



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:

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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,

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