



# CITY OF DEL MAR

July 19, 2024

San Diego Association of Governments (SANDAG)  
401 B Street, Suite 800  
San Diego, CA 92101  
[LOSSANcorridor@sandag.org](mailto:LOSSANcorridor@sandag.org)  
ATTN: Tim Pesce

Re: City of Del Mar Comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the LOSSAN Rail Realignment Project

Dear Mr. Pesce,

Thank you for the opportunity to comment on the LOSSAN Rail Realignment Project (“Project”). The City of Del Mar provides the following comments to ensure that the Draft Environmental Impact Report (“DEIR”) fully analyzes the Project and a range of alternatives aimed at avoiding the Project’s adverse impacts. Our comments reflect the grave concerns that our community members have expressed in public hearings to the City Council. The Project and its alternatives have the potential to adversely impact our community’s quality of life, tourism, local businesses, tax revenue, property values, and our unique and sensitive coastal resources.

The Project’s expansive environmental impacts have potential to threaten our community character, history, and our citizens’ health and wellbeing.

## **I. The Project Description and Descriptions of Project Alternatives are Vague and Incomplete.**

Generally, the NOP is deficient in several regards. First, both the Project Description and the three alternatives fail to provide enough detail for a reader to determine the scope and level of environmental impacts. It fails to identify a complete list of construction related impacts, short-term and long-term health risks, socioeconomic impacts, the property condemnation process, and what properties could be taken, hazardous material transportation risks, geologic impacts, and the full impact on coastal resources.

Additionally, while the NOP identifies three alternative rail alignments, it does not clearly identify the “proposed project.” The California Environmental Quality Act (“CEQA”) requires a “proposed project” to be identified along with a “range of reasonable alternatives” to that proposed project. The EIR’s “bona fide subject” must be “[t]he defined project and not some different project.” (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Assn.* (1986) 42 Cal.3d 929, 938.) Further, inadequate or unstable descriptions of the Project may mislead the public and thwart the EIR process. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656.)

Without a clear identification of the proposed project, members of the public cannot comment meaningfully on the NOP. (*Save Our Capitol! v. Department of General Services* (2023) 87

Cal.App.5th 655, 676.) “A project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading.” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332.) Here, the public is asked to conjure what a reasonable range of alternatives might be to each of three proposed alignments, and to numerous options for portal locations. The current NOP identifies alternatives, but not the required proposed “bona fide” project. (CEQA Guidelines Sections 15378 and Section 15126.6).

Critically, the NOP does not identify whether rail removal from the bluff is part of the Project to be addressed in the DEIR. The NOP states part of the Project objective is to “Improve rail service reliability by relocating the existing railroad tracks away from the eroding coastal bluffs in Del Mar.” But the project description cannot fail to describe key elements of the Project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730-35.)

CEQA explicitly defines a project to be studied in an EIR as “the whole of an action” and does not allow breaking a project into smaller pieces to reduce the cumulative effects of a larger project. Section 15378 subdivision (a) of the CEQA Guidelines clearly defines a “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” (See also, *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283-284 [“environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences.”].)

Here, the DEIR must consider all Project elements, including the removal of existing rail structures and any additional facilities as part of the overall Project.

## **II. NEPA is Required.**

While the NOP suggests that a National Environmental Policy Act (“NEPA”) document is required and will be prepared, the NOP omits the identification of the lead agency for that document. It is unclear why SANDAG omitted the identification of the relevant federal agency. The Federal Rail Administration’s (“FRA”) mission is “to enable the safe, reliable, and efficient movement of people and goods.” Thus, the FRA would be the likely candidate, or alternatively, the Surface Transportation Board, which is charged with economic regulation of rail. In any case, regardless of the agency a joint EIR/EIS (Environmental Impact Study) should be prepared for the Project. The coordination between the State, SANDAG, and the federal government is critically important to this Project and owed to the citizens of the region. Given that the Project will be subject to NEPA, the EIR needs to address irreversible changes to the environment. (CEQA Guidelines Section 15127). It is undeniable that the Project will have significant irreversible impacts to local coastal communities, wetlands, and require the relocation of residents.

## **III. The City of Del Mar Is a “Responsible Agency” Under CEQA.**

The City of Del Mar is a “Responsible Agency” under CEQA and maintains all review and adoption rights granted under CEQA. CEQA defines a “Responsible Agency” as “an agency other than the lead agency with a legal responsibility for carrying out or approving a project” and mandates that “a responsible agency... be involved during the project scoping, planning and CEQA document preparation stages.” (CEQA Guidelines, Sections 15096 and 15381). Here, the City of Del Mar

will have the authority and the discretion to issue Coastal Development Permits and approve other discretionary permits such as encroachment permits and traffic plans. Accordingly, the City qualifies as a Responsible Agency under CEQA and must be treated as such.

#### **IV. Objectives are Incomplete.**

The Objectives listed in the NOP, and particularly regarding the 2021 Regional Plan and the 2018 California State Rail Plan, are too broad. Moreover, the objectives provide no definitive method of comparing the environmental impacts of the Project alternatives with one another. Other objectives should be included when evaluating the relative benefits of the Project to its alternatives, such as quantifying the impacts from condemnation including its costs, the number of properties affected, impacts to residents and businesses, property value impacts, and timing considerations. And while the NOP broadly identifies some environmental impacts based on their resource categories, the NOP and any EIR/EIS should rank the significance of such impacts compared to other impacts. For example, if one alternative impacts a wetland resource while another alternative does not but has other serious public safety impacts, how will the agency resolve these conflicts between the objectives? The objectives should also include the relative impacts to the character of the coastal communities. Will one coastal city bear all the adverse impacts of the Project when compared to other coastal communities? In sum, the objectives fail to take in consideration the impacts on each coastal community or city and the objectives should recognize the historic and unique character of each impacted community.

#### **V. Construction Impacts Have Not been Defined.**

CEQA requires that construction impacts be analyzed, even though they are temporary. (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1425.) The NOP fails to properly identify the full range of construction related impacts in both the Project Description and its alternatives. It is a given that construction of the Project or the selection of any one of the alternatives will involve several years of construction. These multiyear projects are complex and have discrete construction phases and elements. Each phase of construction should be analyzed, and each major Project element should be evaluated. For example, the boring tunnels or cut and cover should each be fully evaluated as their own discrete Project element.

##### Impacts to be Addressed During Construction:

During each construction phase the DEIR must address impacts and include appropriate mitigation measures to reduce levels to insignificance related to:

- Noise impacts to residents and businesses, the number of residents and businesses impacted compared to the no-project alternative and the three alternatives listed in the NOP.
- Vibration impacts to adjacent residents and businesses, and the potential occurrence of earthquakes during construction.
- Air pollution impacts during construction and the number of residents and businesses impacted by the Project and its alternatives.

- Water pollution runoff that includes surface and ground water deterioration or impacts associated with accidental spills during construction.
- Risks associated with hazardous materials, including petroleum products during construction.
- Evaluation of the increased risk of derailments or other rail accidents from construction activities.
- Direct and indirect impacts to the San Dieguito and Peñasquitos Lagoons during each phase of construction.
- Impacts to public health during construction.
- Identification of unstable soils and other geologic risks during construction.
- Identification of how drainage and runoff issues will be mitigated during construction.
- Identification of the impacts from tunneling when the tunnel is below the water table and of any required dewatering.
- Identification of where soils will be disposed, including location, manner, and volume of soil disposal.
- Identification of increases in pollutant emissions during each phase of construction.
- Identification of locations subject to nighttime construction and potential impacts to birds, other wildlife, and nearby residents.
- Identification of all related traffic impacts and mitigation, including alternate traffic and emergency evacuation routes. The duration of each alternate traffic route should be identified, and a reasonable range of traffic mitigation measures should be provided.
- Impacts on property values and the loss of tax revenue.

## **VI. The Project and Each Alternative Should Be Fully Analyzed.**

The alternatives analysis is the “core of the EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564.) “One of [an EIR’s] major functions . . . is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” (*Laurel Heights Improvement Ass’n. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400.) Accordingly, the Project and all alternatives should be reviewed in the DEIR at the same thorough level of analysis. Given the expansive scope and complexity of the Project each alternative should be evaluated at the same level as the Project Description. Full analysis of each alternative is the only transparent method of insuring that the decision makers understand the full range of impacts of each alternative. The fundamental purpose of CEQA is to ensure

informed decision-making. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.) This includes socioeconomic impacts, condemnation impacts, and resource protection issues, which are required under NEPA.

Impacts to be Addressed During Rail Operations Post-Construction:

The DEIR should specifically analyze the following potential environmental impacts due to rail operations after the Project is constructed:

- Geotechnical impacts including long-term settling, water drainage, impact of earthquakes, sea-level rise, composition of soils, and settlement of the tunnel structures.
- Long term impacts of single bore vs. twin bore tunnel construction.
- Impacts to the San Dieguito and Los Peñasquitos Lagoons.
- Impacts to the hydrology of the San Dieguito River and the City of Del Mar's ability to construct a living levee(s).
- Impacts on property values and the loss of tax revenue.
- Disruption to the community from relocation of residents and businesses.
- Identification of which properties will be subject to eminent domain.
- Identification of the short-term and long-term impacts to the tourism industries of the coastal communities.
- Impacts to City of Del Mar revenues during operations and including the long-term economic impacts to the City.
- Future increases of passenger and freight operations should be clearly quantified, and as rail traffic increases, each associated environmental impact should be identified and mitigation measures proposed.
- The DEIR should analyze the environmental benefits of each alternative alignment as compared to the Project. Again, each alternative should be fully analyzed at the same level of the Project.
- The DEIR should include examples of similar passenger and freight train tunnels that have been constructed under residential areas with similar geological features and provide both the short-term and long-term impacts to both the residential and business communities.
- The DEIR should visually document and map the precise path of the Project and the alternatives routes.

- The EIR preparer should use drones to visually map the proposed portal locations to create realistic 3D renderings.
- Provide the public with three-dimensional models (physical or computer graphic) of the alternative portals, permanent facilities, private and public property to be acquired, elevated Jimmy Durante Boulevard, new above ground track alignment with elevated berms, floodwalls, U-structures, and cut and cover tunnels with their locations, designs and any landscaping details.
- Prior to and in the DEIR, SANDAG should install story poles showing building/tunnel ventilation locations, and at each proposed portal site for the public to view prior to the close of the comment period.
- The DEIR should consider the worst-case scenario and the associated public health and safety concerns of a freight train derailment occurring within a tunnel and account for trains that carry hazardous and/or flammable materials. In this regard, the DEIR should address the personnel and emergency equipment needed to respond to such an event, and whether the tunnel design will integrate fire suppression systems, public alert systems, and whether evacuation plans will be put in place prior to operations.
- The DEIR should address pollutant air emissions from the tunnel portals and/or ventilation systems. The DEIR should address the public health impacts from these pollutants and identify the sensitive receptors living or working near these pollutant point sources.
- Identification at a NEPA level of all economic and social impacts to each city in the Project area and their residents and businesses.
- Identification of the public safety risk from derailments, pedestrian strikes, transportation of military munitions, and hazardous waste transportation.

## **VII. The DEIR Should Address the Range of Socioeconomic Impacts to Each Coastal Community.**

It is appropriate for the DEIR to address socioeconomic impacts associated with the Project and for each of its three alternatives. The Project has the potential to literally fractionize communities, cause mass relocations of residents and businesses, disrupt tourism for many years, decrease property values, and increase health risks. CEQA provides the ability for SANDAG to address these project consequences in CEQA Guidelines Section 15131(b):

*(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant.*

The Project will split Del Mar above and below ground. The social and economic impacts to residents and the business community, City finances, property values, Fairgrounds attendance, short and long-term impacts to tourism, and indirect impacts to the community's sense of wellbeing and safety all should be addressed.

### **VIII. Other CEQA Issues Must Be Addressed in the DEIR.**

The DEIR should address additional CEQA issues, including, but not limited to:

- The DEIR should address for Alternative A (I-5 Alignment), the additional impact of requiring a 2% grade (downward north to south) in the Solana Beach trench on top of the already planned double tracking construction.
- The DEIR should also include if there is any additional trenching needed for the downward grade beyond what is needed for the double tracking. The DEIR should also identify if the trench will be "covered" and where covering would occur.
- The DEIR should identify the trade-offs and parameters to be considered when deciding where to end tunneling and start cut-and-cover at the north end of Alternative A.
- Identify the incremental cost of double tracking in Solana Beach versus Alternative A.
- As part of the Alternative analysis, identify whether tunneling can extend further northward and thus shift the cut-and-cover north, closer to Via de la Valle.
- Identify the necessary tunnel depth to avoid or reduce noise and vibration impacts to residential and business properties that are above or near the tunnel to a level of insignificance.
- The DEIR should identify all right-of-way acquisitions by Assessor Parcel Number (APN) for the Project and its alternatives.
- Identify specific (by APN) residential and commercial property located within 500 feet of portals/tunnels for all alignments.
- In addition to public views, identify all private property view modifications for the Project and for each alternative.
- Address if there will be significant impacts to Steven's Creek resulting from the Project and its alternatives.
- Show the ventilation plan for the Project and each alternative.
- Identify the noise impacts of each tunnel ventilation system including impacts to adjacent properties.

- Identify and incorporate mitigation measures to reduce noise impacts emanating from the trains that extend out from the portals and to local residences and businesses for the Project and its alternatives.
- Identify and incorporate mitigation measures for any tunnels located under private properties and businesses, including state-of-the art vibration dampening technology, such the Springed System installed for the tracks built under the London opera house (London, England) on the newly constructed Elizabethan Line.
- The DEIR noise analysis should also include the noise frequency and impacts of, including, but not limited to, train horn; wheels screeching; signal crossings; locomotive noise; whooshing sounds when train enters tunnel portal; and high-speed passenger and freight trains.
- The DEIR should include noise and vibration simulations.
- The DEIR should identify the typical freight trains lengths currently running on the along the bluffs and if the new tunnels limit train size or nighttime durations.
- Identify the current and expected type of freight carried and to be carried on the rail system.
- Identify and incorporate enhanced safety measures associated with the tunnel to reduce the possibility of derailments.
- Identify how deep each of the portals will be for Alignments B & C, and how much of the structure(s) will be above ground.
- Identify for the Project and all alternatives if additional structures will be needed for flood walls, gates, higher bridges, berms, and levees.
- Identify the evaluation criteria that determines the environmentally superior alternative and any ranking criteria.
- The DEIR should address whether the removal of the tracks from the North Portal and/or from the Camino del Mar Bridge to Coast Blvd will be analyzed.
- The DEIR should address all future actions relating to the land under the current tracks and what will occur to those vacated lands. It should address the ownership of those lands post vacation and the uses for those lands.
- The DEIR should address the mitigation opportunities for the railroad Wye property and the old spur line to the North County Transit District parking lot.
- The DEIR should include studies of all potential flood areas including the North Beach and the Wye properties including identification of what type of structures will be used to mitigate floods.

- The DEIR should recognize that the Project is of “Statewide, Regional, or Area wide Significance” within the meaning of CEQA Guidelines Section 15206. Accordingly, the DEIR should be prepared under those Guidelines.
- Another alternative that the DEIR should include is bifurcating rail service by separating the freight rail service from passenger service and moving freight service further inland, while leaving passenger service in the City of Del Mar.
- The DEIR should include all location options for the northern portal structures. Each alternative should include different location options for the portals.
- The DEIR alternative section should consider the option of locating a north portal farther north between the Camino del Mar/Jimmy Durante Boulevard intersection and the railroad trestle.
- The DEIR should provide a detailed timeline for the public, which should include timelines of the EIR process, property acquisition, the complete construction schedule with all major milestones, and other critical path timelines.
- The DEIR should discuss any alternatives that were considered in the scoping process but were later rejected. The rejected alternatives should contain a reasonable explanation why they were dismissed.
- As the lead agency, SANDAG should make available their technical consultants in a follow-on public forum and prior to the EIR certification hearing.
- The DEIR should assess impacts on the hydrology of the San Dieguito River Floodplain for the portal proposed under Jimmy Durante Boulevard. The DEIR should consider the effect of the alteration of the 100-year floodplain caused by raising the current track bed south of the San Dieguito River on the higher berm and protecting its descent to the portal (which is below the 100-year floodplain) with flood walls, a U structure, and a cut and cover tunnel (with floodgates at the portal). This effectively divides the 100-year floodplain of the North Commercial District and North Beach neighborhood into two. The DEIR should consider whether this approach will alter the flooding potential of the North Commercial District or North Beach neighborhoods. Should this be the case, mitigation measure(s) will be required and must be incorporated into the Project. This analysis should take into consideration flooding from both heavy rains and tidal surges with expected sea level rise over the anticipated lifetime of the tunnel. Mitigation must be disclosed and objectively evaluated in the DEIR.
- The Alignment Screening Report (SANDAG, May 31, 2024) notes the 2022 construction cost estimates for the 3 alignments: Alternative A (referred to as Alignment P7-A) = \$4.14 billion; Alternative B (referred to as Alignment 5) = \$2.28 billion; and Alternative C (referred to as Alignment 3)= \$1.85 billion. Given substantial increases in construction costs over the past 2 years, the Project and alternatives should be updated and adjusted for future inflation and the costs should reflect current 2024 dollars.

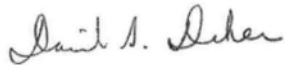
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- Given the substantial but significantly varying financial costs of the three alternative routes, as well as the growing public concern about the Project, the EIR should include a financial and economic cost benefit analysis of the Project. These economic studies should consider the low ridership of the passenger trains.

We appreciate the opportunity to comment on the NOP for the LOSSAN Rail Realignment Project and look forward to working with SANDAG in the coming months to address the many important concerns being raised by the public and various Project stakeholders.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave Druker".

Dave Druker  
Mayor