

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH COUNTY TRANSIT DISTRICT –)
VERIFIED PETITION FOR DECLARATORY)
ORDER)

Docket No. FD 36433

MOTION FOR BOARD-SPONSORED MEDIATION

Pursuant to 49 C.F.R. § 1109.2, the City of Del Mar (“Del Mar”) requests that the Surface Transportation Board (“Board” or “STB”) commence Board-sponsored mediation in the above-captioned proceeding among the North County Transit District (“NCTD”), the California Coastal Commission (“Coastal Commission”), the San Diego Association of Governments (“SANDAG”), and Del Mar. In support hereof, Del Mar states as follows:

1. On August 28, 2020, NCTD filed a Petition for Declaratory Order (“Petition”) pertaining to alleged actions of the Del Mar and the Coastal Commission that it claims unreasonably interfere with its railroad operations. Various parties filed replies, including Del Mar and the Coastal Commission.

2. In decisions served on November 30, 2020 and April 7, 2021, the Board has granted several unopposed motions by NCTD to hold in abeyance agency consideration of NCTD’s Petition, based on NCTD’s statement of its “constructive discussions” with the Coastal Commission and Del Mar to resolve the matters at issue, and because “[t]he Board favors the private resolution of disputes whenever possible.”

3. On December 30, 2021, NCTD filed a Status Update with the Board. In its Status Update, NCTD states that, despite “constructive discussions” with Del Mar and the Coastal Commission, and “[d]espite significant efforts by NCTD to address the parties’ concerns, negotiations have not been successful.” NCTD further requests the Board to expedite consideration of its Petition.

4. Concurrently with this Motion, Del Mar is replying to NCTD’s Status Update, and among other things, has advised the Board that Del Mar agrees with NCTD that the parties have engaged in productive discussions to resolve issues raised in NCTD’s Petition, but disagrees that the discussions to date are at an impasse or have concluded, or that there is a need for expedited consideration of NCTD’s Petition. Del Mar also explains the historic and continuing cooperation and vital role of SANDAG in the planning, development, funding, and construction of the NCTD right-of-way and related projects, matters that are the subject of NCTD’s Petition.

5. While continuing to dispute the need or basis for NCTD’s requested Declaratory Order, Del Mar further advises in its Reply that it still believes that the Board has an important role to play in resolving the parties’ disagreements, and even if the parties were at an impasse in their discussions, which Del Mar does not believe that they are, there is a much better way to resolve any remaining differences, through Board-sponsored mediation.

6. Accordingly, Del Mar hereby respectfully requests that the Board order Board-sponsored mediation pursuant to 49 C.F.R. § 1109 in an effort to resolve the disputes underlying the Petition.

7. This proceeding involves matters that are eligible for mediation under 49 C.F.R. § 1109.1.

8. “The Board favors the resolution of disputes through alternative dispute resolution in lieu of formal Board proceedings whenever possible. 49 C.F.R. § 1109.1.” *R.J. Corman R.R. Property, LLC – Abandonment Exemption – in Scott, Campbell, and Anderson Counties, Tenn.*, AB 1296X (STB served Dec. 1, 2020) (“*R.J. Corman*”). The Board regularly grants mediation where mediation is requested by a party, and where “mediation could be productive.” *Lake Providence Port Comm’n – Feeder Line Application – Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, LA*, FD 36447 (STB served Oct. 21, 2021) at 3 (“*Lake Providence Port Commission*”).

9. Board-sponsored mediation, under the Board’s rules at 49 C.F.R. § 1109, is the best way to help resolve the issues that are the subject of NCTD’s petition at this time. Again, Del Mar believes that the settlement discussions over the last year between NCTD, the Coastal Commission, and Del Mar, have been productive, and still have the potential to bear constructive results and ultimate resolution. 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 (“FMCS”).

10. Del Mar requests that the Board appoint a staff member(s) knowledgeable of preemption issues, as the mediator(s), as well as consider the appointment of staff from the FMCS, as it has in several recent mediations. Pursuant to 49 C.F.R. § 1109.3(c), Del Mar will make an appropriate principal(s) available to attend mediation sessions at times mutually convenient to the Board and the parties. Del Mar also believes that a site visit is warranted, if possible with appropriate precautions given the current COVID-19 situation, because it would assist the mediators in understanding the very unique environment and the complexity of the projects and issues raised in this proceeding, and will be helpful to the parties in their efforts to reach a final resolution.

11. Del Mar requests that the Board specifically order NCTD, the Coastal Commission, SANDAG, and Del Mar to participate in the mediation. While Del Mar recognizes that SANDAG is not yet a party of record to this proceeding, since SANDAG has jurisdiction over the projects that are the subject of NCTD’s Petition, and continues to participate in project review and resolution, as it has for many years, Del Mar believes that SANDAG’s participation in mediation is necessary.¹

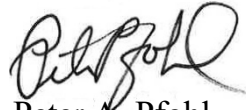
¹ If the Board believes that it cannot compel SANDAG’s participation, it should at least formally request that SANDAG participate in the mediation. Nevertheless, even if SANDAG does not participate, Del Mar still believes that mediation amongst NCTD, the Coastal Commission, and Del Mar would be beneficial and should be ordered.

12. While Del Mar hopes that NCTD, the Coastal Commission, and SANDAG all voluntarily agree to participate in Board-sponsored mediation, even if one or more of them objects, the Board should still order mediation pursuant to 49 C.F.R. §§ 1109.2(a)(1) and 1109.2(a)(2) as mediation could and should be productive and beneficial to helping the parties resolve their disagreements. *R.J. Corman* (ordering mediation even over the objections of one party); *Lake Providence Port Commission* (same).

WHEREFORE, Del Mar requests that the Board order the commencement of mediation under 49 C.F.R. § 1109.

Respectfully submitted,

CITY OF DEL MAR



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Dated January 14, 2022

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that this 14th day of January, 2022, I caused a copy of the foregoing document to be served by U.S. First Class Mail or by more expeditious means on all parties of record. Copies of this document are also being sent electronically to the individuals listed below:

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