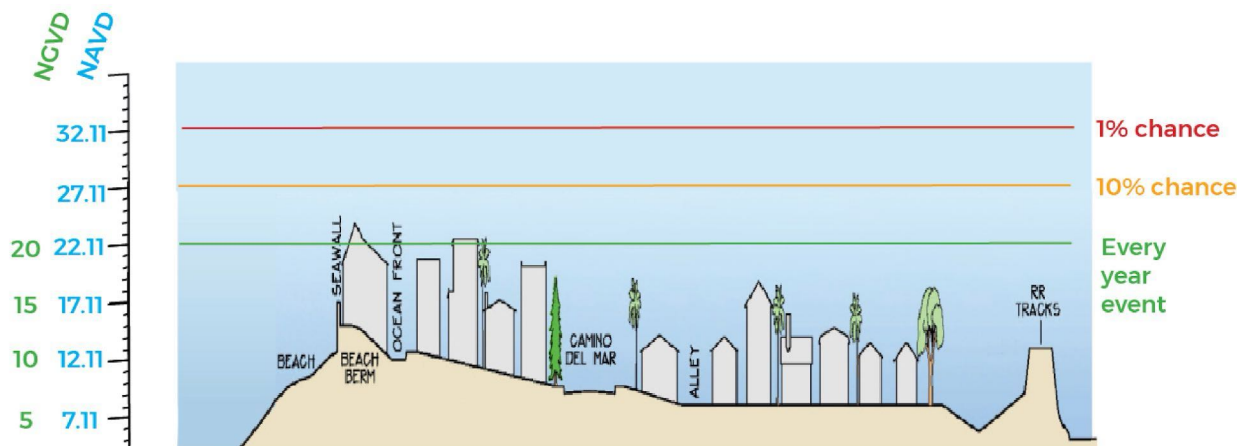


Figure 6 - 2050 Predicted TWL

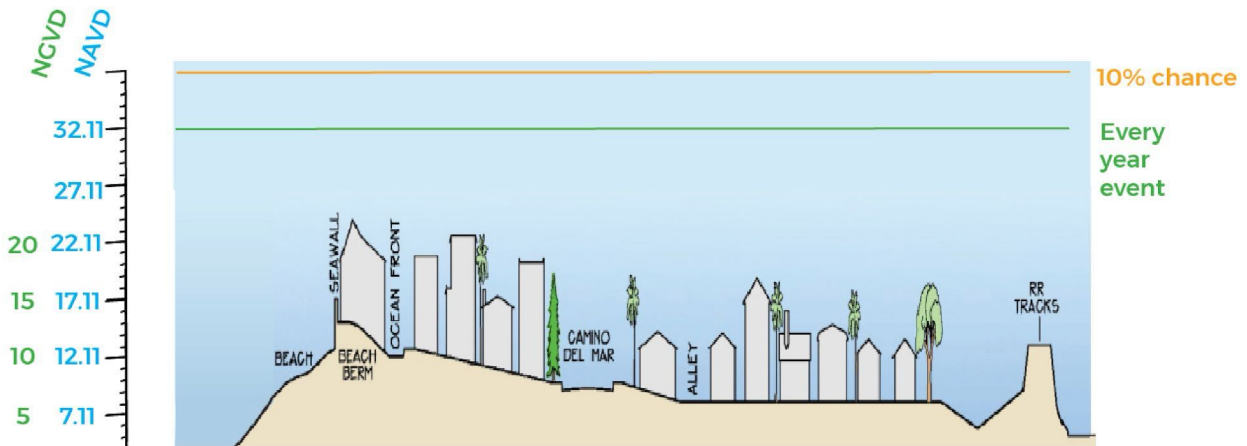


Figure 7 - 2100 Predicted TWL

For some perspective, we suggest you visit the trail markings on the northern side of San Dieguito Lagoon east of Jimmy Durante. The posts mark the water levels under various sea level rise scenarios, as well as the high water mark of a 1980 flood event.



In summary, to totally discount the idea of managed retreat, attempt to allow new development the right to future armoring, and weaken the setback rules, all threaten the safety and livelihood of the residents of Del Mar and the greater beach-going public. Take a moment to consider how Californians have come to grips with the fact

that we live in an active fault zone. Building codes have been strengthened, earthquake insurance is becoming more affordable, and many people have emergency supply kits stocked in their garages or closet. This is all in response to an unpredictable event that may or may not happen in our lifetime, in the next century, or even in the next thousand years. Contrast that with the way Del Mar is currently addressing SLR. This is a threat that is real, is fairly predictable, supported by the vast scientific consensus, and is essentially a very slow-moving but inevitable flood headed our way. To not respond to that now, while we have the chance to proactively prepare, Del Mar is setting itself up for a series of unplanned evacuations, loss of property, and potential loss of life.

Thank you for considering our comments on this important topic. We'd be happy to answer any further questions you may have.

Sincerely,

Kristin Brinner
Member of the Sea Level Rise Technical Advisory Committee
Beach Preservation Committee co-chair
San Diego County Chapter, Surfrider Foundation
Resident of Solana Beach

Jim Jaffee
Beach Preservation Committee co-chair
San Diego County Chapter, Surfrider Foundation
Resident of Solana Beach

Julia Chunn-Heer
Policy Manager
San Diego County Chapter, Surfrider Foundation
Resident of Cardiff



APPENDIX B

June 2, 2021: Comments to the California Coastal Commission regarding City of Del Mar Major Amendment LCP-6-DMR-20-0005-1



June 2, 2021

Delivered via email

To: Chair Steve Padilla, California Coastal Commission

CC: Jack Ainsworth, Executive Director, California Coastal Commission; Karl Schwing, Deputy Director, California Coastal Commission, San Diego Coast District

Re: City of Del Mar Major Amendment LCP-6-DMR-20-0005-1

Dear Chair Padilla,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves, and beaches for all people, through a powerful activist network. With nearly 70 miles of coastline to protect, the Surfrider Foundation San Diego County Chapter is the largest and most active chapter in the country. We are a grassroots organization, which means the people working to protect our local ocean, waves, and beaches are volunteers who care about the San Diego County coastline and want to make a difference.

Studies have repeatedly shown that not only is sea level rise inevitable – and every new study forecasts increasingly dire scenarios – but sea level rise is also likely to cost the State of California even more than earthquakes or wildfires. With such a threat steadily marching toward us, every action the Coastal Commission takes to address it (or not) is what will save our beaches (or not). The pending decision regarding the City of Del Mar's Local Coastal Program Amendment (LCPA) has repercussions for everyone who enjoys the coast in Del Mar, as well as the rest of our region where many cities are in the process of updating their LCPs.

Support for staff's suggested modifications

We agree with staff that Del Mar's proposed amendments to their Land Use Plan (LUP) and Implementation Plan (IP) should be rejected as submitted. Staff hits the mark when stating that extensive work has been done in Del Mar to understand its serious vulnerabilities to Sea Level Rise (SLR), and it is imperative that this important planning document address those hazards.

There are several Suggested Modifications that are imperative to preserve public

rights and ability to access beaches in the future. These modifications are necessary for our support of the plan, but they could be further strengthened:

Suggested Modification No. 11 and 16: Modifications related to the definition of existing development.

We support staff's recommendation to remove the ill-conceived definition of existing development. It is particularly important to define existing development accurately, as there have been multiple development projects proposed since this LCP draft was first submitted, including residential development and the Marisol proposal (otherwise known as the Zephyr development) above Dog Beach.

Further, the definition of existing development should be strengthened. A specific definition of existing development based on actual legislative intent would provide critical guidance to Del Mar as it accepts and implements its LCP. The Commission should go further and define existing development as development that existed prior to the Coastal Act passage in 1977. Per Sections 30235 and 30253 of the Coastal Act and the Commission's SLR Policy Guidance document, new development should not require seawalls, and any development after 1977 is considered new development.

The 1977 definition of existing development is also upheld in the 2019 decision concerning the Lindstrom CDP and the Commission's Sea Level Rise Policy Guidance document. As detailed in the Staff Report, the Commission interprets the term "existing structures" in Section 30235 of the Coastal Act as structures that were in existence on January 1, 1977—the effective date of the Coastal Act. This should be explicitly confirmed as the definition in Del Mar's LCP as well.

Suggested Modification No. 17. Modification related to the definition of "Substantial Improvement"

We agree with staff's suggested modification that generally strengthens the definition of "substantial improvement." This loophole is currently actively being exploited in the neighboring city of Solana Beach to effectively construct new structures behind the protection of seawalls intended for existing structures.

Including 50% thresholds for substantial improvements or development of existing structures is important to prevent the indefinite extension of an existing structure's economic lifetime. However, we think the policy should be further clarified to include replacement work undertaken on or after January 1, 1977 (effective date of the coastal act), rather than September 11, 2001 (date of LCP certification).

We object to the proposed dates used in Section 30.56.030 b iii and iv:

iii. Replacement (including demolition, renovation, reinforcement, or other type of alteration) of less than 50% of a major structural component where the proposed replacement would result in cumulative alterations exceeding 50% or more of that major structural component, taking into consideration previous replacement work undertaken on or after September 11, 2001 (the date of certification of the LCP). **January 1, 1977 (effective date of the Coastal Act); or**

iv. an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of 50% or greater of the floor area, taking into consideration previous additions undertaken on or after September 11, 2001 (the date of certification of the LCP). **January 1, 1977 (effective date of the Coastal Act).**

We find no basis in law or policy to justify the use of the LCP certification's date as the basis for determining substantial improvement. Instead, January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether 'substantial improvement' has occurred. The 2001 date must otherwise be justified.

Importance of maintaining other critical modifications

We also stress the importance of the following Suggested Modifications:

Suggested Modification No. 2. related to Chapter III's goals and Policies.

Staff correctly incorporates the goals of the 2018 Del Mar Sea Level Rise Adaptation Plan as policy. In particular, we stress the importance of including maintenance of a walkable beach as a primary goal. Del Mar's Sea Level Rise Technical Advisory Committee determined unanimously at its formation that a walkable beach should be a founding principle guiding its work, so it is logical to include this as a stated goal of the proposed amendments.

Suggested Modification No. 3. Mandating periodic and threshold-based updates to the LCP.

Requiring further updates to the LCP based on concrete thresholds and time spans gives the city more flexibility to adjust to changing conditions. The specific thresholds suggested by the staff report are based in reality and science, and they also reflect the findings of the City's own Vulnerability Assessment. The City and SANDAG have been working to fast-track a plan to remove the LOSSAN railroad from the bluffs. The importance of this long-term project has been repeatedly demonstrated in the last year, as bluff collapses along the tracks have interrupted the

trains travelling this corridor. Given the city's current support for relocation of the Del Mar section of the LOSSAN railroad tracks, as well as the changes to our environment due to SLR, it is reasonable to mandate periodic updates of the LCP to address any additional changed circumstances beyond the immediate need to relocate the railroad tracks.

Suggested Modifications No. 4 and No. 12 concerning setbacks.

As staff suggested, it is imperative that SLR, time (75 years), and slope stability all be incorporated into the calculation of coastal bluff setbacks. It's also important to remove any alternative stability requirements, as we have seen countless times how an applicant's geotechnical 'experts' will come up with whatever number is convenient to the private property owner, not the beach going public.

SLR, time (75 years), and slope stability are consistent with guidance from the 2003 document by Dr. Mark Johnsson titled "Establishing development setbacks from coastal bluffs"¹ and the Commission's Sea Level Rise Policy Guidance, which we detailed in our 2019 Letter to the Commission regarding this LCP². The modifications are also necessary in order to comply with Section 30253 and other Coastal Act Policies.

Broad community support for effective setback standards was very recently demonstrated by the defeat of Measure G: Marisol Specific Plan by the residents of Del Mar. Surfrider wrote a letter to the City on February 3, 2020 outlining our concerns about the Draft EIR and specific plan amendments. A major concern we had was the EIR's utilization of very optimistic and weak setback calculations.

We do support further modifications to the setback policies proposed. Staff suggested adding a route to smaller setbacks to mitigate potential claims of takings associated with setbacks. However, we feel this modification as drafted could ignore the perils of SLR, 75 years of projected bluff erosion, and inclusion of a factor of safety when calculating setbacks. Staff suggests adding the following to Chapter 30.55 Coastal Bluff Overlay Zone, Section 30.55.050 Development Regulations for the Coastal Bluff Overlay Zone:

d. If application of the minimum 40-foot setback would preclude reasonable use of the property such that it would constitute a taking of private property, a smaller setback may be permitted if the proposed development is setback as far landward as feasible and its footprint is minimized.

¹ <https://www.coastal.ca.gov/W-11.5-2mm3.pdf> Johnsson, Mark. "Establishing Development Setbacks from Coastal Bluffs", 16 January 2003, Memorandum to Commission, W11.5.

² https://drive.google.com/file/d/1NCTTLbB1mdsgCt_trK9CJ4L68akMPXtJ/view

Based on past history in surrounding neighborhoods like Solana Beach and Encinitas, this argument will be consistently misused to completely negate all of the important setback calculations. This conflicts directly with staff's suggested amendments for setbacks concerning SLR and factor of safety. It is probable that a minimum 40 ft setback will not meet the more stringent requirements of safety over 75 years when sea level rise is taken into account. This loophole should be removed entirely. Otherwise it should include a condition that any permit for New Development - regardless of setback calculations - explicitly waives the right to any future armoring and is subject to removal of threatened portions if at any time it is threatened by erosion.

Suggested Modification No. 5 and No. 13 concerning development location.

Staff was correct when acting to strengthen the LCP to require that development be located to eliminate the need for protective devices. It is important that any loopholes that could be interpreted to allow new structures protective devices be removed.

Suggested Modification No 19 concerning floodplain development permits.

It is important here to specify that development in the floodplain is a hazardous proposition, and that because of the goals stated elsewhere in the LCP concerning relocation of public infrastructure, it may be impossible to provide public infrastructure to private residences located in a floodplain.

We are generally in agreement with all of the remaining Suggested Modifications.

Support for the City's amendments regarding track relocation

In addition to suggested modifications by staff, we support the relocation of the railroad tracks, as proposed by the City and agreed to by staff in the staff report:

Amendment to Policy III-2 of the certified Land Use Plan:

f. Support relocation of the railroad and other public infrastructure from vulnerable bluff areas.

Relocation is supported by our regional metropolitan planning organization, SANDAG. Presenting at the May 3, 2021 Del Mar City Council Meeting, SANDAG staff confirmed that realignment "was a priority moving forward" and presented alignment options³. The Director of the organization was recently quoted⁴ in a news

³https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/_05032021-2737

⁴ <https://thecoastnews.com/sandag-affirms-commitment-to-move-tracks-off-del-mar-bluffs/>

article this March:

“You can fight nature, but nature is going to win at the end of the day,” said Hasan Ikhata, executive director of SANDAG. “We are absolutely intending to have part of the regional transportation plan in May release a project that would move the tracks off the bluff once and for all. Yes, it’s expensive, yes it’s going to take a long time, but that is the right thing to do for the region.”

Relocation of the tracks was also supported unanimously by the Del Mar City Council at the April 19, 2021 meeting:

IT WAS MOVED BY MAYOR GAASTERLAND, SECONDED BY COUNCILMEMBER DRUKER TO REAFFIRM GETTING TRAINS OFF THE BLUFF AS SOON AS POSSIBLE. (VOTE 5-0) (4/19/2021 approved minutes)

To restore lateral and vertical beach access, we also believe the LCPA should include provisions mandating the removal of all stabilization measures for the rail as soon as they are no longer required for the safety of the railroad. Additionally, fencing and stabilization measures in the interim period should be discouraged or prohibited where possible. If fences or additional interim stabilization is required, mitigation must be required in the LCPA with in-place and not in-kind access both vertically from the bluff to the beach and along the bluff. Examples of improved access include tunnels or stairs and at-grade crossings and additional signaling.

Conclusions

Del Mar’s Sea Level Rise Technical Advisory Committee, the City, and Coastal Commission staff have done important work to amend the city’s LCP. Altogether, this work represents an important first step in recognizing the difficult choices we will have to face in the near future with accelerating SLR and climate change.

We support staff’s suggested modifications to the LCP. We also ask that the following changes be made to the Del Mar LCP to further strengthen the protection of the public’s beach:

- **Redefine existing development:** Existing development should be defined per the original intent of the Coastal Act, as supported by the recent decision concerning the Lindstrom CDP and the Commission's Sea Level Rise Policy Guidance document. January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether 'substantial improvement' has occurred.
- **Strengthen definition of substantial improvement:** We find no basis in law or policy to justify the use of the LCP certification's date as the basis for determining substantial improvement. Instead, January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether 'substantial improvement' has occurred.
- **Remove the setback loophole:** Regulations specifying blufftop setbacks in Section 30.55.050 Development Regulations for the Coastal Bluff Overlay Zone should not be weakened by adding a decreased setback loophole. Setbacks should only take SLR, projected 75 year erosion, and factor of safety into account. A smaller setback should not be permitted. If such setback is permitted, it must include a condition for removal of threatened structures or portions of structures if they are ever threatened by erosion in the future. This condition should apply to all setbacks associated with New Development.
- **Strengthen railroad relocation LCPA policies to include mitigation for temporary stabilization measures and fencing:** Temporary railroad stabilization measures should be removed and temporary impacts to access should be mitigated.

In a broader context, it is the Coastal Commission's duty to ensure that local jurisdictions' plans will adequately plan and respond to sea level rise. We understand and support the sentiment from the City of Del Mar in wanting to make locally relevant decisions pertaining to broad questions surrounding sea level rise and erosion. We believe the current version of the LCP, with staff's suggested modifications, allows the City room to do this while ensuring a check and balance to protect the public beach.

Staff's modifications are a compromise that moves the City in the right direction toward an adequate plan by including thresholds for considering a wider suite of adaptation options and by providing an avenue for the City of Del Mar to commit to incorporating updated sea level rise science into its planning on a regular basis.

California's voters and the Coastal Act created the Coastal Commission as a check and balance to prevent local jurisdictions from ceding the public's coast and beach to private property interests. We respectfully request that you accept staff's suggested modifications to ensure equitable access to our beaches.

Sincerely,

Kristin Brinner

Member of Del Mar's Sea Level Rise Technical Advisory Committee

Resident of Solana Beach

Co-Lead of the Beach Preservation Committee

San Diego County Chapter, Surfrider Foundation

Jim Jaffee

Resident of Solana Beach

Co-Lead of the Beach Preservation Committee

San Diego County Chapter, Surfrider Foundation

Laura Walsh

Policy Coordinator

San Diego County Chapter, Surfrider Foundation



APPENDIX C

July 26 2021: Comments to Del Mar City Council on Item 2, SANDAG's presentation to Del Mar City council concerning Del Mar Bluff Stabilization Project



July 26, 2021
Delivered via email
To: Del Mar City Council

Re: Item 2 - Presentation by SANDAG on Del Mar Bluff Stabilization Project

To the members of the Del Mar City Council —

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. The Surfrider Foundation San Diego County Chapter has more than 2,300 members, many of whom enjoy Del Mar's coastline. Bluff stabilization of the Del Mar section of the LOSSAN corridor railroad tracks will have significant impact on the city's coastline and coastal access, and we submit the following comments related to SANDAG's proposed stabilization efforts.

Extreme bluff stabilization measures should be avoided to the extent possible

As we pointed out in our comments on Item 15 of today's City Council agenda, SANDAG's proposed bluff stabilization measures will have an extreme impact on the public's beach. SANDAG has maintained that its Del Mar Bluffs Phase 5 and 6 proposals, which include the construction of a contiguous seawall from 15th street to Sherrie Lane, have been designed to stabilize the bluffs for thirty years, until approximately 2050. The timeline for track realignment however, has newly been accelerated where an operable inland track could exist by 2040.

Given this accelerated timeline, Surfrider urges SANDAG not to erect beach destroying seawalls that will outlast their useful need in protecting the track in its current position. To this point, Surfrider strongly recommends that the City Council work with SANDAG to ensure that hard armoring is only erected where necessary to ensure safety of the track as long as it is operated.

We recommend that the City requests SANDAG to commit to reevaluating the Del Mar Bluffs Phase 6 (DMB6) proposal in three years, based on updated information about the alignment alternative selected and its completion timeline. DMB6 is not scheduled to be initiated until 2026, so postponing DMB6 proposals until 2024 would allow the agency time to reevaluate its hard armoring plans and update the appropriate permit applications.



Additionally, the lifetime of the seawalls should be tied to their benefits to the track in its current location. Every year that the seawalls exist, they will take up the public's beach space, block coastal access, and erode the public beach. Bluff toe stabilization permitted and financed for the purpose of ensuring track safety should not be allowed to continue negatively impacting the public beach and bluffs beyond the track's operable lifetime. For this reason, we also urge the City Council to work with SANDAG to ensure that bluff stabilization infrastructure is removed as soon as possible and to earmark funding for seawall removal.

Significant bluff stabilization activities warrant significant mitigation efforts

DMB5 and DMB6 include the construction of a contiguous seawall, as well as extensive trenching and regrading of the bluffs. The impacts to the coastline through erosion and coastal access will be enormous. Mitigation should be equally and inversely impactful. In making mitigation determinations, Surfrider strongly urges the City to thoroughly review SANDAG's erosion rate calculations. Surfrider has seen how erosion rates can dramatically differ across permit applications related to coastal development along Del Mar's bluffs. In this case, a first step in reviewing the relied upon erosion rates would be to ensure that the same erosion rates SANDAG is using to justify the need for bluff stabilization efforts in the first place are also used as a foundation for mitigation calculations.

Mitigation should be in the form of projects, with safe crossings incorporated

Not all mitigation is created equal. In order to ensure that mitigation is tangible and provides the most benefits to Del Mar and to beachgoers, Surfrider recommends that SANDAG include mitigation project proposals as part of its DMB5 federal consistency application to the California Coastal Commission. Given the enormous impact of this project to the public beach and coastal access, the City of Del Mar should expect tangible and timely beach and public access benefits as mitigation for the stabilization activities. As the entire Southern part of the City's bluffs undergoes construction, The City should not merely accept fees with no real plans to direct that mitigation funding to projects. SANDAG's proposals should be project specific, and they should be reviewed as part of the Coastal Commission's federal consistency



determination on this project so that the public and the City of Del Mar have the appropriate opportunity to participate in the project selection process.

Surfrider also understands that NCTD is proposing to erect a fence along the Del Mar bluffs that will effectively blockade countless special coastal access spots in the City. We echo calls from the community that NCTD should work with the City to establish safe crossings, and request that this be considered as a form of mitigation for bluff stabilization projects.

We recognize that SANDAG, the North County Transit District (NCTD), and City of Del Mar are working on a Coastal Connection Study to evaluate project-based mitigation options for coastal access disruptions to the City, and that this study is set to be completed in 2022. Surfrider urges the City Council to question whether this study timeline can be accelerated or whether the federal consistency determination can be postponed in order to enable appropriate public review of tangible mitigation options that will support coastal access.

Conclusion

The City of Del Mar is facing tandem proposals to fence off the top portion of its bluff and wall off the bottom. The City's ability to affect and influence these proposals will shape coastal access for the current and next generation in Del Mar. We strongly encourage the City Council to avoid beach destroying stabilization measures to the extent possible, particularly by tying interim stabilization measures to the lifetime of the tracks in their current location. Where this cannot be done, meaningful steps towards real project-based mitigation must be pursued through the process of permitting stabilization measures.

Sincerely,

Udo Wahn
Advisory Executive Committee Member
San Diego County Chapter, Surfrider Foundation

Kristin Brinner
Beach Preservation Committee co-lead



San Diego County Chapter, Surfrider Foundation

Jim Jaffee
Beach Preservation Committee co-lead
San Diego County Chapter, Surfrider Foundation

Laura Walsh
Policy Coordinator
San Diego County Chapter, Surfrider Foundation



APPENDIX D

September 20 2021: Comments to Del Mar City Council on Item 2 SANDAG's presentation to Del Mar City council concerning Del Mar Bluff Stabilization Project



Sep 20, 2021
Delivered via email
To: Del Mar City Council

Re: Item #2 Presentation By SANDAG on Del Mar Bluff's Project

To the members of the Del Mar City Council —

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. The Surfrider Foundation San Diego County Chapter has more than 2,300 members, many of whom enjoy Del Mar's coastline. Stabilization of the Del Mar section of the LOSSAN corridor railroad tracks is already having severe impacts on the city's coastline and coastal access, and we submit the following comments related to the bluff stabilization update.

Extreme bluff stabilization plans must adjust to a rapidly accelerating relocation timeline

[Right: A photo by a Del Mar resident depicts extensive emergency work in 2021]

Del Mar's bluffs are already severely affected from emergency stabilization work. Natural geology, coastal access, and bluff habitat have been affected in the long-term in multiple places. Surfrider is highly concerned that the SANDAG's long-term plans for Del Mar Bluff Stabilization Project Phase 5 & 6 will continue to mar the bluffs without having been adjusted to consider the advancing





timeline of the Del Mar Realignment Project.

In the past two years, the Del Mar Realignment Project (which will relocate the railway off the bluffs) has gone from a concept championed by some regional stakeholders to one with widespread political support. Support for realignment was pledged extensively at the first San Diego Regional Rail Corridor Executive Leadership Task Force in April 2021. Additionally, the City of Del Mar pledged its support in a [letter](#) to Surfrider dated August 24, 2021. SANDAG has also included plans for realignment in its [Regional Transportation Improvement Program](#), which was adopted by SANDAG's Board of Directors on February 26, 2021.

Many regional stakeholders including Surfrider are advocating for SANDAG to activate the realignment within the next 7 years — by the time President Biden leaves office. The blufftop and blufftoe work being proposed by SANDAG as interim stabilization will come with extensive negative tradeoffs for public access and public beaches; in particular the quarter mile of seawall being proposed will significantly erode and block access to Del Mar's special public beaches.

DMB5 and DMB6 were designed to stabilize the bluff for thirty years and therefore far exceed necessary measures for stabilizing the bluff for the next seven years, as the new timeline for Realignment calls for. **The current bluff stabilization proposals therefore should either be scaled back accordingly, or the public must be assured that mechanisms exist to reevaluate the scope of this work.**

Surfrider recommends that the City requests that SANDAG commit to reevaluating the Del Mar Bluffs Phase 6 (DMB6) proposal in three years, based on updated information about the alignment alternative selected, its completion timeline, and funding. DMB6 is not scheduled to be initiated until 2026, so postponing DMB6 proposals until 2024 would allow the agency time to reevaluate its hard armoring plans and update the appropriate permit applications.

In addition to reevaluating the scope of DMB5 and 6 at appropriate intervals to adjust to the realignment timeline, we maintain the priorities outlined in our [letter to City Council](#) on July 26, 2021:

- **Bluff stabilization infrastructure must be removed as soon as possible, and a funding and concept plan for seawall removal must be guaranteed upfront.** Beach destroying seawalls must not outlive their intended purpose.

- **Significant bluff stabilization activities warrant significant mitigation efforts.** The erosion rates SANDAG is using to justify the need for bluff stabilization efforts in the first place must also be used as a foundation for mitigation calculations.
- **Mitigation should be in the form of projects, with safe crossings incorporated.** Surfrider recommends that SANDAG include mitigation project proposals as part of its DMB5 federal consistency application to the California Coastal Commission. SANDAG's proposals should be project specific, and they should be reviewed as part of the Coastal Commission's federal consistency determination on this project so that the public and the City of Del Mar have the appropriate opportunity to participate in the project selection process. City Council should consider accelerating the Coastal Connection Study timeline so the related results pertaining to possible mitigation options can be explored in the federal consistency review for DMB5. Mitigation should include opportunities for coastal access in the form of safe crossings.

Conclusion

[Right: Proposed Work in DMB5 may include extensive seawalls, DMB5 Alternative Analysis Report¹]

SANDAG's emergency and interim bluff stabilization work, as well as its diligence in realignment, will affect the coast and coastal access in the City for the foreseeable future. We strongly encourage the City Council to avoid beach-destroying stabilization measures to the extent possible, particularly by tying interim stabilization measures to the lifetime of the tracks in their current location. Where this



Figure 44 - Existing Conditions



Figure 45 - Construction of improvements at the bluff top only

¹ https://drive.google.com/file/d/1fY1ry8ya_pv6Uo2vPtq2aST97NONpRPJ/view?usp=sharing



cannot be done, meaningful steps towards mitigation for these disastrous projects must be pursued.

Sincerely,

Udo Wahn M.D.
Advisory Executive Committee Member
San Diego County Chapter, Surfrider Foundation

Kristin Brinner
Beach Preservation Committee co-lead
San Diego County Chapter, Surfrider Foundation

Jim Jaffee
Beach Preservation Committee co-lead
San Diego County Chapter, Surfrider Foundation

Laura Walsh
Policy Coordinator
San Diego County Chapter, Surfrider Foundation



APPENDIX E

June 3, 2022: Comments to the California Coastal Commission on Item W7b, CC-0005-2, Coastal Commission Federal Consistency Determination concerning Del Mar Bluff Stabilization Project



June 3, 2022

To: Donne Brownsey, Chair, California Coastal Commission
Cc: John Ainsworth, Executive Director, California Coastal Commission

Re: Item W7b, CC-0005-21 (San Diego Association of Governments, San Diego Co.)

Dear Chair Brownsey and Commissioners,

The Surfrider Foundation (Surfrider) is a nonprofit grassroots organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches, for all people, through a powerful activist network. Our San Diego Chapter is deeply involved in railroad protection and relocation issues in Del Mar. We have also been engaged in state and local decisions related to previous phases of Del Mar Bluff Stabilization (DMB) work, as well as more recent local conversations related specifically to DMB Phase 5.

Surfrider San Diego County is a member of the Los Angeles – San Diego – San Luis Obispo (LOSSAN) Regional Rail Corridor Working Group and the San Diego Shoreline Preservation Committee. We were part of Del Mar's Sea Level Rise Technical Advisory Committee that led sea level rise discussions related to Del Mar's Local Coastal Program Update process beginning in 2015. Our comments on DMB5 are consistent with our goal to see Del Mar plan for sea level rise to protect coastal access, coastal recreation, and marine resources in the most effective way, given current conditions affecting the safety and operability of the railroad.

We support the staff recommendation to make a conditional consistency determination for this project, but propose a number of critical suggestions to meet the needs of this community given the proposed project's extreme impacts.

Surfrider recognizes the need to stabilize the Del Mar section of the LOSSAN corridor and appreciates that the San Diego Association of Governments (SANDAG) and Coastal Commission staff have worked hard to reduce project impacts.

However, we cannot overstate the impact of this project to Del Mar's beaches and bluffs. Anticipated impacts can be found inconsistent with Sections 30251, 30253, and the access policies of chapter 3 of the Coastal Act (at a minimum) unless proper conditions are accepted in the Consistency Determination.

Del Mar's special bluffs, beaches, and waves are cherished by locals and visitors from throughout San Diego County, the State of California, and the country. Certain aspects of DMB5 — like the upper bluff stabilization, which can never be undone — will degrade the natural coastline in one of Southern California's quintessential beach towns far beyond the lifetime of this permit. Any permit extensions will also perpetuate related impacts.

Executive Summary

- To meet the specifications of Coastal Act Section 30253 and 'mitigate' damage, the project must facilitate relocation of the railroad.
- We recommend a number of suggested amendments to support relocation that are aimed at clarifying intentions to remove the proposed ½ mile of seawall.
- We support the staff report in pursuing a project design based on low-risk sea level rise scenarios because this supports the commitment to relocate the tracks.
- SANDAG has not provided environmental documentation to support a thorough analysis of the project proposal. The Commission should maximize public access opportunities so that the mitigation proposal is consistent with the access and recreation policies of Chapter 3 of the Coastal Act.
- We support the Capital Improvement Projects (CIP) proposed and recommend safe crossings at both 7th and 11th street. These projects are critical for securing access in spite of construction, proposed fencing, and armoring and should not be scaled back under any circumstance.
- The vertical access trails should benefit from a long-term rail to trail program.
- We recommend interim public access projects on Torrey Pines State Beach to address the seven year or more gap during which the CIP projects are not completed.
- The wetland mitigation ratio should be 4:1. The .28 acres of wetland habitat affected by this project are some of the last remaining intact wetlands in California.
- We request clarity around where and when rolling construction takes place so the schedule can be clearly understood by the community.

This project is devastating to Del Mar's bluffs and beaches

Approval of this permit includes the authorization of half a mile of seawall (2,500 feet) for 30 years, the permanent grading and upper bluff stabilization of approximately three quarters of a mile of bluff, and the construction of at least five stormwater outfalls.

Related impacts include:

- Construction activities taking up beach space and blocking access on Del Mar and State Park beaches for as long as three years. This impact could be found to be inconsistent with Sections 30210, 30211, 30212, 30220, 30221 of the Coastal Act and Section 4 of Article X of the California Constitution.
- Loss of beach access at 7th and 11th Street for up to seven years — or longer if other agencies do not comply with permit terms. This impact could be found inconsistent with Sections 30210, 30211, 30212, 30220, 30221 of the Coastal Act and Section 4 of Article X of the California Constitution.
- Narrowing of large stretches of beach and disappearance of lateral access along the beach caused by the placement of seawall and rip rap backfill for up to 30 years, with permanent narrowing of the beach expected in the future due to accelerated erosion and sea level rise. This impact could be found inconsistent with Sections 30210, 30211, 30212, 30220, 30221 of the Coastal Act and Section 4 of Article X of the California Constitution.
- Permanent loss of habitat along natural bluffs and on beaches, with temporary loss guaranteed during three years of project construction. This impact could be found inconsistent with Section 30240 of the Coastal Act.
- Drastic visual change to the bluffs, particularly due to the seawall visible to all beachgoers including surfers and boaters in the water for up to 30 years. This impact could be found inconsistent with Sections 30251 and 30253 of the Coastal Act.
- Potentially increased erosion, water quality contamination, and rip currents caused by the construction of five stormwater outfalls. This impact could be found inconsistent with Section 30231 of the Coastal Act.
- Permanent loss of .28 acres of some of California's last remaining wetlands. This impact could be found inconsistent with Sections 30233, 30231 and 30255 of the Coastal Act.

In light of these major impacts, we suggest mitigation opportunities and make recommendations to ensure accountability and transparency throughout the process:

The benefit of this project is that it can facilitate improved coastal access and long-term managed retreat

Surfrider can live with basic aspects of this project because it memorializes and motivates relocation of the LOSSAN railroad, which should never have been located on Del Mar's fragile and eroding bluffs in the first place. Further explanation is in our letter to this Commission related to emergency bluff work in 2020¹. As this staff report points out, SANDAG committed to relocating the Del Mar section of the LOSSAN corridor by 2035 (memorialized in its 2021 San Diego Forward Regional Transportation Plan) due to the fact that the rail faces increasing coastal hazards from sea level rise and erosion in the near and long-term.

Relocation of the railroad tracks provides an extremely rare and important opportunity to allow space for Del Mar's coastline to migrate landward as sea levels rise. It will also secure public recreation, viewing, and access opportunities along the former rail corridor in the future. If successfully managed, this project will be a nationally significant case study, where today's permit represents one step along an adaptation pathway towards managed retreat of critical infrastructure and restoration of an otherwise highly developed area on an eroding shoreline. The site is unique in San Diego County as one of the few areas along coastal bluffs where existing development would no longer be threatened once the rail is relocated.

This project can be found consistent with the Coastal Act, the Coastal Commission's Sea Level Rise Guidance, and the Coastal Commission's Guidance on Critical Infrastructure **only insofar as it facilitates relocation and provides mitigation for both short and long term access impacts**.

It is obvious that this project contravenes many Coastal Act policies, including 30253 and 30251, as well as access policies in Sections 30210, 30211, 30212, 30220, 30221 of the Coastal Act and Section 4 of Article X of the California Constitution.

The justification for the project rests on the provision of Coastal Act Section 30235, which allows the Coastal Commission to permit armoring *"when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."*

However, Section 30253(2) of the Coastal Act requires that new development shall not contribute to erosion nor *"require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."* While hard structures provide temporary protection against the threat of sea level rise, they disrupt natural shoreline processes, accelerate long-term erosion, cause loss of beach and other critical habitats and corresponding ecosystem benefits, as well as impair beach access and recreational uses. Therefore, armoring must be avoided or, in this instance, used for a minimized and time-certain duration.

¹ <https://documents.coastal.ca.gov/reports/2020/8/W13b/W13b-8-2020-correspondence.pdf>

Relocating the train is a practical way of meeting the requirement to mitigate adverse impacts of this project, and SANDAG has already committed to this intention in its Regional Transportation Plan.

In order to facilitate rail relocation, critical adjustments to the staff report need to be made in order to ensure accountability and feasibility — we make those suggestions in later sections of this letter. We note here however that the goal of managed retreat is both ambitious and imperative, and we generally support staff in their assumption that retreat will be achieved by 2035 with flexibility through 2053 (which captures the 30 year permit timeline.)

Because of this permit timeline, Surfrider concurs with staff that in this particular instance, SANDAG should not be held to design this critical infrastructure project to meet the standards of the H++ risk aversion sea level rise scenario. We take note that the Commission's Sea Level Rise Guidance recommends analyzing critical infrastructure under the medium high-risk aversion and extreme-risk aversion scenarios because of its typically long design life, low adaptive capacity, and the high consequences associated with its failure; all of which apply to this project. While we strongly agree with this concept generally, the added variable of SANDAG's commitment to relocate the train drastically shortens the otherwise long design life of this type of project. We agree that a 1 in 20 and low-risk aversion scenario is more appropriate when the design life of the project is the next 30 years, as this allows for a calibration of the project design that reduces impacts to coastal resources and coastal access while still managing risk.

We do also note that it is important to interpret the Commission's Sea Level Rise Guidance² in context. The Guidance provides that the Commission must consider critical infrastructure projects on a case-by-case basis, and that projects that facilitate relocation are preferred:

Chapter 7: Adaptation Strategies includes a goal regarding special considerations for protecting transportation infrastructure which states that applicants should:

“Develop or update a long-term public works plan for critical facilities to address sea level rise: Develop a long-term management plan to address the complexities of planning for sea level rise that incorporates any potential maintenance, relocation, or retrofits and structural changes to critical facilities to accommodate changes in sea level, and obtain Coastal Commission certification.” (page 140, California Coastal Commission Sea Level Rise Guidance)

The Guidance similarly supports incremental changes to transportation networks specifically to facilitate realignment:

2

https://documents.coastal.ca.gov/assets/slr/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf

“Allow for phased implementation of realignment and relocation projects: In some cases it may be necessary to make incremental changes in transportation networks so that access to and along the coast can be maintained while also addressing coastal hazards over the long-term” (page 141, California Coastal Commission Sea Level Rise Guidance)

We strongly support the staff report in working towards its own adopted SLR Guidance and memorializing the legally binding aspects of SANDAG’s policy commitment to relocate the Del Mar section of the LOSSAN corridor by 2035.

Environmental documentation is missing

The Staff Report notes that DMB5 is categorically exempt from the NEPA and CEQA process. Additionally, SANDAG has made clear that there is a pressing need to embark on this project before the next rainy season, given the bluff failures that have resulted in emergency work in recent years.

While Surfrider notes the intense efforts and collaboration that have been pursued to achieve the proposal outlined in the staff report, we note the following as important environmental documentation that is noticeably not part of the report:

- Identification of an environmentally superior alternative - Including potentially an entirely different alternative; perhaps one that includes a ‘phased’ component to seawall installation
- Lack of Coastal Connections Study - SANDAG has failed to complete the Coastal Connections Study within the timeframe provided by its DMB Phase 4 permit. This staff report is therefore unable to include information about the public access projects being proposed in this project, which would otherwise help determine whether or not appropriate public access mitigation can be provided on a reasonable timeline.
- Risk assessment information justifying the location, extent, and needed timing of stabilization measures - Currently SANDAG appears to be justifying the accelerated timeline of the project on the fact that recent bluff failures have occurred in areas that were previously identified as ‘low risk.’ This broad swath approach to stabilizing the entire bluff is reactive and most likely over-assumes risk in certain areas, which will ultimately come at the consequence of coastal resources and coastal access.

Without these environmental documents, it is extremely difficult for Surfrider and the Commission to determine whether or not the current proposal represents the least environmentally damaging and feasible alternative. It is also difficult to determine whether the proposed mitigation, monitoring and reporting efforts are sufficient.

In light of these missing environmental documents and analysis, we submit that the most important step the Commission can take to finding Coastal Act consistency in this case is to secure maximum reasonable mitigation opportunities for this enormously consequential project. Below, we suggest mitigation opportunities and make recommendations to ensure accountability and transparency throughout the process.

Recommendation #1 - Make adjustments to support relocation

As has been discussed, this project can only meet Coastal Act requirements and the Commission's Sea Level Rise Guidance requirements by reaffirming SANDAG's already formal commitment to relocation of the Del Mar Section of the LOSSAN corridor by 2035. We suggest the following adjustments:

1a. Staff Report Language on Relocation and Automatic Extensions - We ask that staff make a minor adjustment to the report so as not to undermine SANDAG's commitment to relocate the track by 2035. It is possible to justify the 30-year permit timeline without undermining SANDAG's formal policy language in its RTP. For instance, the discussion on page 10 of the staff report states:

"SANDAG is currently in the process of planning to relocate the tracks consistent with the regional transportation plan; however, given the magnitude and complexity of that effort and outstanding funding needs for final design, environmental review, and construction, implementation of the relocation would likely extend beyond the target date of 2035."

This should be amended to replace the phrase 'would likely' with 'may,' at a minimum. We suggest further amendments to acknowledge the difficulty of relocation, while adding language such as the below:

"However, SANDAG has made a formal commitment in its Regional Transportation Plan that commits the agency to relocating this rail by 2035."

Surfrider also has concerns with the potential for undue delay given the automatic extensions currently granted in the conditional approval. Surfrider suggests the report implement a condition that addresses authorization term without allowing for automatic extensions upon application submission so that the project is not unduly delayed. We appreciate that Condition One otherwise memorializes the commitment to relocate the track by 2035.

1b. Removability of Seawalls - The removal of the seawalls permitted in this project is a critical step towards relocation, which allows for mitigation of lost public access and recreation. We make the following recommendations to strengthen the requirements for removable seawalls:

- Adjust conditions on authorization terms to remove rail abandonment aspects. Condition 1a states that the authorization of seawalls included in the consistency certification shall expire in 30 years or upon relocation and legal abandonment of the sections of railroad at issue in this action, whichever occurs first. We suggest amending this language to require the seawalls to be removed after 30 years or when the rail line is no longer in service. The North County Transit District (NCTD) may never formally abandon this section of rail — for instance NCTD still leases portions of its property to the City of Del Mar near the Del Mar Fairgrounds, though that area has not received rail service in decades. This condition should also clarify that the legally permitted purpose of the seawall may only pertain to bluff stabilization as long as rail service continues.
- Clarify whether the current seawalls will also be removed as part of the project. Surfrider assumes that the temporary and emergency seawalls that have been constructed by SANDAG through previous permits will also be removed when the rail is no longer in service. Removal of these seawalls will also be necessary to achieve the goals of a larger managed retreat effort. This should be clarified through Authorization Term conditions.
- The Commission should add a condition that the seawall is constructed only to protect the railroad and any other existing or future development cannot rely on the permitted seawall to establish geologic stability. Failure to include this type of special condition may result in SANDAG or other property owners claiming that continued authorization of the seawalls is necessary to accommodate existing or additional development.
- The Commission should add a requirement that SANDAG work with the City of Del Mar to develop a formal notification procedure to inform current and future blufftop property owners that the seawalls are temporary and will be removed by the end of the permit term. This will serve to negate any legal takings claims when the seawalls are scheduled for removal and prohibit any future claimed reliance on the seawalls to protect private property.
- The Commission should consider an opportunity to delay seawall construction as long as possible. Surfrider understands that the various components of the stabilization project (upper bluff stabilization, bluff toe stabilization, and other irrigation efforts) all work together, but bluff toe stabilization specifically manages wave overtopping caused by storm surge that is exacerbated by sea level rise. It is unclear whether or not the current seawall designs are necessary to meet today's erosion impacts to the bluff toe. If the seawalls are designed to mitigate risk that is forthcoming, then the seawalls can be permitted today with an agreement about a phased, trigger-based installation at a later date. This would reduce the impacts of the seawall on erosion, which will immediately extend the back of the beach seaward on some parts of the beach and compound erosion and access issues over time.

- The Commission should include a condition that SANDAG work with Scripps Institution of Oceanography to employ advanced geophysical instruments and utilize the data from their coastal LiDAR surveys to track bluff erosion and monitor slope stability at the site.

Recommendation #2 - Adjust public access mitigation proposals to be consistent with access and recreation policies of Chapter 3

Surfrider appreciates the capital improvement projects that have been suggested in the staff report. In particular, safe crossings at 7th Street and 11th Street as well as vertical access trails would be an improvement to the current situation of unsafe and insecure access to the walkable beach and enjoyable waves in the area.

We agree generally with staff that it is not possible to ‘buy back a beach’ in this area to provide in-kind mitigation for the dramatic impacts that this project will have on beach erosion and lateral beach access, as well as both vertical and lateral access throughout construction. If public access mitigation is the only available form of mitigation as in-kind mitigation is not possible, and if the project is missing necessary documents (as described above) that would be required to fully find Coastal Act Consistency, the Commission should seek to maximize public access as mitigation.

In the past, mitigation for seawall impacts over time was provided by payment of recreation fees to account for lost beach area.³ Similar fee programs should be considered, perhaps for an endowment fund to manage the vertical trails (mentioned later). In contrast to previous fee programs that only mitigate for lateral access and placement loss, the DMB5 project must also mitigate for additional loss of vertical beach access from the blufftop to the beach and for lateral access along the beach. In order to address these impacts, additional mitigation is required to meet the nexus test of the impact. Simply rebuilding existing vertical access while access is lost for many years does not mitigate all impacts commensurately. Both vertical and horizontal access must be mitigated in the short and long term in order to meet the nexus tests of the Nollan and Dolan cases⁴.

We note that even the current staff recommendation affords SANDAG up to seven years to complete the proposed capital improvement projects. Given that these projects may hinge on approvals from the North County Transit District and California Public Utilities Commission, it could take even longer. It is unreasonable that the City of Del Mar and the over 2 million annual Del Mar beach visitors should fail to benefit from public access mitigation for seven years or more. We suggest the following adjustments to help mitigate this scenario and provide further suggestions for mitigation opportunities:

³ See for example Land Use Plan (LUP) Amendment #LCP-6-SOL-16-0020-1 (Public Recreation Fee), CDP 6-05-072/Las Brisas Recreation Fee and CDP 3-02-024/Ocean Harbor House.

⁴ See Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987) and Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).

1 - Strengthen mitigation project opportunities. The capital improvement projects suggested in the report are critical for securing access in spite of construction, proposed fencing, and armoring. These projects should not be scaled back under any circumstance. To maximize the benefits of public access mitigation, we strongly urge the Commission to require vertical access and safe crossings at both 7th and 11th Street - not one or the other. Both of these are currently popular accessways that facilitate surfing, walking, and beach enjoyment over more than a mile of beach. There is a recognized surfing reef at 8th St. in Del Mar and 11th St. offers a unique peak as well.

2 - Include interim project opportunities in addition to the capital improvement projects. Much of the staging for this project occurs on Torrey Pines State Beach, and no public access mitigation has been suggested in this staff report. Surfrider suggests working with State Parks to make two public access improvements to Torrey Pines, which would provide some mitigation for State Parks access and possibly address the 7 year or more gap in which SANDAG could fail to provide access.

2a. Project #1 - We suggest working with State Parks on a project concept to create a living shoreline near the highbridge between Los Penasquitos Lagoon and Torrey Pines State Beach. The maintenance of the beach under the bridge is important for visitors coming from the North Torrey Pines parking lot, and is a valued access point for on duty lifeguards and for Junior Lifeguards practice. The beach in this area is vulnerable to high tides because of its location near the lagoon, the local geomorphology, and the fact that the substrate (which is fill from the historic rail construction) is very soft. In the past, State Parks has maintained the beach by inlet dredging but this area is a good opportunity for a more resilient living shorelines project with cobble toe. Funding is needed to haul the sand and cobble from the lagoon and would also assist with annual planned inlet maintenance. Such a project would make the area more resilient, provide critical public safety and public recreation access, provide an access point for Rail ROW maintenance and repair, and be designed to maximize habitat and resilience. It could also be completed in the near term and serve as a multi-benefit coastal resilience pilot project in the City of San Diego.

2b. Project #2 - State Parks has also identified three areas along Torrey Pines Road where a staircase would be useful for facilitating public access to the beach. This section of the beach is often physically separated from the southern part of the beach when the lagoon is breached. People who are trying to cross to the other section of beach, or who parked in the parking lot near the lagoon, would be able to access the beach considerably quicker than is currently possible. At least one option for a staircase in this area would not require armoring and would provide faster access to the beach for public safety and maintenance staff. This project could also potentially integrate with the City of San Diego's goals to construct an ADA beach access in the area.

3. Require SANDAG to report on CPUC and NCTD successes - The safe crossings at 7th and 11th Street will require California Public Utilities Commission (CPUC) and NCTD approval, where approval could fail to be provided or extend the timeline of this project. The Coastal

Commission should hold SANDAG to account in making a robust effort to secure these approvals. We recommend including a condition requiring SANDAG to show and report on robust efforts to secure approvals from both of these agencies.

4. Ensure that public access benefits remain after project is gone. The staff report is unclear on what will happen to the vertical accessways once the permit expires and the seawalls are removed. Surfrider supports maintaining these accessways even while a larger relocation effort is pursued. We recommend SANDAG be required to implement a formal rail to trail program, which would perhaps set up a process for transferring ownership such as through the establishment of an endowment fund that the City of Del Mar, State Parks, or some other entity could use to assume management of the trails in the future.

Recommendation #3 - Adjust wetland mitigation

The .28 acres of wetland habitat affected by this project are some of the last remaining intact wetlands in California. They are home to endangered species and habitat to native flora and fauna, and they provide carbon sequestration benefits. In a May 26th SANDAG presentation to the City of Del Mar Design Review Board, a statement was made by SANDAG that impacts to ospreys are not a concern and that they feed in the San Dieguito lagoon. This is inaccurate. Ospreys, peregrine falcons, crabs, and many other species use the tidal zone for feeding.

It is also unclear why staff has chosen a 1:1 mitigation ratio for wetlands when it is more common to use a ratio of 4:1. We suggest a minimum 4:1 ratio based on the Commission's own Procedural Guidance for the Review of Wetland Projects in the California Coastal Zone, which states that a "wetland mitigation ratio in excess of one to one" should be used and that a higher mitigation ratio helps to compensate for wetland acreage and functional capacity lost at the specific site. Given that the recommendation is fee-based, we recommend applying this funding to the suggested project at Torrey Pines, which affects the Los Peñasquitos Lagoon.

Recommendation #4 - Communications for transparency

We suggest making some adjustments to better communicate the impacts of this project to community members. In particular, we suggest clarifying:

The project construction timeline - We are under the impression, but it is not clear from the staff report, that construction will occur on a rolling basis to address areas marked in the staff report as high priority, then medium, then low. SANDAG should be required to clarify which sections of the bluffs are being worked over time, and this information should also be stated in the staff report.

Project endurance - It is not stated anywhere in the staff report that the upper bluff stabilization is, in fact, permanent. This is of significant consequence to those who care about the natural features of the bluff. This should be stated clearly in the report. The state of the soldier piles,

connecting grade beams at the surface and tie backs as they become exposed should also be further discussed.

Conclusion

Thank you for your consideration of these requests. We hope to see coastal resources and access recovered in Del Mar in the long-term upon inclusion and consideration of these permit adjustments for finding conditional concurrence for Coastal Act consistency.

Best,

Laura Walsh,
California Policy Manager
Surfrider Foundation

Mitch Silverstein
Policy Manager
Surfrider Foundation San Diego County

Jim Jaffee
Beach Preservation Co-Lead
Surfrider Foundation San Diego County

Kristin Brinner
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Climate Co-Lead
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