

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303559

ENTERED
Office of Proceedings
January 19, 2022
Part of
Public Record

Finance Docket No. 36433

**NORTH COUNTY TRANSIT DISTRICT -
PETITION FOR DECLARATORY ORDER**

**NORTH COUNTY TRANSIT DISTRICT REPLY IN OPPOSITION
TO CITY OF DEL MAR'S AND CALIFORNIA COASTAL COMMISSION'S MOTIONS
FOR BOARD-SPONSORED MEDIATION**

The North County Transit District ("NCTD") respectfully submits to the Surface Transportation Board ("STB" or "Board") its Reply in Opposition to the City of Del Mar's ("Del Mar") Motion for Board-Sponsored Mediation filed on January 14, 2022 and the California Coastal Commission ("CCC") Request for Mediation concurring with Del Mar's request (collectively referred to as "Motion"). This proceeding has been held in abeyance by agreement of NCTD, Del Mar, and the CCC to enable these parties to engage in discussions to resolve the disputes at issue herein since November 11, 2020 or for over fourteen months. While these discussions were constructive and held some promise at times, it is clear after this lengthy negotiation period that an agreement cannot be reached. Therefore, Board-sponsored mediation at this late stage would be a waste of the Board's resources and another veiled attempt to delay a vital safety fencing project necessary to save the lives of trespassers along NCTD's rail line in Del Mar.

BACKGROUND

On August 28, 2020, NCTD filed a petition for declaratory order relating to certain actions of Del Mar and the CCC regarding NCTD's rail line maintenance and other upgrading activities in its rail right-of-way. Numerous filings have been received in response to the petition. On November 6, 2020, NCTD voluntarily filed a motion to hold this proceeding in abeyance, stating that it recently had constructive discussions with Del Mar and the CCC and that those three parties agreed that they should engage in further discussions to attempt to resolve the matters at issue. The Board granted NCTD's unopposed request and held this proceeding in abeyance until March 30, 2021 and directed NCTD to file a status update by that date. On March 29, 2021, NCTD filed a status report, stating that it, Del Mar, and the CCC have had further constructive discussions and that the parties have agreed that settlement discussions should continue. (NCTD Status Report 2-3.) As such, NCTD, with the concurrence of Del Mar and the CCC, voluntarily requested that the Board continue to hold this matter in abeyance until December 31, 2021. (Id. at 1, 3.) The Board again granted NCTD's unopposed request and continued to hold this proceeding in abeyance until December 31, 2021. NCTD was directed by the Board to file a status update on December 31, 2021.

In the December 30, 2021 Status Update filed by NCTD, it moved the STB to lift the order holding this proceeding in abeyance and to place this proceeding in active status. In addition, because the railroad projects at issue will begin soon, specifically NCTD staff was instructed by the Board of Directors to bring the safety fencing project to the January 20, 2022 Board meeting for consideration of approval and the Phase 5 bluff stabilization project located on the Del Mar Bluffs is in final design with an anticipated contract award in 2022, NCTD requested that the Board expedite this proceeding to ensure the parties understand their

obligations under the applicable laws. It explained that despite significant efforts by NCTD to address the parties' concerns, negotiations have not been successful. NCTD also stated that it sees no choice but to proceed with this matter in an expedited manner to resolve the disputes at issue.

On January 14, 2022, Del Mar filed a Reply to Status Update and its Motion and on January 18, 2022, the CCC filed its own Motion and Reply to Status Update. In support of the Motion, Del Mar and CCC stated they believe that the settlement discussions over the last year between NCTD, the CCC, and Del Mar have been productive and still have the potential to bear constructive results and ultimate resolution. Del Mar also noted that in seeking to obtain fair and final resolution, both Parties would benefit by having the involvement of Board staff knowledgeable of railroad preemption and potentially the added involvement of the Federal Mediation and Conciliation Service. Based on this limited explanation of their reasoning for mediation, Del Mar and CCC asked the Board to order NCTD, the CCC, San Diego Association of Governments ("SANDAG"), and Del Mar to participate in the mediation. In making this request, Del Mar admitted that SANDAG is not a party of record to this proceeding but claims SANDAG has jurisdiction over the projects that are the subject of NCTD's petition and continues to participate in project review and resolution.¹ As a result, Del Mar claims it believes that SANDAG's participation in mediation is necessary. In the Motion, Del Mar and CCC ignore

¹ As it did in its reply to NCTD's petition, Del Mar continues to make an issue of SANDAG not being present in this proceeding. It ignores that NCTD is the owner of the rail line at issue, has a common carrier obligation to provide freight service on the line, and is required to provide its line to Amtrak for intercity passenger rail service. SANDAG has none of these obligations and does not own the line at issue. In fact, to date, SANDAG has not commented in this proceeding despite Del Mar's attempts to involve it. Attached hereto as Exhibit A is the letter sent by NCTD in response to the CCC letter to SANDAG that was attached to Del Mar's Reply to Status Update as Attachment A.

the fourteen months of discussions that have yielded no results due primarily to Del Mar's intransigence².

DISCUSSION

"The Board shall grant any mediation request submitted by all parties to a matter but may deny mediation where one or more parties to the underlying dispute do not consent to mediation..." 49 C.F.R. § 1109.2(b). NCTD does not consent to mediation here and opposes the Motion as the parties already have been in negotiations for over fourteen months while this proceeding has been held in abeyance. NCTD strongly believes further discussions in mediation after this lengthy period would be a waste of the Board's resources.

Most importantly, NCTD has not proceeded with the safety fencing project³ in the interest of encouraging resolution of this matter over these fourteen months. During this time, there have been 1,828 train incidents involving trespassers on the NCTD rail line in Del Mar, including 1 fatality. From June 2016 through June 2021, there have been 6 deaths and 3 serious injuries on the NCTD rail line in Del Mar. Safety is the number one priority of NCTD regarding its rail operations. It works tirelessly to protect the safety of San Diego County citizens and visitors, the Amtrak and NCTD passengers on its rail line, and the Amtrak, NCTD, and BNSF employees who work on this rail line. NCTD cannot in good faith further delay the safety fencing project and risk any additional unnecessary loss of life or injuries on its watch.

NCTD has recently built and/or has an approved project for safety fencing in its right-of-way on this rail line in the nearby cities of Oceanside and Encinitas and received no opposition

² Even as recently as January 10, 2022, a mere 4 days after filing its Motion seeking mediation, Del Mar, through two (2) council members' request, publicly debated the viability of NCTD's rail line through Del Mar with one option being to terminate the line altogether. Attached hereto as Exhibit B is Del Mar's Agenda Report and response from the North County Transit District.

³ The NCTD safety fencing is solely funded by California money and requires no federal permit. As a result, it is not subject to Coastal Zone Management Act Federal Consistency Review. *See* 16 U.S.C. § 1456.

from the governing bodies of these communities. In addition to helping to prevent these devastating accidents involving trespassers, these safety fencing projects help to lessen rail service delays, traumatization of rail employees, and railroad property damage as a result of trespasser incidents on the rail line⁴.

In addition to its lengthy fourteen-month negotiations with Del Mar and CCC, NCTD has spent nearly \$118,000 in studies of the safety fencing and bluffs stabilization projects at the request of Del Mar in the interest of reaching a settlement with CCC and Del Mar⁵. These studies included right-of-way fencing mapping, surveying, design, and design support services. Additionally, NCTD employees have spent a significant amount of staff time in an attempt to resolve this matter over the past fourteen months. After the dedication of so much time and money to these negotiations, NCTD has come to the carefully considered conclusion that further talks will not result in a resolution of this proceeding.

Moreover, NCTD is a “common carrier” by rail and has a legal duty to provide freight rail service on this rail line. *See Orange County Transportation Authority–Acquisition Exemption–The Atchison, Topeka and Santa Fe Railway Company*, 10 I.C.C.2d 78, 90 (1994). In addition, NCTD has a legal duty to provide the use of its facilities to Amtrak to provide intercity passenger rail service, including the maintenance of the rail line to the standard set forth in the operating agreement between the parties. *See* 49 U.S.C § 24308.

Prior to impacts of COVID-19 and subsequent public health orders, NCTD operated 22 trains each weekday, as well as weekend service. These commuter trains average 4,886 weekday

⁴ Federal Railroad Administration, “National Strategy to Prevent Trespassing on Railroad Property.” *Report to Congress*, October 2018

⁵Approved at the May 2021 North County Transit District Board of Directors Regular Meeting – Agenda Item No. 16. Task Order Agreement No. 05 to Agreement No. 19057 with CivilPros (a DBA of RailPros Holdings, LLC) for Del Mar Bluffs Right-of-Way fencing mapping, and as-needed surveying, design, and design support services.

boardings and 1.4 million annual boardings. NCTD shares the use of its tracks with Amtrak, Metrolink, and BNSF Railway. Amtrak operates the Pacific Surfliner intercity service on the tracks, operating 26 trips daily between Los Angeles and San Diego. “Amtrak has a unique interest in the outcome of NCTD’s petition that pertains to both the projects that have triggered the petition and the uninterrupted operation, improvement and expansion of Amtrak’s National Network. NCTD’s rail line is part of the route of Amtrak’s Pacific Surfliner, a state-supported service along the San Luis Obispo-Los Angeles-San Diego rail corridor (LOSSAN Rail Corridor) that Amtrak operates in partnership with the LOSSAN Rail Corridor Agency. **The Pacific Surfliner is Amtrak’s busiest route outside of the Northeast Corridor, carrying nearly 2.7 million passengers in 2019.**” (Amtrak Petition Support Letter, Oct. 19, 2020) (emphasis added). Also, Metrolink operates commuter trains between Orange County and Oceanside while BNSF operates four (4) to six (6) daily freight trains on the San Diego coastal rail corridor. In 2017, BNSF moved more than 4.3 million tons of freight on this rail line. The rail corridor is also designated as part of the Strategic Rail Corridor Network (STRACNET) due to its importance for national defense. In sum, this rail corridor on which NCTD operates is crucial in many aspects to the movement of interstate and local passengers and interstate freight, as well as to the nation’s defense, in this local area, California, and the United States.

Therefore, NCTD now feels compelled to move forward with this proceeding to enable it to operate and maintain this vital rail line without interference from state and local authorities. While its petition only involves the immediate safety fencing and bluffs stabilization projects, NCTD believes this pattern of interference will continue until the STB rules on this matter. NCTD, as it argues in its petition, believes state or local permitting or preclearance requirements, including environmental permitting or preclearance requirements, being applied to the safety fencing and

bluffs stabilization projects are categorically preempted by §10501(b) of the Interstate Commerce Commission Termination Act (“ICCTA”) as to the NCTD rail lines and facilities.⁶ It also believes any actions taken and regulations enacted with respect to the bluffs stabilization project under federal environmental statutes or other federal statutes directly conflict with the purposes and regulatory scheme under the ICCTA and cannot be harmonized.⁷

CONCLUSION

NCTD respectfully asks the Board to deny the Motions of Del Mar and the CCC for Board-Sponsored Mediation. However, if the Board grants this Motion, NCTD asks the Board not to hold this proceeding in abeyance during the mediation period in accordance with 49 C.F.R. § 1109.3(e).

⁶ See *California High-Speed Rail Authority—Pet. for Declaratory Order*, FD 35861 (STB served Dec. 12, 2014) (STB concluded that any use of California Environmental Quality Act (“CEQA”) was categorically preempted by ICCTA to prevent or delay construction of an approximately 114-mile high-speed passenger rail line); *Northwestern Pac. R.R. Company – Pet. for Declaratory Order*, FD 35977 (STB served Apr. 25, 2016) (CEQA suit challenging the adequacy of CEQA environmental report for California-funded project for stabilization of the railway (primarily roadbed, signal, and track repair) and required compliance with CEQA as a condition of funding that project was preempted by ICCTA, “explaining that CEQA is categorically preempted by § 10501(b) in connection with rail lines regulated by the Board, including state-operated or owned rail lines.”)

⁷ See *U.S. Environ. Protection Agency -- Petition for Dec. Order*, FD 35803 (STB served Dec. 30, 2014) (locomotive idling rules created by California local air district which would have the force of federal law if approved by EPA pursuant to the Clean Air Act preempted by ICCTA because of the potential patchwork of regulations if each state issued its own locomotive idling rules that could result, contravening Congress’s purpose in enacting the ICCTA, because locomotives would be subject “to fluctuating rules as they cross[] state lines” (and as they cross air quality regions), and the rules would therefore likely “directly interfere” with the purpose of the ICCTA); *Ass’n of American Railroads – Petition for Dec. Order*, FD 36369 (STB served Dec. 30, 2020) (federal environmental law (Clean Water Act) requiring permits and fines for the discharge of pollutants from railcars in transit into navigable waters administered by states found to be preempted, explaining that if individual states were to apply the permitting program differently to discharges from the incidental operation of rail cars in transit, it would likely result in a patchwork of differing regulations that could not be harmonized with the ICCTA.)

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for North County Transit District

Dated: January 19, 2022

Certificate of Service

I certify that I have, this 19th day of January 2022, served by email copies of the foregoing document on all parties of record in this proceeding.

/s/ Daniel R Elliott

Daniel R. Elliott

Attorney for North County Transit District

VERIFICATION

I, Matthew O. Tucker, Executive Director of the North County Transit District, do hereby verify under the penalty of perjury that, to the best of my knowledge, the foregoing Reply is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of the North County Transit District in connection with this proceeding before the Surface Transportation Board.

Executed on January 19, 2022.

A handwritten signature in black ink, appearing to read "Matt O. T.", with a long horizontal line extending to the right.

Matthew O. Tucker, Executive Director
North County Transit District

EXHIBIT A

810 Mission Avenue
Oceanside, CA 92054
(760) 966-6500
(760) 967-2001 (fax)
GoNCTD.com

January 11, 2022

Mr. John Ainsworth
Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Sent Via Electronic Mail: john.ainsworth@coastal.ca.gov

RE: Letter dated January 5, 2022 regarding "***Effects of Del Mar Bluffs Projects on Coastal Access and Recreation***"

Dear Mr. Ainsworth:

I write to express my disappointment in your letter of January 5, 2022 to Mr. Hasan Ikhata, Executive Director of the San Diego Association of Governments (SANDAG), regarding the "***Effects of Del Mar Bluffs Projects on Coastal Access and Recreation***." NCTD obtained this letter from an email sent by a private resident from the City of Del Mar.

The letter requests that SANDAG agree to look to "holistic opportunities to address the issues with the Del Mar Bluffs Stabilization 5 and 6 projects, the fencing project, and public access and recreation." Further, the letter states, "Commission staff also encourage SANDAG to incorporate the findings of the Study and also to incorporate input from other studies, agencies, and the public regarding public access and recreation." Buried within your letter is a request that Mr. Ikhata, "concur that the stabilization and fencing proposals are integrated and should be considered together in order to analyze and mitigate for their cumulative, interrelated impacts."

The Coastal Commission is well aware that NCTD has requested expedited consideration of its petition to the Surface Transportation Board to provide much needed clarity in regard to the scope of review other regulatory bodies may or may not have on rail projects. NCTD acted in good faith with the Coastal Commission for more than a year in an effort to avoid seeking a determination from the Surface Transportation Board. Unfortunately, as indicated in your letter of January 5, 2022, the Coastal Commission, in coordination with the City of Del Mar, continues its efforts to require NCTD to fund the costs of creating safe and legal crossings that do not currently exist as a condition for NCTD completing maintenance and safety improvements.

Re: Letter dated January 5, 2022 regarding "**Effects of Del Mar Bluffs Projects on Coastal Access and Recreation**"

January 11, 2022

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For clarity, SANDAG does not have the authority to agree that these projects are integrated. As you are aware, the NCTD Board of Directors is scheduled to take action at its January 20, 2022 meeting related to the fencing project. NCTD believes its right to construct the fence was affirmed by the Surface Transportation Board's determination in FD 34111 in 2002 related to the double tracking projects in the City of Encinitas. Moreover, SANDAG does not have such authority over NCTD to make such determinations.

NCTD has advanced numerous compromise proposals to the Coastal Commission and the City of Del Mar in an effort to bring resolution to this matter without legal intervention. Unfortunately, neither the Coastal Commission nor the City of Del Mar have acted in good faith to achieve a compromise that is reasonable.

For the record, state law prevents the illegal crossing of railroad tracks except at legal crossings. There are no legal crossings that exist today that are impacted by Del Mar Bluffs Stabilization 5 and 6 project or the fencing project. With the lone exception of the City of Del Mar, NCTD has been able to collaborate with regional partners, including the City of Oceanside, the City of Encinitas, and the City of Solana Beach, to create safe and legal crossing projects. In every instance, NCTD allowed use of its right-of-way at no cost and the cities funded the construction and assumed liability for use of NCTD's property. The City of Del Mar recently completed the construction of a new city hall which provides evidence that it funds its priorities.

It is my sincere hope that the Coastal Commission does not continue to follow the path indicated in your January 5, 2022 letter. Without respect to the future determination of the Surface Transportation Board, NCTD intends to continue to collaborate with the Coastal Commission under the premise that the relationship is based on trust and good faith.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt O. Tucker", followed by a horizontal line extending to the right.

Matthew O. Tucker
Executive Director

CC: NCTD Board of Directors
Catherine Blakespear, Board Chair, SANDAG
Todd Gloria, Vice-Chair, SANDAG
City of Del Mar Council
Hasan Ikhata, Executive Director, SANDAG
John Kirk, General Counsel, SANDAG
Lori A. Winfree, General Counsel, NCTD

EXHIBIT B



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Deputy Mayor Tracy Martinez and Councilmember Dan Quirk

DATE: January 10, 2022

SUBJECT: Proposed Resolution Supporting Efforts to Analyze and Better Understand the Long-Term Train Viability

RECOMMENDED ACTION:

Deputy Mayor Martinez and Councilmember Quirk recommend that the City Council adopt a Resolution (Attachment A) supporting efforts to analyze and better understand the long-term train viability, usefulness, social equity, and alternative uses of the train tracks and related services.

BACKGROUND:

The purpose of such efforts to analyze and better understand the long-term viability of the train would help the regional community and decision makers to determine if the train's benefits exceed its costs and conflicts, up and down the route. In Del Mar, "no train" is one of the options we believe the community needs to be thoroughly vetting, just as we are vetting options such as leaving the train tracks on the Del Mar bluffs, blasting a tunnel through the Del Mar hillside, or running the tracks along the I5 highway, all of which present very significant costs, concerns, conflicts, and risks to Del Mar residents and the broader community.

To be clear, support of this resolution does not equate to a call to terminate the train. Rather, support of this resolution is a call for more information to ensure that the public has knowledge on all options regarding the train and the tracks.

The NCTD Coaster

The North County Transit District (NCTD) Coaster service began in 1995, and runs 41 miles from Oceanside to downtown San Diego. In the 26 years of its existence, substantial sums of money have been invested in both its infrastructure and its operations. Despite all of this effort and spending, however, ridership of the Coaster has been very low and has seen many years of decline. It is the least utilized of the 5 train lines in San Diego County by significant margin, as can be shown in the first table below, carrying less than 4,000 people per day pre-pandemic. This is also despite covering the most territory and being the longest line at 41 miles.

City Council Action:

As another point of comparison, the comparable stretch of the 5 Highway from Oceanside to downtown San Diego transports more than 1 million people per day, more than 200 times than the Coaster. Annual growth in the 5 Highway trips is a little less than 1%, or around 10,000 new daily trips every year, significantly more than the entire Coaster ridership. Put another way, the 5 highway accounts for about 99.7% of commuter/traveler volume while the Coaster accounts for just 0.3% (pre-COVID).

Table 5.1 Rail Routes by Ridership, 2015-2016

Route	Route Description	Transit Mode	Average Weekday Boardings	Length (Miles)	Weekday Boardings Per Mile
Blue Line Trolley	Downtown SD to San Ysidro	Light Rail	56,230	15	3,651
Green Line Trolley	Santee to Downtown SD/Imperial	Light Rail	34,837	24	1,476
Orange Line Trolley	El Cajon to Downtown SD	Light Rail	29,562	18	1,642
SPRINTER	Oceanside to Escondido	Light Rail	10,282	22	467
COASTER	Oceanside to Downtown SD	Commuter Rail	5,196	41	127

Coaster Ridership Compared to the I-5 Highway

Route	Route Description	Mode	Annual Trips	Average Daily Trips
5 Highway	Downtown to Oceanside	Highway	383,250,000	1,050,000
5 Highway with 10% carpool	Downtown to Oceanside	Highway	421,575,000	1,155,000
COASTER 2021	Downtown to Oceanside	Rail	700,000	1,918
COASTER pre-COVID	Downtown to Oceanside	Rail	1,400,000	3,836

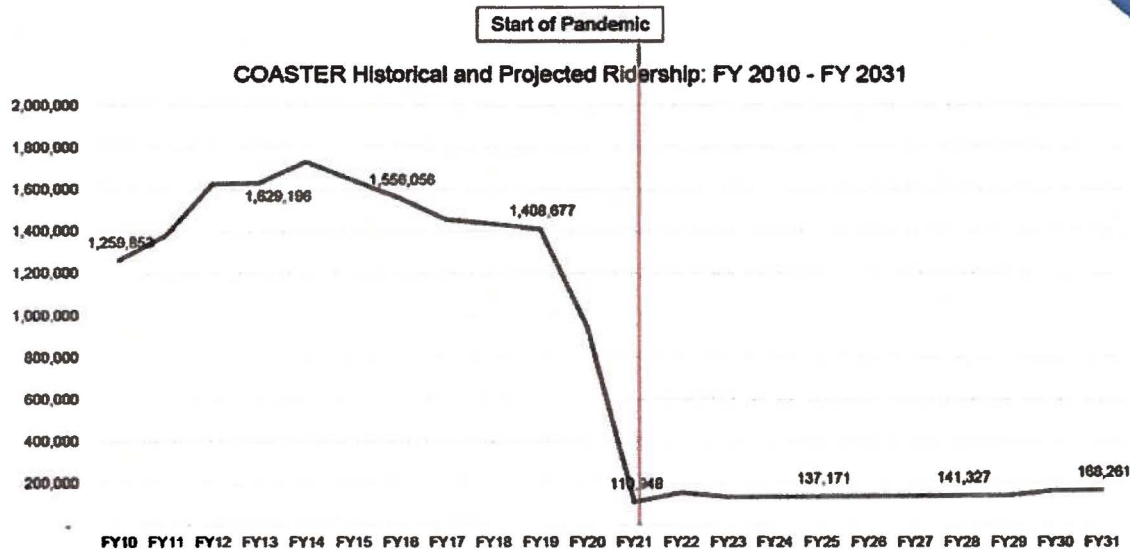
*Adjustment to reflect estimated 10% of commuters carpool

Source: Caltrans data, SANDAG, www.sandag.org/uploads/publicationid/publicationid_2144_22946.pdf

The Coaster also saw several years of declines (2014 to 2019) prior to the COVID plunge in 2020. The years of decline for the Coaster were comparable to the experience of many other rail and mass transit lines throughout the state and country, meaning that its challenges are not unique or easily fixable.

Below is the most recent official annual ridership projection for the Coaster from the NCTD (April 2021). The 168,261 number for 2031 translates to an average of just 461 riders per day. This forecast is in conflict with state and federal grant requests that depend upon substantially higher ridership forecasts.

COASTER: Historical and Projected



Source: NCTD

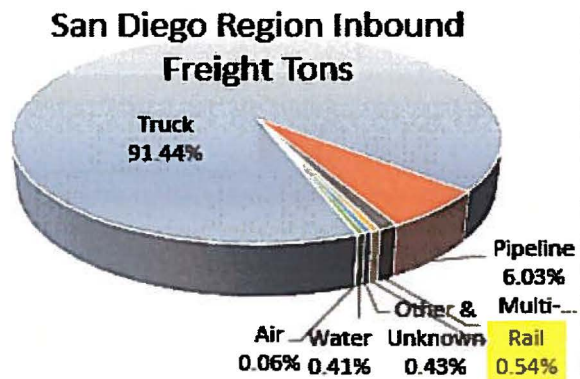
The Amtrak Pacific Surfliner

The Amtrak Pacific Surfliner volumes are also very low and have seen serious declines as well. This line stretches 351 miles from San Diego to LA to San Luis Obispo. In 2019, it had 2,776,654 riders, down 6% from 2,946,239 in 2018. That is an average of only 7,607 daily riders for a 350-mile line. That translates to an extremely low rate of 21 riders per mile per day through one of the most highly populated regions in the country. That was pre-COVID. As of September 2021, daily ridership averaged just 3,233, still down more than 50% from pre-COVID levels.

Rail Freight

Freight volumes are also slight. The only rail freight in San Diego County occurs on these NCTD tracks. Rail freight make up approximately 1/2 of 1% of freight volume in the county, with the other 99%+ effectively coming from trucks on the highway. See SANDAG chart below. The only freight company that operates on this line is BNSF, now owned by Berkshire Hathaway. There are significant community concerns that the large amount of tax dollars being spent on and proposed for the train tracks amounts to a disproportionate benefit or illegal gift of public funds to a single private rail freight company.

Domestic Inbound	2012 Freight Tons
Truck	68,908,943
Pipeline	4,547,274
Multi-Mode	819,151
Rail	410,170
Other & Unknown	320,738
Water	305,603
Air	48,493



Source: SANDAG, https://www.sandag.org/uploads/projectid/projectid_437_19698.pdf

Financial Costs

A substantial amount of time, effort, and money has been spent on the Coaster over the last decade, and an even larger amount is being considered for the future, notably billions of dollars for a Del Mar tunnel. Below is just a partial list of both completed and proposed or potential projects, all for a rail line that has very low ridership and has had negative growth many years. The list does not include billions of dollars in potential cost related to moving 9 miles of vulnerable tracks running along the beach in San Clemente.

Assuming that the Coaster ridership rebounds from approximately 1,500 one-way daily boardings as of late 2021, to its pre-pandemic level of 3,800 one-way boardings per day (or about 2,000 unique individuals daily), the cost alone of the \$3 billion Del Mar tunnel translates to an extremely high \$1.5 million per Coaster user. With the other potential projects and spending, the cost per Coaster user approaches \$5 million. Even including the Amtrak ridership for the San Diego region, the per capita cost for these projects is well above \$2 million.

As has been discovered with many large infrastructure projects, these proposed costs are also likely being significantly under-estimated. For example, the California High Speed Rail project was initially presented to the public as a \$33 billion project in 2008. Today, it is now approaching \$100 billion in projected costs, and it is nowhere close to being completed.

Del Mar Tunnel - prospective	\$3,000,000,000 +
Miramar Tunnel - prospective	3,000,000,000 +
Del Mar Bluffs Stabilization (Phase 5)	65,000,000
San Dieguito Double-Tracking & Fairgrounds Platform	220,000,000
Batiquitos Lagoon Double Track & Bridge	104,000,000
Elvira-Morena Double Track	192,000,000
Encinitas Pedestrian Crossings	10,000,000
Los Penasquitos Lagoon Bridge	31,000,000
North Oceanside Double-Track	56,000,000
Oceanside Transit Center	28,100,000
Poinsettia Station Improvements	33,700,000
La Costa to Encinitas Double Track	120,000,000
San Diego River Double Track	82,400,000
San Elijo-Track	75,700,000
San Diego Convention Center	380,000,000
Track improvements south of Santa Fe Depot	700,000,000
Carlsbad Trenching	400,000,000
Sorrento to Miramar Phase 2	98,000,000
Signal Optimization	36,500,000
Serra Siding (Capistrano Beach)	50,000,000
New Coaster Locomotives	53,500,000
Coaster Rail Cars	42,500,000
Engine & Train Car Maintenance - 20 years	76,000,000
	8,854,400,000 +
Completed Projects	
Sorrento Valley Double Track	31,800,000
South Carlsbad Double Track	18,400,000
Trestles Bridge Reinforcement	8,000,000
Santa Fe Pedestrian Crossing	10,000,000
Tecolote Crossovers	11,000,000
San Luis Rey Transit Center	9,000,000
Sorrento to Miramar Phase 1	44,400,000
Santa Margarita River Bridge Replacement	40,600,000
San Onofre to Los Pulgas Double Track	37,700,000
Est. operating losses for 25 years@ \$12 million per year	300,000,000
	510,900,000

Source: NCTD, SANDAG, gonctd.com/about-nctd/nctd-projects/, keepsandiegomoving.com/Lossan-Group/Lossan-intro.aspx

Significant Conflicts & Non-Financial Costs

As large as the financial costs of the train are, the non-financial costs and conflicts are much greater. The most significant cost of the train is the urban design cost it imposes. The trenches, barriers and fences that run along the train tracks physically divide and separate cities. They ruin views, restrict mobility, and work against pedestrian and bike-friendly design. They often restrict access to the coast. Notably, the tracks run for nearly 2 miles of bluff/beach front in Del Mar, and nearly 9 miles along the beach in San Clemente. A multi-billion-dollar tunnel that would blast a hole through the Del Mar hillside would also present significant environmental risks and a very disruptive and destructive construction project for many years. Other negatives and conflicts include disruptive train horns and noises, accidents, pollution from idling, and possible eminent domain.

The Significant Impacts of COVID and Hybrid/Remote Work Trends on Mass Transit

The impact of COVID was significant for most mass transit ridership across the world, with many lines experiencing ridership declines in excess of 90%. The Coaster saw a decline of 95% and as of October 2021, was still down 67% from pre-COVID levels. The Coaster's declines and weak recovery have been worse than many other mass transit lines in San Diego County and the country. This is because the Coaster ridership skews towards the "higher income office/tech worker" demographic that is prevalent in the northern part of the county. It is precisely these types of workers that are shifting to remote and hybrid work patterns that have emerged because of COVID. It looks increasingly likely that a meaningful part of the Coaster ridership decline will be permanent. Sustained concerns of mutating viruses and contagion risks will likely discourage many people from shifting to traditional mass transit.

Major Technology Advances & Competitive Threats to Rail

We are on the edge of a profound revolution in transportation and transit with the rapid advancement of electric and autonomous vehicle technology. There is good reason to believe that these developments are going to have significant and permanent negative impacts on the ability of fixed line rail to attract meaningful ridership. Notably, electric vehicles are clean and do not emit any greenhouse gases so they will be significant in addressing concerns about the environment and climate change.

In future years, autonomous or highly advanced driver-assist vehicle technology also has the potential to create meaningful efficiency and improvements with transportation, transit, mobility, and freight on the roads and highways. Autonomous vehicle technology has the potential to significantly improve traffic flow, reduce congestion, and eliminate wasted time or lost productivity from sitting in traffic. Instead of driving, travelers on the roads will have the option to work, read, sleep, play or engage in otherwise productive activities.

These new technologies are likely to be far more effective at addressing congestion and growing capacity than investing in very expensive fixed line rail with a demonstrated history of low ridership. As a general observation, rail can be a successful form of

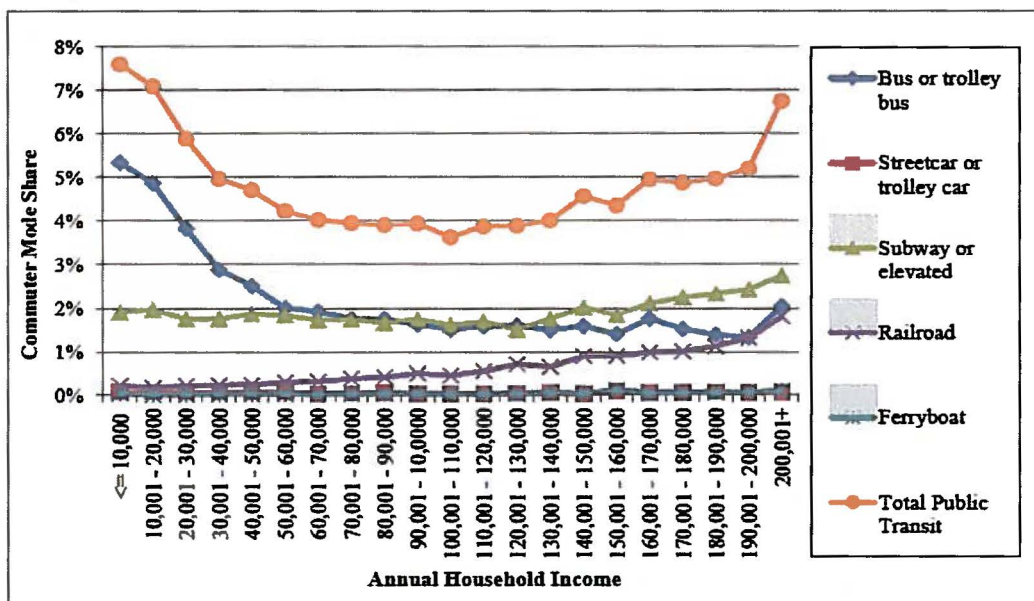
transportation in areas with very high population densities such as New York City or Tokyo or in core downtowns. In most regions across the United States with much lower population density, rail has been in decline and largely unsuccessful at attracting meaningful ridership. These coming technology advances are likely to create obsolescence risks for many marginal rail lines across the country. The Coaster's challenges are not unique.

Rail Does Not Meaningfully Address Greenhouse Gases & Climate Change

One of the arguments frequently promoted in support of the Coaster (and rail more generally) is the benefits to greenhouse gas reduction. This argument lacks merit because of how few people ride the Coaster, which is a fraction of 1% of people in the county. Even assuming large growth in the Coaster ridership, it will always be well below 1% of the population. Policies that promote solar energy and electrification of cars, buses, and trucks would be far more impactful and cost effective because this targets most people and how they travel and live today.

Social Equity in Transportation – Rail is for the Affluent

Across the country, the ridership profile of rail lines like the Coaster tends to skew significantly to higher income demographics. (See chart below, purple line.) According to the NCTD, two thirds of Coaster riders earn above the region's median income, and 47% of them earn more than \$100,000. In 2016, the average household income of an Amtrak passenger was \$170,000, well above the median income. As such, the spending of billions of dollars on rail projects that heavily subsidizes a small number of affluent and higher income commuters is completely counter to the goal of pursuing social equity in transportation.



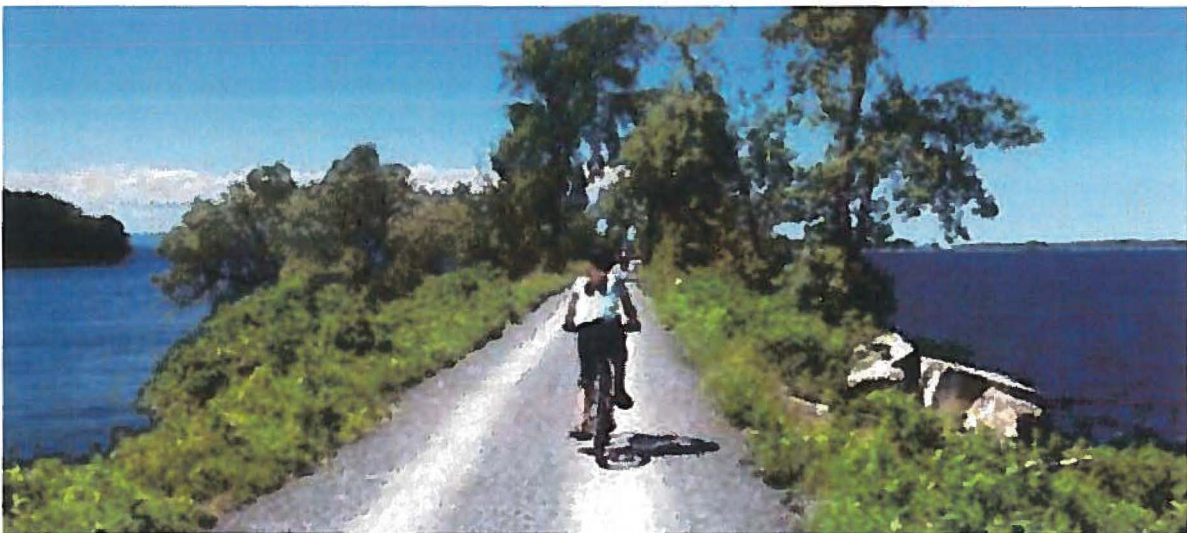
Source: US DOT, <https://rosap.ntl.bts.gov/view/dot/54292>

A Trail as “Highest and Best Use”

Many discontinued train tracks across the country have been converted into popular multi-use trails. Two of the most successful and well-known include the High Line in New York City and the Beltline in Atlanta. The Rails-to-Trails Conservancy (<https://www.railstotrails.org/>) has successfully advocated for the creation of more than 2,000 such trails across the country. Given the region and coastal areas that the Coaster and Amtrak Surfliner run through, it is possible that a converted trail could become one of the most popular trails in the country. Such a trail could also create billions of dollars in economic and lifestyle benefits.



The High Line in New York City, arguably the nation's most prominent and successful rail-to-trail project.



The Island Line in Burlington, Vermont is a very popular rail-to-trail project.



The extensive and on-going Beltline rail-to-trail conversion project in Atlanta is highly utilized, widely praised, and has sparked great urban design that promotes walkability and bicycle usage.

Conclusion

Ridership numbers on the Coaster and Surfliner were very low before the COVID pandemic. Volumes plunged with the pandemic and remain at very depressed levels as of December 2021. Official forecasts from the NCTD itself show extremely low projections through 2031. Demographic data also shows that train ridership skews to high income earners, raising concerns about equity, fairness, and large subsidies for the affluent. Rail freight volumes, similarly, are low as well, at well below 1% of total freight, with the other 99%+ coming from trucks on the highways. Future technology advances with electric and autonomous vehicles would seem to present significant competitive threats to rail as well. Despite these low numbers and forecasts, there are plans and discussions to spend many billions of taxpayer dollars on the tracks and train services. In addition to large financial costs, the tracks and trains also create significant conflicts with the communities they run through that include noise, accidents, impacts on natural landscapes, and trenches, barriers, and fences that divide cities and create poor urban design.

There are many compelling reasons to support efforts to analyze and better understand the long-term viability, usefulness, social equity, and alternative uses of the tracks and trains that run on them.

More Information

<https://coaster-rail-to-trail.org/>

<https://www.facebook.com/groups/coasterrailtotrailproject>

<https://www.railstotrails.org/>

<https://usafacts.org/articles/covid-public-transit-decline/>

<https://www.everycrsreport.com/reports/IN11181.html>

FISCAL IMPACT:

There is no fiscal impact or action to be taken related to this agenda item.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

ATTACHMENTS:

Attachment A - Resolution Supporting Efforts to Analyze and Better Understand Long-Term Train Viability

RESOLUTION NO. 2022-XX

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF DEL MAR TO SUPPORT EFFORTS TO ANALYZE AND BETTER UNDERSTAND THE LONG-TERM TRAIN VIABILITY, USEFULNESS, SOCIAL EQUITY, AND ALTERNATIVE USES OF THE TRAIN TRACKS AND RELATED SERVICES INCLUDING THE NORTH COUNTY TRANSIT DISTRICT COASTER, AMTRAK PACIFIC SURFLINER, AND BURLINGTON NORTHERN AND SANTA FE RAILWAY FREIGHT TRAINS

WHEREAS, ridership levels for the North County Transit District (NCTD) Coaster have been very low and in decline for many years, significantly underperforming expectations and forecasts despite substantial financial investments and efforts since its inception in 1995; and

WHEREAS, ridership levels of the 350-mile Amtrak Pacific Surfliner have also been low, significantly underperforming expectations despite substantial financial investments over 40+ years; and

WHEREAS, the COVID pandemic has caused an additional large decline in ridership from previously low ridership levels for both the Coaster and the Surfliner; and

WHEREAS, some impacts from the COVID pandemic such as remote and hybrid work trends appear to be permanent, creating additional doubt about future ridership recovery and growth; and

WHEREAS, rail freight in San Diego County only constitutes only 0.5% of total freight transport (approximately) with the other 99%+ effectively coming from freight trucks on the roads; and

WHEREAS, rail freight is operated by a private company in Burlington Northern and Santa Fe Railway (BNSF), and as such, taxpayers should not disproportionately subsidize a private company's investments; and

WHEREAS, the potential solution of rerouting the train tracks off the Del Mar bluffs involves the spending of large sums of money (\$3+ billion) to build an alternative route such as a tunnel through the Del Mar hillside or by the I-5 highway; and

WHEREAS, other challenges or projects along the tracks could require many additional billions of dollars more in additional costs, including a tunnel in the Miramar area, various trenching projects, and 9 miles of tracks along the San Clemente beach vulnerable to sea level rise; and

WHEREAS, the trains and tracks creating significant local conflict with the communities through which they run in the form of fences, trenches, barriers, noise, accidents, natural habitat impact, and poor urban design from divided cities; and

WHEREAS, the state of California has banned the sale of vehicles with internal combustion engines as of 2035; and

WHEREAS, rapid advances in clean electric vehicle technology have led to substantial growth of such vehicles as of 2021, which directly addresses the greenhouse gas and climate change rationale for supporting rail; and

WHEREAS, continued advances in autonomous vehicle technology presents substantial potential in the future for improving congestion and efficiency of transportation, transit, and freight on the roads; and

WHEREAS, the spending of significant financial resources on the train appears to be inconsistent with social equity goals given that two thirds of Coaster riders earn above the regional median income and 47% earn above \$100,000 in annual income; and

WHEREAS, the spending of significant financial resources on the train appears to be inconsistent with social equity goals given that the average household income of an Amtrak passenger is \$170,000 (2016), significantly above the national average; and

WHEREAS, the prospective spending of billions of dollars on the tracks and related requests for state and federal grants must include appropriate and realistic projected benefits including ridership growth; and

WHEREAS, the potential alternative use of the tracks as a linear park and multi-use trail can generate substantial social and economic value.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar that the City of Del Mar supports efforts to analyze and better understand the long-term viability, usefulness, social equity, and alternative uses of the train tracks and related services including the NCTD Coaster, the Amtrak Surfliner, and the BNSF freight.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California, at the Regular Meeting held this 10th day of January, 2022.

Dwight Worden, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, Acting City Clerk of the City of Del Mar, California, DO
HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2022-
XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting
held the 10th day of January, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sarah Krietor, Acting City Clerk
City of Del Mar



MEMO

810 Mission Avenue
Oceanside, CA 92054
GoNCTD.com

Date: January 10, 2022

To: Del Mar City Council Members

From: Matthew O. Tucker, Executive Director, NCTD

A handwritten signature in blue ink, appearing to be "MT", next to the name Matthew O. Tucker.

CC: NCTD Board of Directors
SANDAG Board of Directors

Re: City Council Agenda for Proposed Resolution Supporting Efforts to
Analyze and Better Understand Long-Term Train Viability

I have reviewed the subject agenda item
(<https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/01102022-2894>)
scheduled for consideration at your January 10, 2022 meeting and have provided
detailed feedback in the attachment.

In general, the staff report indicates a lack of understanding regarding transportation system planning, operations, and travel demand management. Specifically, passenger rail, public transportation, traveler management demand programs, and roads are part of the comprehensive tools in the transportation system toolbox. The bulk of travel capacity has been invested in our road network with rail, public transportation and traveler demand management programs providing congestion relief, traveler choice, and working to mitigate the need to add road capacity.

Federal, state, and regional transportation plans and funding priorities have evolved to reflect that the era of road expansion will be coming to an end due to environmental, land use, and other considerations. As a result, all levels of government along with San Diego County taxpayers (who voted by a two-thirds majority) are investing in rail, public transportation, and travel demand strategies to support future population growth, economic prosperity, and environmental considerations. A COASTER trainset can carry a maximum of 750 riders. Obviously, the COASTER with only 30 trains per day was not designed to replace or compete with the I-5. The COASTER was designed and developed to complement the Interstate 5 travel corridor and provide congestion relief that voters overwhelmingly support.

The staff report also includes a significant amount of misinformation. The misinformation can be either characterized as intentionally misleading, explicitly inaccurate, and sometimes even salacious. Following are examples.

- It is clearly salacious to state that NCTD is providing an "illegal gift of public funds" to BNSF. If there is evidence to support that statement, I request that the City provide such evidence or retract the statement.
- It is intentionally misleading to represent that ridership performance during the global pandemic that caused an unprecedented disruption of the entire economy

is indicative of future rider demand or in any way illustrative of the viability of the service.

- It is misleading to state that “47% of COASTER riders earn above \$100,000 in annual income” without including additional context. The referenced study did not cite individual rider income; it referenced household income. The following information related to COASTER rider demographics to provide context to the public.
 - The annual household income of 21.07% of COASTER riders was less than \$49,999
 - The annual household income of 32.07% of COASTER riders was less than \$99,999
 - The annual household income of 46.85% of COASTER riders was greater than \$100,000
 - 43.9% of riders indicated they live in a household with two people
 - 35.9% of riders indicated they live in a household with three or four people
- It is clearly misleading to suggest that COASTER train operations do not support equity while simultaneously stating that autonomous and zero emission personal vehicle technologies will lift all boats.
 - Based on market research performed by Hedges & Company in 2018, the average Tesla owner is a 54-year-old white man making over \$140,000 annually with no children.
 - As indicated previously, the COASTER provides key mobility for a wide range of household incomes.

The proposed staff report and resolution continues to advance a larger misinformation context. Specifically, that the City of Del Mar can disrupt or cause to discontinue a rail line that supports the movement of interstate commerce, intercity passenger rail, and national defense. The misinformation context does not address statutory and contractual obligations that support current operations and assumes that the property will be transferred to the City at no cost, assumes that bluff erosion evaporates, and provides no detail how the trail will be funded.

Furthermore, the staff report is presented as factual information produced by the City's professional staff rather than the opinions of two council members, which is extremely misleading and a disservice to the public discussion about a topic so important as our transportation infrastructure.

As the Executive Director of NCTD, I believe that it is critical that we provide the public with a full and accurate representation of information. The City staff report clearly does not do this.

Attachment: NCTD responses to City of Del Mar Agenda Item

ATTACHMENT

NCTD's Response to City of Del Mar's Proposed Resolution Supporting Efforts to Analyze and Better Understand Long-Term Train Viability

1. The City of Del Mar's staff report and resolution cite COASTER ridership performance.

NCTD Response

- NCTD agrees that COASTER ridership performance needs to improve. With that said, it is not appropriate to compare COASTER ridership with automobile usage or reference performance during a pandemic as a normal trend. Public transportation was never intended to provide equivalent capacity or usage to the road system. Public transportation is part of the transportation toolbox.
- Current and planned increases in funding of public transportation supports larger economic, environmental, societal, and land use goals. In 2004, San Diego County voted by a two-thirds margin for a comprehensive transportation program of projects that specifically included COASTER service improvements. These investments build out San Diego County's broader transportation network, consistent with regional and state plans.
- The rail line that was purchased in the early 1990s lacked the infrastructure to support frequencies and travel times required for high-quality passenger train service.
- Prior to 2020, the railroad infrastructure, equipment, and services had not been sufficiently improved to support increased frequencies. NCTD offered very limited services with large gaps between trains, which limited making the service viable alternative to automobile travel for many potential riders.
- Sufficient projects were completed in 2020 to support increased frequencies. Unfortunately, the COVID-19 pandemic impacted all facets of daily life and the economy, including the roll-out of improved COASTER services.
- The world continues to be impacted by the COVID-19 pandemic. The current situation is unprecedented and there is little basis for developing estimates in which the region can place significant confidence. NCTD will continue to monitor the short- and long-term trends associated with full recovery from the impacts of the COVID-19 pandemic.

2. The resolution and staff report cites equity as a concern as it relates to investment in rail. Additionally, both documents cite emerging technologies such as zero emission and autonomous vehicle technology as the future.

NCTD Response

- NCTD supports emerging technologies and is advancing zero emission bus and rail operations projects.
- The staff report and resolution do not attempt to articulate how autonomous and/or zero emission technologies will enhance equity. Based on market research performed by Hedges & Company in 2018, the average Tesla owner is a 54-year-old white man making over \$140,000 annually with no children. The vision articulated in the City's staff report and resolution may very well be viable for the City, but not for San Diego County, the State of California, or the country.

3. The resolution states “that two thirds of COASTER riders earn above the regional median income and 47% earn above \$100,000 in annual income.”

NCTD Response

- For additional context, the San Diego Association of Governments (SANDAG) 2015 On-Board Transit Passenger Survey captured **annual household income** and not individual rider income.
 - 43.9% of riders indicated they live in a household with two people
 - 35.9% of riders indicated they live in a household with three or four people.
 - The SANDAG survey found that:
 - The annual household income of 21.07% of COASTER riders was less than \$49,999
 - The annual household income of 32.07% of COASTER riders was less than \$99,999
 - The annual household income of 46.85% of COASTER riders was greater than \$100,000
4. The resolution and staff report cites the financial costs of infrastructure improvements and “disproportionate benefit or illegal gift of public funds to a single private freight company.”

NCTD Response

- NCTD is very disappointed that the City of Del Mar alleges a violation of law in a public document. If the City of Del Mar has such evidence, it should promptly forward such information to the appropriate law enforcement entity. Otherwise, NCTD requests that the City remove this statement from the staff report.
 - BNSF and Amtrak pay NCTD an annual maintenance fee for their usage of the railroad. This fee escalates on an annual basis tied to a CPI. BNSF and passenger rail operators will benefit from increased capacity to run additional trains. NCTD will receive more money (above the CPI adjustments) from BNSF and Amtrak as train frequencies are increased.
 - The government directly funds (creation of highway system using general funds, sales tax, and gas tax) or transfers tax revenues (mortgage tax deduction and equipment depreciation deduction) to create public benefits.
 - The trucking industry receives a disproportionate benefit as a result of the interstate highway system and is not taxed to cover the added costs of pavement maintenance due to trucks being far heavier than cars.
 - Tesla Inc. has received a **total of \$2.5B in subsidies and \$465M in loans** from various levels of government since 2007. Source: <https://subsidytracker.goodjobsfirst.org/parent/tesla-inc>).
5. The resolution states, “continued advances in autonomous vehicle technology presents substantial potential in the future for improving congestion and efficiency of transportation, transit, and freight on the roads.”

NCTD Response

- In 2013, the State of California passed Senate Bill (SB) 743, which mandates that jurisdictions can no longer use automobile delay – commonly measured by Level of Service (LOS) – in transportation analysis under the California Environmental Quality Act (CEQA). The State has issued guidelines calling for the use of a broader measure called **Vehicle Miles Traveled (VMT)**, which measures the total amount of driving over a given area.
 - The COASTER, despite its limited infrastructure and service frequencies, is one of the region's highest performers with each customer trip reducing vehicle miles traveled by 26.4 miles.
 - A freight train can provide the equivalent capacity of 260 to 400 trucks depending on the length of the train consist or if it is a double stacked consist. A single or multiple autonomous and connected truck consist(s) composed of 260+ trucks operating at night is not an advancement in safety or reduction of vehicles miles traveled. Please keep in mind that BNSF moves a significant amount of petroleum and chemicals on the railroad.
6. The resolution states, "the potential alternative use of the tracks as a linear park and multi-use trail can generate substantial social and economic value."

NCTD Response

- BNSF and Amtrak have federal rights to operate that are not subject to local or state requirements.
- The tracks are included in the Strategic Rail Corridor Network that supports national defense.
- It is important to note conversion of an active rail line to a trail only occurs when it is no longer economically feasible to operate freight or passenger and the Surface Transportation Board approves the abandonment. The San Diego and Escondido Subdivisions do not meet the criteria for abandonment and in fact, BNSF is advancing plans to increase the frequencies of freight and the region is advancing plans to increase passenger/commuter rail.
- The region has developed plans to relocate the tracks from the bluffs to a tunnel due to the erosion of the bluffs. Why would the City or region decide to purchase the property from NCTD and construct a linear park and multi-use trail on property that it alleges is eroding?
- Conversion of rail tracks to trails does not singularly create an economic impact. For example, the High Line in New York (cited in the City staff report) was significantly benefitted by intense density coupled with frequent transit within walking distance. These two factors positively impacted property values and do not exist in the Del Mar area.
- NCTD is unaware of any plans by the City of Del Mar to intensify commercial and retail development. NCTD would gladly partner to restore train operations at the Del Mar Train Station and support other improvements to create a mobility hub.