

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

305518

Finance Docket No. 36433

ENTERED
Office of Proceedings
October 20, 2022
Part of
Public Record

NORTH COUNTY TRANSIT DISTRICT -
PETITION FOR DECLARATORY ORDER

OCTOBER 20, 2022 STATUS UPDATE

North County Transit District (“NCTD”) respectfully submits its October 20, 2022 Status Update to advise the Surface Transportation Board (“STB” and “Board”) of recent important events with respect to the above-captioned proceeding, including an agreement between NCTD and the San Diego Association of Governments (“SANDAG”) to allow the Del Mar Bluffs Stabilization 5 Project (“DMB5”) to proceed while preserving NCTD’s right to challenge the preempted Consistency Certification CC-0005-21 issued on June 8, 2022 by the California Coastal Commission (“CCC”) and two orders from the United States District Court for the Southern District of California (the “Court”) in the related cases regarding the NCTD safety fencing project in its right-of-way establishing a briefing schedule on the motions to remand to state court. These recent events make NCTD’s request for expedited consideration of its petition for a declaratory order even more important at this time as it relates to the bluff stabilization and safety fencing projects at issue in this proceeding.

NCTD/SANDAG DMB5 Agreement

On October 11, 2022, NCTD and SANDAG finalized an agreement regarding DMB5 (“Agreement”). (A true and correct copy of the Agreement is attached hereto as Exhibit A). The Agreement allows DMB5 to proceed while preserving the objections of NCTD to the propriety of the CCC certification of this project.

For the convenience of the Board, NCTD will review the purpose of the negotiations leading up to this Agreement provided in its July 16, 2022 Reply (“Reply”). As the Board is aware, the further stabilization of the bluffs in Del Mar by DMB5 is a critical safety project that supports the continued and uninterrupted operations of passenger and freight rail services on the NCTD rail line (“Line”).¹ On June 8, 2022, the CCC conditionally concurred with the consistency certification for DMB5 based on an agreement between SANDAG and the CCC.

¹ See, e.g., <https://www.masstransitmag.com/rail/news/21282564/ca-metrolink-amtrak-suspend-train-service-to-oceanside-because-of-unstable-slope> :

Metrolink and Amtrak train service between Orange County and San Diego County has been suspended until further notice because of slope movement beneath the seaside tracks at San Clemente.

The tracks are San Diego's only viable rail link with Los Angeles and the rest of the United States, and are part of the 350-mile LOSSAN rail corridor from the downtown Union Station to San Luis Obispo on the Central California coast.

"Working with geologists, geotechnical engineers, and surveyors, we have determined (that) to ensure passenger safety service, suspension is necessary," states an announcement on the Metrolink website. "Until we have confirmation from the experts the slope movement has stopped, we will not resume Metrolink service."

The San Clemente segment is one of two weak links at the southern end of the LOSSAN corridor. The other is a 1.7-mile section along the coastal bluffs 40 miles to the south in Del Mar.

NCTD has objected to CCC's power to issue such a decision regarding a railroad maintenance project in this proceeding based on preemption pursuant to 49 U.S.C. § 10501(b). Moreover, NCTD identified to CCC and SANDAG during the CCC process the following conditions as unacceptable as they have no relationship to the impact of the DMB5 on the coastal zone:

- The construction of coastal access and recreational improvements on the bluffs for a maintenance/safety project where legal public access does not exist today; and
- The future reapproval and removal of the seawalls to be constructed as part of DMB5 at the time of the CCC permit expiration in thirty years.

Recognizing the criticality of DMB5, SANDAG and NCTD staff have been meeting since NCTD filed its Reply in July and have now reached the Agreement that supports the advancement of the critical DMB5 into construction, addresses NCTD concerns related to the conditions imposed by the CCC and allows NCTD to continue to advance its petition with the STB without being prejudiced by SANDAG's acceptance of the CCC project conditions pertaining to access and recreation. The Agreement specifically provides that NCTD is entering into it "without waiving any of NCTD's objections as stated in its Petition with the Surface Transportation Board." Agreement at p. 6. SANDAG agreed to solely assume responsibilities and funding for the conditions deemed unacceptable by NCTD. *Id.* at 7 ("NCTD shall not be responsible for any costs associated with the design, environmental review, and construction of the Coastal Access CIP"). As a result of past bluffs collapses in Del Mar and the recent one in San Clemente, NCTD had no choice but to proceed with DMB5, or it would risk interrupting interstate passenger and freight service on its Line without this much needed stabilization. Out of

an abundance of caution and in an effort to resolve this preemption dispute with the CCC, it had already waited ten months for the CCC certification process to be completed. Further delay would have only presented a greater risk to rail service and the public safety on the Line due to the possibility of another bluff collapse.²

Recent District Court Orders Establishing Briefing Schedule

As the Board is aware, two related cases are pending in Court challenging the safety fencing project. In Case No. 3:22-cv-00587-RSH-BGS, *California Coastal Commission v. North County Transit District et al* (S.D. Cal. Oct. 13, 2022), the Court recently ordered “the Parties to complete briefing on Plaintiff’s pending Motion to Remand [9]. Defendants shall file their response no later than October 28, 2022. Plaintiff shall file its reply by November 4, 2022.”

Shortly thereafter, in the Case No. 3:22-cv-00503-RSH-BGS, *Friends of Del Mar Bluffs et al v. North County Transit District et al* (S.D. Cal. Oct. 13, 2022), the Court also ordered “the Parties to complete briefing on Plaintiffs’ pending Motion to Remand [12]. Defendants shall file their response no later than October 28, 2022. Plaintiffs shall file their reply by November 4, 2022.”

As NCTD advised previously, on June 2, 2022, the Court had stayed the cases *sua sponte* reasoning that “the orderly course of justice measured in terms of simplifying issues is served by allowing the STB to determine the preemption issues.”³ In sum, the Court “exercised its power in the vein of judicial economy to avoid two different federal entities (i.e., the District Court and the STB) from determining the same issues as the pleadings in these cases indicate that the

² CCC and the City of Del Mar argued that this type of voluntary agreement should prohibit NCTD from arguing that the CCC certification was preempted. However, NCTD addressed why this argument was unfounded. Reply at pp. 12-15.

³ Case No. 22-CV-587- LL-BGS, 8 <https://ecf.casdl.uscourts.gov/doc1/037118195233>

parties disagree over preemption and whether the ICCTA creates a basis for removal in this case.”⁴ As a result, the Court granted NCTD’s motions to stay the cases until the STB’s ruling on preemption. Now, it appears the Court is moving forward with these cases at least on the remand issue.

CONCLUSION

NCTD again respectfully urges the STB to rule on the preemption issues set forth in its petition, so it may commence construction on this safety fencing project⁵ and have greater clarity on its responsibilities regarding DMB5. NCTD must continue to engage in such rail maintenance projects to provide rail service and to protect rail employees and the public. Without an order from the Board soon, these objectives will be at risk.

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for North County Transit District

Dated: October 20, 2022

⁴ *Id.*

⁵ NCTD Executive Director Matthew Tucker agreed in a sworn declaration submitted in support of the stay motion not to begin construction of the safety fencing project until the STB rules on its petition for declaratory order.

Certificate of Service

I certify that I have, this 20th day of October 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

EXHIBIT A

AMENDED Addendum 18 Project Scope of Work

EXHIBIT A S896855

NCTD File No.: 520003	SANDAG Ref. No.: 5000710 ADD 18 SOW 38 AM 3
CIP Title: Del Mar Bluffs Stabilization 5 (DMB5 Project)	
SANDAG CIP No.: 1147100	SANDAG Project Manager(s): Allie DeVaux NCTD Project Manager(s): Scott Shroyer
Lead Agency: SANDAG	Operating Agency: NCTD
Project Budget: \$67,998,950	Effective Date: July 2022

PLANNING	DESIGN	CONSTRUCTION
Estimated Start Date: TBD	Estimated Start Date: April 2019	Estimated Start Date: March 2023
Estimated Completion: TBD	Estimated Completion: August 2022	Estimated Completion: TBD
Estimated Budget: TBD	Estimated Budget: \$7,000,000	Estimated Budget: \$60,998,950

Intended Source of Funds:

The project is funded from the following sources:

Sources of Funds	NCTD Applied	SANDAG Applied	Total
FEDERAL:			
FTA 5307 - CA-90-Z207		\$320,000	\$320,000
FRA SOGR - Awarded in May 2020		\$11,570,250	\$11,570,250
FTA 5337 FY2023 (NCTD TCEP Match)	\$1,000,000		\$1,000,000
FTA 5337 FY2024 (NCTD TCEP Match)	\$5,200,000		\$5,200,000
FTA 5337 FY2025 (NCTD TCEP Match)	\$2,400,000		\$2,400,000
FTA 5337 FY2026 (NCTD TCEP Match)	\$400,000		\$400,000
RSTP Transfer to FTA		\$3,000,000	\$3,000,000
STATE:			
CA Natural Resource Agency General Fund Grant		\$ 2,928,700	\$ 2,928,700
TIRCP - Allocated by CTC Aug 2020		\$4,900,000	\$4,900,000
TCEP (Regional) - Awarded in Dec 2020		\$31,200,000	\$31,200,000
TCEP (State) - Awarded in Dec 2020		\$5,000,000	\$5,000,000
LOCAL:			
NCTD TDA Match for FTA CA-90-Z207	\$80,000		\$80,000
Total Sources of Funds:	\$9,080,000	\$ 58,918,950	\$ 67,998,950

**Addendum 18 Project Scope of Work
EXHIBIT A**

Describe Any Necessary Transfers of Project Funds Between the Parties:

AMENDED AND REPLACED WITH THE FOLLOWING:

SANDAG will be responsible for funding the project costs for the design phase of the project. SANDAG has issued a purchase order (PO) totaling \$128,200 to the North County Transit District (NCTD).

NCTD will authorize the transfer of \$320,000 of FTA grant funds from the Bridge 257.2 project (CIP 1146500) to replenish California Natural Resource grant funds that were transferred to Del Mar Bluffs Stabilization 4 project to fund change order work.

NCTD will transfer \$80,000 of local funding to match the FTA funds to be transferred from Bridge 257.2. SANDAG will invoice NCTD once the project is completed, and the monies are expended.

NCTD is contributing \$9,000,000 in future Federal Transit Administration (FTA) 5337 funds from fiscal years 2023 through 2026, which should be used as the match to the \$36,200,000 in TCEP funds. SANDAG should ensure that project funds are programmed in a manner that ensures that expenditures charged to NCTD's FTA funds are within the period of fund availability as defined in the Code of Federal Regulations 2 CFR Section 215.28. FTA 5337 funds will be reimbursed to SANDAG by NCTD as expenses are incurred.

Unless otherwise agreed to by the Parties in writing, NCTD funds identified herein can only be used as outlined in this Agreement.

DMB 5 Project Description:

The purpose of the DMB5 Project is to provide engineering, design, and construction services for the repair of existing damaged and deteriorated North County NCTD drainage structures, installation of new drainage structures, as well as provide coastal bluff stabilization measures both above and below the railroad tracks within the Del Mar Bluffs corridor, MP 244.0 to MP 245.7. The design drawings, specifications, and construction estimate will include repairs to damaged drainage facilities, new drainage facilities and bluff stabilization measures both above and below the tracks throughout the Del Mar Bluffs corridor in order to maintain the integrity of the railroad tracks and continuous operation of the coastal rail corridor.

As summarized on the 90% design plans prepared by SANDAG's design consulting team led by HNTB and reviewed by NCTD in April 2022, the design engineering services will include the following:

1. Hydraulic Study and Design of Drainage Improvements, potentially including:
 - a. Design a replacement for an existing concrete storm drain chute at beach level located at MP 244.4 with an underground storm drain system.
 - b. Design an extension of an existing headwall at MP 244.7
 - c. Design a new storm drain to the beach at MP 244.8 South of 7th Street
 - d. Design a new subdrain system from Anderson Canyon to MP 245.7.
 - e. Design a new subdrain system at MP 244.8 running North.
 - f. Design a new subdrain system North of MP 244.2.
 - g. Design a new subdrain system from MP 244.8 to MP 245.0.
 - h. Design a replacement for various small trapezoidal channels. Areas to be determined in preliminary engineering phase.

- i. Design a repair of existing earthen channels in need of regrading.
 - j. Additional areas identified in 30% design schematic plans.
 - 2. Identify and design a solution for localized erosion areas, both above and below the railroad tracks. Areas will be identified in preliminary engineering phase, approximately 20 areas are anticipated to need stabilization with minor walls and grading, including bluff toe walls to protect the embankment from wave action and sea level rise.
 - a. From 15th street to 11th Street
 - b. From 7th to 8th Street
 - c. From Anderson canyon to the 2021 Emergency repair
 - 3. Design soldier piles to stabilize areas that are identified as having inadequate seismic factors of safety. The following areas are anticipated:
 - a. Area SA-3 at MP 244.7
 - b. Area SA-5 at MP 244.8
 - c. Area SA-6 at MP 245.2
 - d. Area SA-8 North of MP 245.4
 - e. Area SA-9 South of MP 245.4
 - f. Additional areas identified in 90% schematic design plans.
 - 4. Identify and design a solution for additional areas in need of stabilization with soldier piles due to anticipated bluff retreat. Provide additional geotechnical investigation in accordance with current design criteria to determine if additional locations in need of piling.
 - a. Design of new soldier pile stabilization areas identified in 90% design plans and geotechnical report.
 - 5. Design of retrofit of existing soldier piles for bluff retreat anticipated until the train can be relocated off the bluffs.
 - a. Design retrofit of existing piles considering:
 - i. Lagging
 - ii. Tiebacks
 - iii. Grade Beams
 - iv. Inline Piles
 - 6. Produce a Categorical Exclusion document for the project from the lead federal agency as determined by funding type.
 - 7. Construct DMB5 Project in compliance with the Coastal Commission consistency certification for the proposed project. This shall include detailed project descriptions, maps, graphics, and analyses to provide evidence that the proposed designs are consistent with the relevant policies of the Coastal Act.
 - 8. Request permits from RWQCB and USACOE.
-

Scope of Work to be performed by NCTD:

NCTD to provide design review and comments, meeting attendance, coordination and administration, right of entry permit reviews, construction document review and comment, assist in community outreach, provide rail operations support, provide formal acceptance of the project, and assume maintenance of the project pursuant to the Master MOU, except as specified in the Project-Specific Conditions Pertaining to Mitigation below. Additionally, NCTD will provide any other services related to operations, maintenance, right-of-way and safety as the owner operator of the Railway per MOU Addendum 18.

Night Time and Absolute Work Windows: NCTD will support SANDAG in all nighttime and absolute work window requests in accordance with NCTD Board Policy No. 23 - *Railroad Construction Scheduling and Management*. SANDAG shall provide NCTD with requested work windows and NCTD will facilitate discussions with the necessary parties so that SANDAG can include agreed-upon Absolute Work Windows in the Invitation for Bids for the stabilization work.

Scope of Work to be performed by SANDAG:

SANDAG will provide project management and administration of the design, advertise, award, and administer the construction contract, coordinate with NCTD to obtain right of entry permits, and coordinate all activities that could affect NCTD and provide other applicable services as described in MOU Addendum 18.

Uses of Funds for All Project Phases	NCTD Cost	SANDAG Cost	Total Cost Estimate
Administration	\$128,200	\$1,900,000	\$2,028,200
Communications		\$250,000	\$250,000
Engineering & Design		\$4,500,000	\$4,500,000
Right of Way		\$200,000	\$200,000
Construction Management		\$12,000,000	\$12,000,000
Flagging		\$1,500,000	\$1,500,000
Professional Services		\$100,000	\$100,000
Construction		\$44,000,000	\$44,000,000
Environmental		\$2,100,500	\$2,100,500
Contingency	\$20,000	\$1,300,250	\$1,320,250
Total Uses of Funds:	\$148,200	\$ 67,850,750	\$ 67,998,950

Any Additional Project-Specific Conditions:

SANDAG received a Federal-State Partnership for State of Good Repair grant from the Federal Railroad Administration for the Project. In accordance with 49 U.S.C. § 22905(c)(1), SANDAG and NCTD agree to the following:

1. NCTD owns right-of-way that will be used for the DMB5 Project;
2. NCTD does not object to SANDAG's use of NCTD's right-of-way for the construction of the DMB5 Project. The Parties agree that SANDAG will not provide any compensation to NCTD for SANDAG's use of NCTD's right-of-way for the stabilization work identified above in the DMB5 Project Description section of this Agreement; the use of NCTD's right-of-way for the project identified herein as "Coastal Access and Recreation Improvements" shall be governed by the provisions included in the Project-Specific Conditions Pertaining to Mitigation section below;

3. The Parties further agree that (exclusive of Coastal Access and Recreation Improvements described below) time is of the essence for the completion of the DMB5 Project;
4. SANDAG and NCTD assure the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations resulting from the Project;
5. NCTD assures that collective bargaining agreements with railroad employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by such employees on the railroad transportation corridor;
6. SANDAG assures compliance with liability requirements consistent with 49 U.S.C. § 28103; and
7. SANDAG received a Transportation Corridor Enhancement Program (TCEP) grant from the State of California for the Project. In accordance with the TCEP grant requirements for the Project, if the Project includes the construction of a public road, highway or street across a railroad, SANDAG and NCTD agree to comply with the provisions of Rules 3.7 and 3.9 of the CPUC Rules of Practice and Procedure as follows:

Applications to construct a public road, highway, or street across a railroad must be made by the municipal, county, state, or other governmental authority which proposes the construction. Such applications shall be served on the affected railroad corporations, and shall contain the following information:

(a) The rail milepost and either a legal description of the location of the proposed crossing or a location description using a coordinate system that has accuracy comparable to a legal description.

(b) Crossing identification numbers of the nearest existing public crossing on each side of the proposed crossing. (Numbers may be obtained from the crossing sign at the crossing, or from the office of the railroad.)

(c) If the proposed crossing is at-grade,

(1) a statement showing the public need to be served by the proposed crossing;

(2) a statement showing why a separation of grades is not practicable; and

(3) a statement showing the signs, signals, or other crossing warning devices which applicant recommends be provided at the proposed crossing.

(d) A map of suitable scale (50 to 200 feet per inch) showing accurate locations of all streets, roads, property lines, tracks, buildings, structures or other obstructions to view for a distance of at least 400 feet along the railroad and 200 feet along the highway in each direction from the proposed crossing. Such map shall show the character of surface or pavement and width of same, either existing or proposed, on the street or road adjacent to the proposed crossing and on each side thereof.

(e) A map of suitable scale (1,000 to 3,000 feet per inch) showing the relation of the proposed crossing to existing roads and railroads in the general vicinity of the proposed crossing.

(f) A profile showing the ground line and grade line and rate of grades of approach on all highways and railroads affected by the proposed crossing.

An application to construct a railroad across a public road, highway or street shall be served on the municipal, county, state or other governmental authority having jurisdiction and control over the highway or charged with its construction and maintenance, and shall include, in addition to the information required by Rule 3.7, the following information:

(a) A copy of the franchise or permit, if any be requisite, from the authority having jurisdiction, which allows the railroad to cross the public road, highway, or street involved. If such franchise or permit has already been filed, the application need only make specific reference to such filing.

(b) The proposed crossing identification number.

(c) The map referred to in Rule 3.7(d) shall also show, by distinct colorings or lines, all new tracks or changes in existing tracks, within the limits of the drawing, which are to be made in connection with the construction of the proposed crossing.

8. Nothing in Paragraph 7 provided in Additional Project-Specific Conditions constitutes NCTD's approval of a crossing across NCTD's tracks without regard to approval by the CPUC.

Project-Specific Conditions Pertaining to Mitigation:

For the purpose of supporting the timely advancement of the DMB5 Project into construction, and without waiving any of NCTD's objections as stated in its Petition with the Surface Transportation Board (STB), the Parties agree as follows:

1. The DMB5 Project will provide mitigation for both the loss of beach sand and for loss of public recreation on the beach until the seawalls are removed in 30 years. The Parties agree that the fee for the mitigation for the loss of sand and public recreation over the 30-year design life of the DMB5 Project amounts to \$8,690,118¹ ("Mitigation Fund"). The Mitigation Fund shall be a DMB5 project cost under Addendum 18 to the Master MOU.

In lieu of the fee for loss of beach sand and public recreation on the beach, the California Coastal Commission (CCC) Permit No. CC-0005-21 requires the planning, design, environmental review, and construction of three projects to provide and improve safe public coastal access and recreation, identified as follows: "(1) enhancement of the north-south trail system east of the rail track on the top of the bluff between Seagrove Park and 4th Street; (2) construction of a CPUC-approved pedestrian rail crossing near 7th Street or 11th Street; and (3) construction of a beach accessway at or between 7th and 11th Streets." The design of these access projects will be informed by SANDAG's Coastal Connections Study, which is expected to be presented for public comment in the Fall of this year. (See, Permit No. CC-0005-21, Condition No. 2, hereinafter referred to as "Coastal Access and Recreation Improvements".) NCTD will review the project recommendations identified in the Coastal Connections Study and shall identify potential project improvements that do not interfere with or impact NCTD's rail operations and maintenance obligations in its right-of-way. Nothing in this Exhibit A modifies or amends the terms of the Memorandum of Understanding Between San Diego Association of Governments, North County Transit District, and the City of Del Mar Re: Coastal Connections, NCTD Doc. No. 2021-01, regarding the Coastal Connections Study.

2. By entering into this Agreement, neither party accepts liability for the operation and maintenance of the Coastal Access and Recreation Improvements. Consistent with NCTD Board Policies and agreements between NCTD and other jurisdictions for community enhancement projects within NCTD right-of-way, and sufficiently in advance of the commencement of construction of the Coastal Access and Recreation Improvements, NCTD shall meet and confer with the City of Del Mar regarding the future operation and maintenance of the Coastal Access and Recreation Improvements.
3. SANDAG agrees to facilitate the negotiations with the City of Del Mar and NCTD to develop and enter into an agreement to establish roles and responsibilities regarding use of NCTD's right-of-way, long-term maintenance and upkeep of the Coastal Access and Recreation Improvements and liability related concerns; said agreements shall be executed prior to SANDAG's issuance of a procurement for the Coastal Access and Recreation Improvements construction contract. NCTD and SANDAG agree to timely negotiate these agreements in good faith. Nothing in this Agreement prohibits NCTD from imposing a fee for the City of Del Mar's use of the NCTD right-of-way for the operation and maintenance of the Coastal Access and Recreation Improvements.
4. The construction of any pedestrian rail crossings and access improvements defined as Coastal Access and Recreation Improvements shall be approved by NCTD prior to such improvements being advanced to construction.
5. As to the Coastal Access and Recreation Improvements, the Parties agree as follows:

¹ The methodology for calculating the mitigation for the loss of sand is as follows: 17,824 cubic yards (CY) of sand multiplied by the cost to replace the sand, \$17/CY, for a total of \$303,015. The methodology for calculating the loss of public recreational beach impact is 49,336 square feet (SF) of loss of beach recreational area multiplied by the beach recreation value, \$170/SF, for a total of \$8,387,103.

- a. SANDAG agrees to request the SANDAG Board of Directors authorize the creation of a separate Capital Improvement Project for the Coastal Access and Recreation Improvements (Coastal Access CIP), and allocate the Mitigation Fund as the budget for the Coastal Access CIP²; SANDAG's responsibilities under this Scope of Work are contingent upon SANDAG's Board's approval of this request;
 - b. Except for SANDAG's ability to allocate the Mitigation Fund toward the Coastal Access CIP, NCTD shall not be responsible for any costs associated with the design, environmental review, and construction of the Coastal Access CIP;
 - c. The Parties agree that SANDAG will not provide any compensation to NCTD for SANDAG's use of NCTD's right-of-way to design and construct the Coastal Access CIP;
 - d. SANDAG shall not be prohibited from seeking grant funding and/or funding from third parties outside of this Agreement for any additional costs of the Coastal Access CIP beyond the Mitigation Fund;
 - e. For the Coastal Access CIP, NCTD shall: (i) provide any needed design review and comments, meeting attendance, and coordination; (ii) timely process agreements once approved by NCTD; (iii) cooperate with SANDAG and (iv) provide access to SANDAG to NCTD's right-of-way for construction;
 - f. While CCC Permit No. CC-005-21 approved the construction of "fencing consisting of three-foot-tall wooden pylons and steel cabling or other similarly low-profile designs...along the length of the trail" as a project feature of the Coastal Access and Recreation Improvements, the parties agree that NCTD's security fencing project is separate and distinct from the Coastal Access CIP. This Agreement does not constitute an admission or agreement by SANDAG to accept liability or any additional insurance requirements associated with a deviation from NCTD's standard 6-foot security fence nor does it constitute an acceptance by NCTD of any deviations from NCTD's standard 6-foot security fence.
6. Mitigation for the DMB5 Project's wetland impacts will be paid by SANDAG's Environmental Mitigation Program.
 7. As to Condition Nos. 4-6 in CCC Permit No. CC-005-21 pertaining to gnatcatcher habitat avoidance, construction safety, and construction staging and storage: The costs for these construction-related conditions have already been included as part the construction budget, and any additional costs pertaining to these permitting conditions shall be considered a DMB5 project cost under Addendum 18 to the Master MOU.
 8. As to Condition No. 7 in CCC Permit No. CC-005-21, the DMB5 Project construction budget has allocated funds to construct the grade beams in a color and texture that blends in with the natural bluff, so that if the grade beams become exposed, they are designed to maintain the desired visual condition. Monitoring the seawalls for vandalism and cleaning the seawalls to confirm the desired visual condition and to clean any graffiti after construction will be a maintenance activity. The parties agree to meet and confer with the City of Del Mar regarding the maintenance of the seawalls within the City of Del Mar's property.
 9. NCTD agrees that, after all necessary agreements have been fully executed as provided in this Project-Specific Conditions Pertaining to Mitigation, it shall not unreasonably withhold approval and/or permitting of any construction or project completion of SANDAG's obligations that are specified in CCC Permit No. CC-005-21 or any other agency that is in compliance with NCTD Board Policy No. 11 - *Real Estate* and NCTD Board Policy No. 18 - *Railroad Safety and Community Enhancement Projects*.
 10. This Agreement does not constitute an admission by either party as to whether CCC's permit conditions constitute a "Concurrent Non-Project Activity" as defined in the Amended Addendum 18 and does not set forth a precedent as to the meaning of that term for other projects governed by Amended Addendum 18.
 11. This Agreement shall be binding on the Parties, and may only be amended, modified, or supplemented by a written agreement signed by both Parties.

² While the scope of the Access and Recreation Improvements will be informed by the Coastal Connections Study, and the costs are not certain, at the time of executing this Agreement, SANDAG estimates that the costs should be within the proposed Coastal Access CIP budget.

SAN DIEGO ASSOCIATION OF GOVERNMENTS



Hasan Ikhata
Executive Director

Sep 27, 2022

Date

 E-SIGNED by Andre Douzjian
on 2022-09-27 18:19:19 GMT

Andre Douzjian
Chief Financial Officer

Date

 E-SIGNED by Sharon Humphreys
on 2022-09-27 19:51:38 GMT

Sharon Humphreys
Director of Engineering and Construction

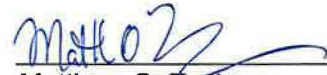
Date

 E-SIGNED by Annie Smiddy
on 2022-09-27 20:08:39 GMT

Annie Smiddy
Office of General Counsel

Date

NORTH COUNTY TRANSIT DISTRICT



Matthew O. Tucker
Executive Director

10/11/2022

Date



Eun Park-Lynch
Chief Financial Officer

10/11/2022

Date



Scott Shroyer
Senior Rail Engineer

10/11/2022

Date



Lori A. Winfree
General Counsel

10/11/2022

Date

S1007222_36

Final Audit Report

2022-09-27

Created:	2022-09-27
By:	Cynthia Neira (cynthia.neira@sandag.org)
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-  Document created by Cynthia Neira (cynthia.neira@sandag.org)
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-  Email viewed by Hasan Ikhata (hasan.ikhata@sandag.org)
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-  Document e-signed by Hasan Ikhata (hasan.ikhata@sandag.org)
Signature Date: 2022-09-27 - 8:27:48 PM GMT - Time Source: server
-  Agreement completed.
2022-09-27 - 8:27:48 PM GMT



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