



CITY OF DEL MAR

June 25, 2025

San Diego Association of Governments (SANDAG)
1011 Union Street, Suite 400
San Diego, CA 92101
ATTN: LOSSAN Comments

Re: City of Del Mar Comments on the Updated Notice of Preparation of a Draft Environmental Impact Report for the San Diego LOSSAN Rail Realignment Project

LOSSAN Rail Realignment Project Team,

This letter is respectfully submitted on behalf of the City of Del Mar (City) as approved by the Del Mar City Council on June 16, 2025.

The City has closely monitored the SANDAG LOSSAN Rail Realignment project (Project) since public outreach began in 2020, given its potential to significantly and negatively impact Del Mar's quality of life, environment, public safety, economy, property values, and municipal revenues. City representatives participated in the 2024 Value Analysis (VA) process and have been a driving force in encouraging SANDAG to identify alternative alignments that mitigate potential impacts to the City to the maximum extent practicable. However, the fundamental issue at hand is that SANDAG is not the proper Lead Agency to oversee the preparation of a Draft Environmental Impact Report (DEIR) for the Project under the California Environmental Quality Act (CEQA). For SANDAG to continue in this role will ensure that the DEIR and the entire CEQA process are defective.

By this letter, the City incorporates its prior comments submitted to SANDAG in response to the first Notice of Preparation ("NOP") for the Project. Those comments were approved by the City Council and submitted to SANDAG on July 16, 2024. The City's prior comments focused on the potential impacts from the Project to the City's residents, businesses, and visitors from the Project. Those comments are relevant to the Updated NOP and the concerns raised should be analyzed in the forthcoming DEIR and Environmental Impact Statement (EIS). The City requests that those comments become part of the administrative record in this manner.

The City appreciates the opportunity to submit formally the following comments and concerns regarding the Updated Notice of Preparation (NOP) for the DEIR that was issued by SANDAG on May 16, 2025. The Updated NOP includes revised Project Goals and Objectives, a Project Description and Alternative Alignments to be analyzed in the DEIR; however, **this is the City's Lead Agency role and not SANDAG's.**

The comments below 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 disproportionately and adversely impact our community's quality of life, tourism, local businesses, tax revenue, property values, and significantly impact our unique and sensitive coastal resources. Further, the Project's expansive environmental impacts have potential to forever alter the

community character of our City, its history, and adversely impact our citizens' health, prosperity, and wellbeing. For example, has SANDAG considered the environmental and public safety impacts from train vibrations and the weight of heavy freight trains in a tunnel through the eroding Del Mar hillside? **Given these impacts and SANDAG's lack of approval authority over the Project, the Lead Agency role should be transferred to the City.** The City requests to discuss this transfer with SANDAG staff prior to seeking formal determination of the Lead Agency through the State's process.

I. SANDAG is Not the Proper Lead Agency under CEQA.

SANDAG is the incorrect Lead Agency for the Project, and consequently any further actions to advance the environment review of the LOSSAN project are invalid and prejudicial to CEQA. Under CEQA, SANDAG is the **least favored** Lead Agency because it is a special purpose district, has the least regulatory oversight, assumes no environmental consequences from its limited actions, and is not the first agency to issue land use or development permits. Instead, SANDAG is merely a project manager and banker of Federal funds, should they be granted for the Project, and a contract manager that oversees the consultants processing the environmental documentation and associated engineering studies. Nearly all local municipalities have these abilities.

Conversely, the City, its community members, businesses, and visitors will all be significantly impacted by the Project. Unlike other SANDAG projects, the Realignment Project is almost entirely within the jurisdictional boundaries of the City. Therefore, it is the City that will be most impacted by air toxic emissions, short- and long-term traffic impacts, public access blockages to the coastline, sensitive coastal and wetland resource impacts, as well as vibration impacts to residents and businesses, noise impacts to homes and businesses, among other adverse impacts. In addition, its residents will face significant condemnation proceedings, property devaluation, and loss of marketability of their homes and businesses.

The City will be required to amend its Local Coastal Program (LCP), General (Community) Plan and Zoning Code and Maps, issuance of Coastal Development Permits, Design Review Permits, grading permits, tree removal permits, encroachment permits, grant land leases, and building permits for the Project. SANDAG has none of these regulatory roles.

CEQA defines the criteria for determining what agency should serve as a Lead Agency (14 CCR Sec. 15051). A Lead Agency is different than a Responsible Agency in that it exercises control of the preparation of the Environmental Impact Report (EIR) and related documentation for the project. SANDAG has historically acted in the capacity of Lead Agency for rail and highway projects under the authority granted to them under Senate Bill 1703. (As codified in Cal. Gov. Code 29532.1 and Division 12.7 of the CA Pub. Utilities Code). However, Senate Bill 1703 does not grant SANDAG plenary powers to function as the Lead Agency in all circumstances.

Importantly, as discussed below, Senate Bill 1703 recognizes that SANDAG "shall not have any authority over local land use decisions affecting permitting or zoning of public or private development projects." (CA Gov. Code Sec. 132354.6). In summary, Senate Bill 1703 leaves zoning and other land use controls in the hands of local government. Having the City act as the Lead Agency is a recognition that the City will be disproportionately impacted by the Project, and a further realization that it is the City who is the first called upon to act in approving or denying several significant permits, zoning, and Local Coastal Program approvals.

A. SANDAG Cannot Override Local Land Use Control or Act as the CEQA Lead Agency in all Cases.

The powers granted to SANDAG under SB 1703 include the following:

1. Sue and be sued;
2. To acquire any property by any means, and to hold, manage, occupy, develop, jointly develop, dispose of, convey, or encumber property;
3. To create a leasehold interest in property for the benefit of the consolidated agency;
4. To acquire, by eminent domain, any property necessary to carry out any of its powers or functions;
5. To merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land or as needed to carry out its functions;
6. To construct, acquire, develop, jointly develop, maintain, operate, lease, and dispose of work, property, rights-of-way, and facilities; and
7. To enter into and perform all necessary contracts, and to do any other things to carry out the purposes of this chapter. (CA Gov. Code Sec. 132354).

However, none of the powers listed above state that SANDAG is specifically granted Lead Agency status under CEQA. More importantly, Section 132354.6 states: “*Except as otherwise provided by law, [SANDAG] shall not have any authority over local land use decisions affecting permitting or zoning of public and private development.*” (CA Gov. Code Sec. 132354.6). Therefore, the conflicting provisions of SB 1703 and CEQA taken together demonstrate that the City should function as the CEQA Lead Agency. Further, the courts have held that the determination of Lead Agency is a procedural question subject to independent review. (Planning & Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892,905-906). Improperly acting as Lead Agency is a failure to proceed in the manner required by law and an abuse of discretion. (PCL v. DWR, supra, 83 Cal.App.4th at 912).

B. Criteria for Identifying the Lead Agency.

CEQA provides the criteria for determining the Lead Agency when there is a dispute between two agencies seeking to function as the Lead Agency. Where two or more public agencies will be involved with a project, the determination of which *agency* will be the Lead Agency shall be governed by the following criteria:

(a) If the project is carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The local agency formation commission shall function as a Responsible Agency.

(c) Where more than one public agency equally meets the criteria in subdivision (b), the agency which will act first on the project in question will normally be the Lead Agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may by agreement designate an agency as the Lead Agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

The above provisions must be read with the statutory limitation on SANDAG's powers under 132354.6 noted above, which provides: Except as otherwise provided by law, the consolidated agency shall not have any authority over local land use decisions *affecting permitting or zoning of public or private development projects*.

The City has significant permitting and zoning approval authority over the Project because it will have to amend its LCP, Community Plan, Zoning Code and Map, issue Coastal Development, Design Review, grading, building, encroachment, and tree removal permits, and approve a host of other zoning changes. Hence, The City has compelling arguments for functioning as the Lead Agency or having similar oversight rights of a Lead Agency. The City faces irreparable harm from the alternative alignments as currently proposed for the Project.

C. Request for Formal Lead Agency Consultation.

Based on the foregoing, the City formally requests a consultation with SANDAG's senior management team to resolve any dispute that it may have with the City acting as the Lead Agency for the Project.

II. The Public Works Exception Under the California Coastal Act does not Apply to the Project.

SANDAG may not legitimately assert that the City has lost regulatory control over the Project because of the public works project exception under the California Coastal Act. The public works project is a narrowly applied provision of the California Coastal Act that allows for a public works project to override local LCPs for the greater good of the community.

Relevant section of the Coastal Act:

“Any person authorized to undertake a project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.

“If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment if it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.” (Calif. Coastal [§ 30515.](#))

In 2014, the California Coastal Commission approved a North Coast Corridor Public Works Plan for SANDAG, and one of its many features included rail upgrades, such as double tracking along the current rail footprint. It did not, however, include the alternative alignments currently proposed for environmental review in the DEIR. Further, SANDAG did not follow the procedures established in Section 30515 of the Coastal Act of first seeking the City’s approval of an LCP amendment.

For SANDAG to effectively use the North Coast Corridor Public Works Plan to override the City’s LCP, the EIR/EIS would have to be certified and then SANDAG would submit an LCP amendment to the City. Should the City deny the LCP amendment, then SANDAG could appeal the denial to the California Coastal Commission for consideration. SANDAG has not met these regulatory requirements to effectively use the Public Works Plan to override the City’s LCP.

In summary, the California Coastal Commission’s approval of the 2014 North Coast Corridor Public Works Plan does not override the City’s authority under the Coastal Act to issue an LCP amendment for the Project. Notably, the 11-year-old plan does not reflect the alternative alignments currently proposed, and in 2014, SANDAG failed to follow the necessary procedures to *first* submit an LCP amendment to the City prior to submitting the plan to the Coastal Commission for approval. These procedural failures and the fact that the 2014 North Coast Corridor Public Works Plan does not reflect the currently proposed alternative alignments voids the application of that plan to the Project.

III. The Project Objectives Place Rail Operations Above the Protection of Coastal Resources.

The Project’s first objective is to improve the reliability of rail service at the expense of the City’s businesses, residents, and the natural environment. This is highlighted by the fact that the Project’s goal is merely to “minimize negative effects” or “minimize impacts” to coastal resources or homes and businesses. CEQA’s role is to reduce significant environmental impacts to below a level of significance. (Public Resources Code Sec. 21081; CEQA Guidelines Sec. 15021). Placing operational efficiency above the protection of the natural environment, as the Project does, is contrary to the principles of CEQA.

IV. The Project Objectives are Unclear and Incomplete.

As noted, the Project’s goal and objectives included in the Updated NOP appear to place operational objectives before protecting the Del Mar community. While the objectives state that the Project will minimize impacts on homes, businesses, and to natural resources, it appears that any operational concern can override these impacts and that is not what CEQA requires. It further

appears that the operational objectives could unfairly limit or unduly constrain the proposed alternative alignments making the protection of the Del Mar community a secondary concern rather than a primary concern of SANDAG. In summary, the Updated NOP's goal and objectives predetermine the outcome of the DEIR in favor of operational objectives, and consequently, could forever change the character of our City as well as its economy, public safety, and municipal revenues.

As the City stated in its prior NOP comments, the proposed objectives are not weighted, which allows SANDAG to unilaterally determine which objectives are more important than others. There is no methodology to determine which objective will have more importance when environmental impacts are compared against operational impacts for each of the proposed alternative alignments. In summary, there is no definitive method to determine what alternative alignment will score the highest when analyzed against the proposed project objectives. Moreover, it appears that the operational objectives have precedence over community concerns and would result in the discounting of the environmental impacts of a particular alternative alignment if that alignment meets the operational objectives of SANDAG. As a result, by placing operational objectives above environmental considerations, SANDAG begins the environmental review process by biasing the outcome of the DEIR by placing operational objectives above all other environmental considerations.

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 on residents and businesses, property value impacts, and timing considerations. Also missing in the objectives are the avoidance and/or minimization of negative impacts on air quality and public health and safety. Nowhere in the objectives is public health seriously considered. If an alternative places our residents at risk from toxic air pollution it should be disregarded from the outset.

Determining the relative weight of an objective from the onset of the EIR process is foundational to transparency, and by not providing this decision-making framework before the DEIR is released for public review obscures how the objectives will be valued and leaves these decisions to staff alone.

The objectives should also include the relative impacts to the character of the coastal communities. At present only the City of Del Mar is being asked to bear all the adverse impacts of the Project when compared to other coastal communities. In summary, the objectives fail to take into consideration the impacts on each coastal community or city and the objectives should place the historic and unique character of each impacted coastal community above operational efficiencies.

V. The Project Description and Descriptions of Project Alternatives are Vague and Incomplete.

The City remains concerned with SANDAG's approach of advancing multiple concepts (in this case, four alternative alignments plus the "no build" option) for analysis in the DEIR without a clearly defined "Project Description" and without sufficient detail to understand the precise location of each of the alternatives. The Updated NOP continues to speak in terms of alternatives and fails to identify the actual project. Alternatives, under CEQA, are required to lessen the environmental consequences of the Project. Here, there is no single identified Project, just various alternatives. This basic failure further demonstrates why SANDAG should not be the Lead Agency.

CEQA requires a “proposed project” to be identified along with a “range of reasonable alternatives” to that proposed project. (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 290 [“The presentation of five very different alternative projects in the DEIR without the designation of a stable project was an obstacle to informed public participation”].) 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 in any meaningful way on the potential impacts of the project. (*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 the four proposed alignments, and to numerous options for portal locations. SANDAG staff’s recommendations to the Board of Directors identifies alternatives, but not the required proposed “bona fide” project. (CEQA Guidelines Sections 15378 and Section 15126.6).

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.

The Updated NOP includes an alternative alignment proposed by a group of Del Mar residents that has been shared and discussed with SANDAG’s senior management. Those residents have worked tirelessly and invested their own resources to develop what is being called the “Northern Yellow Line”, which could eliminate and/or mitigate the Project’s most significant impacts on the City. This alternative needs to be properly analyzed in the DEIR.

VII. There is no Federal Lead Agency.

SANDAG has yet to name their federal partner, which is critically important. The Project cannot proceed without federal funding and federal authorization. Failure to identify this federal partner will lead to a defective EIR because once an EIS is drafted, it is likely to contradict or add new evidence of impacts that are new or different than what the EIR evaluated. SANDAG, and more properly, the City should not proceed with the CEQA process until such time that a federal Lead Agency and a federal funding commitment has been made. Failure to secure a federal Lead

Agency and associated funding is a prerequisite to proceeding with CEQA otherwise SANDAG is wasting valuable City and public resources. Finally, it appears by federal statute that the Surface Transportation Board may have certain authority over LOSSAN rail expansion projects, yet they and other federal agencies have to date shown no interest in the LOSSAN project. SANDAG is not entitled to shop for a favorable federal Lead Agency. It is instead required to follow the regulations of the agency that has jurisdiction of major federal actions. (49 C.F.R. Part 1105).

Moreover, as a threshold matter, SANDAG should justify to their federal lead agency partners that the Project makes economic sense. The City therefore requests that a cost benefit analysis be included in the DEIR and EIS.

VIII. The Range of Alternatives are Deficient.

The four alternatives do not provide solutions to the unprecedented impacts that the City will be asked to absorb. The City as a Lead Agency would explore solutions that avoid all impacts on the City and more directly connect to the I-5 corridor. Alternatives that transit through the City are not acceptable. Alternatives that result in significant condemnation proceedings are equally not acceptable. Yet, no alternatives were presented that avoid these profound impacts. Below we provide a few summary comments as it relates to each of the four alternatives. However, as noted, SANDAG has again failed to identify a single proposed Project, and to substitute multiple alternatives does not solve the need to define the project.

- San Dieguito Bridge to 1-5 Alignment: This alternative that follows the lagoon along an elevated bridge to a cut and cover tunnel and then transitions to an undergrounding project has significant promise to reduce community impacts to the City. However, the key question left unaddressed is will this alternative be acceptable to the resource agencies given its proximity to protected wetlands? If this alignment intrudes into wetlands, how viable is this alternative? Moreover, the elevated bridge along the lagoon will impact protected public views to the coastline. The route could become more acceptable if it were contained fully in an underground tunnel or if the alignment were directed further away from protected wetlands and the community, as proposed in the “Northern Yellow Line” alternative developed and submitted to SANDAG by a group of Del Mar residents.
- Under Crest Canyon Alignment: This alternative includes a north portal location that would require eminent domain to take private property and result in significant short-term and long-term impacts to residential neighborhoods along Jimmy Durante Boulevard and Jimmy Durante Boulevard itself. This roadway is one of the City’s main arterial roadways and would cause major disruption to the entire City’s roadway system. Further, this alternative continues to require subsurface easements.
- Under Camino Del Mar Alignment: This alternative includes north and south portal locations in the City that require eminent domain of private property. The portals would emit continuous air pollution and noise venting onto homes and the coast and wetlands. Like the “Under Crest Canyon” alternative, this alignment would result in significant short-term and long-term impacts to Jimmy Durante Boulevard. Again, subsurface easements would also be required.
- Del Mar Bluffs Double Track Reinforced Alignment: This alternative would result in significant and permanent impacts to protected and sensitive coastal resources, and the

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removal of permitted private encroachments in North County Transit District (NCTD) right-of-way. Environmental permitting of this alignment would face significant challenges. Again, it is worth noting that this alternative was previously studied and dismissed in 2007 as infeasible for the reasons described above. Finally, this alignment does not meet SANDAG's own operational objective of moving the current rail line off the fragile and environmentally sensitive coastal bluffs. This alignment would only add to ongoing rail delays from future bluff failures. Therefore, this alternative should be removed from consideration. Moreover, on February 27, 2025, the California Coastal Commission took a strong position against this alternative alignment and found it inconsistent with prior Commission actions and SANDAG's own representations. The letter stated: "*If implemented, the Del Mar Double Track Reinforce Alternative would be in direct conflict with the Commission's action in CC-0005-21, its Sea Level Rise Guidance for critical infrastructure and SANDAG's commitment to relocate the tracks from the Del Mar Bluffs and remove the seawalls.*" Accordingly, this alternative should not be considered as it is unacceptable to the Commission and the community of Del Mar. Instead, this alternative should be replaced with the "Northern Yellow Line" alignment proposed by Del Mar residents.

We appreciate the opportunity to comment on the Updated NOP for the San Diego LOSSAN Rail Realignment Project and look forward to our discussion concerning the transfer of Lead Agency functions to the City.

Sincerely,



Terry Gaasterland

Mayor

cc: Del Mar City Council
Ashley Jones, Del Mar City Manager
Mario Orso, SANDAG Chief Executive Officer
Maria Rodriguez Molina, SANDAG Director of Mega Projects, Border, and Goods Movement