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## **STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION**

**Local Government:** City of Del Mar

**Decision:** Approved with Conditions

**Appeal Number:** A-6-DMR-26-0018

**Applicant:** Integrated Professional Services LLC, Michael McMillan

**Location:** 117 6<sup>th</sup> Street and adjacent NCTD-owned Lot, Del Mar (APNs: 3001741400, 3003215500)

**Project Description:** Installation and replacement of fencing, and hardscaping improvements, at 117 6<sup>th</sup> Street; and, replacement of existing approx. 3-foot-tall chain link fence on the leased NCTD property west of the residential lot with a 5-foot-tall transparent glass fence and gate.

**Appellants:** Commissioner Ann Notthoff & Vice Chair Caryl Hart

**Staff Recommendation:** Substantial Issue

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### **IMPORTANT HEARING PROCEDURE NOTE**

The Commission will not take testimony on this "substantial issue" recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant,

any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The appellants contend that the approved project is inconsistent with the public access, recreation, and coastal hazard protection policies of the Del Mar certified Local Coastal Program (LCP). Specifically, the appellants argue that the City incorrectly determined that the project site is not located between the first public road and the sea, resulting in the City failing to apply required public access findings under the LCP and Chapter 3 of the Coastal Act. The appellants also contend that the new fencing approved within the North County Transit District (NCTD) right-of-way could potentially interfere with the alignment, planning, and eventual construction and maintenance of the formalized bluff-top trail required as mitigation for SANDAG's Del Mar Bluffs 5 Stabilization project (per Consistency Certification CC-0005-21), and sets a negative precedent for the continued approval of private encroachments into the NCTD right-of-way that preclude options for siting and maintaining a formalized public trail within the rail corridor. Finally, the appellants contend that the replacement fence on the NCTD lot may potentially compromise drainage and stabilization options for the to-be-finalized trail alignment, contrary to LCP policies that require avoidance of risk to life and property, and the careful siting of new accessways that minimize landform alteration.

Upon review of the locally approved project and the certified LCP, the proposed fencing raises a substantial issue regarding impacts to public access. The site is located between the sea and the first public road (Stratford Court); therefore, the public access and recreation policies of Chapter 3, as well as the relevant goals and policies of the City's LCP, apply. Because the City misidentified the site's location, it did not make required findings ensuring maximum public access, nor did it evaluate whether the development may diminish or interfere with historic public access within the NCTD right of way. This area contains an informal, but well-documented, bluff-top trail network between Seagrove Park to the north and 4th Street to the south, which the LUP acknowledges as heavily used by the public. At the project site, the approved replacement fencing is located just east of an existing informal, lateral trail and within the rail corridor SANDAG must use to construct and/or formalize a continuous north-south lateral trail as part of its mitigation obligations. Based on the information available,

it appears that the approved fencing could constrain potential trail routing and maintenance options, interfere with drainage and bluff-stabilization needs for the trail and rail corridor, and reduce flexibility and adaptive capacity necessary for long-term implementation of required public access improvements.

The project also raises a substantial issue concerning coastal hazards. The NCTD parcel is located within a highly dynamic bluff system that experiences significant erosion, slope instability, and landslides. The certified LUP requires that development avoid increasing hazards and minimize alteration of natural landforms. As approved, the project would introduce new fencing for the benefit of a private residence located on NCTD property within an erosive bluff environment that may preclude options for future stabilization and maintenance of the public trail and railroad corridor that minimizes landform alteration and hazard risk.

In applying the five factors the Commission may use when considering an appeal, the appeal is found to raise a substantial issue with respect to the LCP provisions because additional information is needed to determine the degree to which the City's approval is consistent with the certified LCP and Chapter 3 of the Coastal Act. The question of how private encroachments affect required coastal access mitigation associated with a major regional infrastructure project (Del Mar Bluffs 5) is of substantial precedential value and is central to ensuring long-term protection of coastal access. Finally, the preservation and formalization of bluff-top public trails is a cornerstone of both the LCP and the Commission's conditional concurrence with SANDAG's consistency certification, and the potential interference created by the approved fencing raises a significant concern.

Because of the above-described inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Del Mar Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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## EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Location](#)

[Exhibit 3 – Blufftop Trail Network](#)

[Exhibit 4 – Approved Plans](#)

[Exhibit 5 – Appeals](#)

[Exhibit 6 – City Notice of Final Action](#)

## **I. APPELLANTS CONTEND**

The appellants contend that the project as approved by the City does not conform to the City of Del Mar's certified Local Coastal Program (LCP) with regard to protection of public access, including access to a planned formalized coastal trail required as mitigation for SANDAG's Del Mar Bluffs Stabilization Project 5 approved by the Commission in 2022 through Consistency Certification No. CC-0005-21 ([Exhibit 5](#)). More specifically, a condition of the Commission's concurrence with CC-0005-21 requires, in part, "enhancement of the north-south trail system east of the rail track on the top of the bluff between Seagrove Park and 4th Street" in the City of Del Mar. In the area of the subject site, the lateral trail will likely follow an existing public access path within NCTD's right-of-way; however, because planning and implementation of the lateral trail has not yet been completed, any efforts to authorize, formalize, or maintain private encroachments within the NCTD right-of-way along the trail alignment, such as the subject project, would potentially preclude options for the design and completion of the trail. The appellants also contend that the City failed to make the appropriate public access findings because it incorrectly identified the project site as not being located between the first public road and the sea, and therefore the project was not analyzed for consistency with Policies IV-22 and IV-23 of the City's LUP, Section 30.61.090 of the IP, and the public access and recreation policies of Chapter 3. Finally, the appellants contend that the replacement of the private fence within the NCTD right-of-way may potentially compromise drainage and stabilization options within a highly erosive bluff environment. The City's LCP requires that all development avoid risks to life and property associated with bluff failure and erosion, and that new accessways should be sited and constructed to minimize alteration of landforms. Because the proposed replacement fence on NCTD property potentially encroaches in area needed for the safe siting of the trail as well as its maintenance needs and adaptive capacity, the private development is not consistent with the LCP.

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## **II. LOCAL GOVERNMENT ACTION**

The project was approved by the Director of Planning and Community Development on June 30<sup>th</sup>, 2026 ([Exhibit 6](#)).

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## **III. APPEAL PROCEDURES**

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Del Mar has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

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## IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

### Motion:

I move that the Commission determine that Appeal No. A-6-26-0018 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

### Resolution:

The Commission hereby finds that Appeal No. A-6-26-0018 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION**

### **A. Project Description and Background**

The project approved by the City of Del Mar (City) authorizes the installation of fencing at 117 6th Street ([Exhibit 1](#)), including a 1-foot 3-inch stucco wall for a total of 5-foot fence along the east property wall, a 6-foot-tall decorative stone panel along the east property wall, a 6-foot-tall glass gate to rear yard on the northeast corner of the house, a 2-foot tall planter wall along the east property line, and a 10-inch glass wall on top of existing curved wall located in the front yard setback ([Exhibit 4](#)) and, replacement of existing approx. 3-foot chain link fence on the leased North County Transit District (NCTD) property west of the residential lot with a 5-foot-tall transparent glass fence and gate. The area of the NCTD lot is under a lease agreement where the owner can use the property for purposes related to landscaping and beautification, and the new fence will enclose this area ([Exhibit 2](#)). The lease agreement dates back to at least June 2023, and was amended in July 2025 to allow for the addition of a glass fence five feet in height and 238 feet in length.

The City found that the project is consistent with the public access and public recreation provisions of the certified Local Coastal Program (LCP) ([Exhibit 6](#)). However, the development as approved by the City raises several LCP consistency issues with regard to these provisions, particularly as they relate to a recent federal consistency certification for the Del Mar Bluffs 5 Stabilization project by SANDAG (CC-0005-21), and the required formalization of an adjacent trail directly next to the site on NCTD property that is required as one component of a mitigation package for the bluff stabilization work ([Exhibit 3](#)).

The site is within the City of Del Mar's permit jurisdiction and appealable to the Coastal Commission due to the property being located being the first public road and the sea (§30603(a)(1)) ([Exhibit 5](#)). While the bluff area is considered fragile, the project site itself is not located within the City's Coastal Bluff Overlay because the eastern edge of the railroad right of way is a manufactured, rather than natural, slope, and therefore the properties to the east of this slope are not subject to Coastal Bluff Overlay regulations.

### **B. Public Access and Recreation**

Section 13577 of the Coastal Act states:

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that the road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all -weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along inland right-of-way of such road.

Section 30210 of the Coastal Act states:

In carrying out the requirement of [Section 4 of Article X of the California Constitution](#), maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214 of the Coastal Act states. In relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

[...]

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the project is already adequately provided for in the area.

Policy III-9 of the City's certified LUP states, in relevant part:

Where a proposed development would lie at the top of, or in proximity to a coastal bluff, the Coastal Bluff regulations cited below and on subsequent pages shall apply...the manufactured cut slope which follows the eastern edge of the AT&SF Railway Right of Way between the City's southern boundary and 15<sup>th</sup> Street is not considered to be a coastal bluff. Therefore, the properties which lie to the east of such manufactured cut slope are not subject to the following coastal bluff regulations.

Page 71 of the City's certified LUP states:

A number of lateral access paths run generally parallel to the shoreline at the top of the bluffs along the railroad tracks between Seagrove Park and Carmel Valley Road. Portions of these paths lie within the right-of-way of the AT&SF Railway. The other portions of these paths lie within areas owned publicly by the City of Del Mar and the State of California. Although this access has not been formalized in terms of a recorded easement, it has been and continues to be used by many on a daily basis. This informal but continuous use of trails also occurs at various locations along the shorelines of San Dieguito and Los Penasquitos Lagoons.

This chapter contains a number of policies aimed at formalizing the use of the trails along the railroad tracks in the southern portion of the City and along the lagoon shores. In each case, the goals and policies for providing long term use of such accessways and the provision of improvements within them is tempered by the need to preserve, the fragile resources within the respective areas and to protect the safety, rights and privacy of residents who live in the area. It is the City's policy to encourage and facilitate vertical access to sandy beach areas only from safe vertical access points.

Goal IV-C of the City's certified LUP states:

Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.

Policy IV-22 of the City's certified LUP states:

Enhance public improvements along appropriate bluff top areas which provide significant scenic vistas when such improvements are not in conflict with bluff preservation policies. Improvements shall include the installation of benches for scenic viewing at the western terminus of 11th, 8th and 4th Streets and along the upper bluff area south of Del Mar Canyon. All bluff top improvements shall be consistent with the goals and policies of Chapter III of this Land Use Plan regarding the preservation of fragile coastal bluff systems and the minimizing of hazardous conditions.

Policy IV-23 of the City's certified LUP states:

Retain the bluff top areas west of the railroad right of way between the southern border of the City and 15<sup>th</sup> Street in an open space condition to provide panoramic ocean views; to provide lateral access along the coastal bluff top and to preserve and protect the adjacent fragile and scenic bluffs.

Section 30.61.090 of the certified IP states, in relevant part:

- A. New development shall be sited and designed in a manner that does not interfere with or diminish any public right of access which may have been established based on historic public use. When it is found that site constraints are so severe that siting on the access way in its historic location would significantly impair the proposed development, access may be provided in an alternative alignment and/or location on the development site....
- B. [...]
- C. Applications for Coastal Development Permits which involve sites where there is evidence of the existing of potential prescriptive rights shall be subject to conditions to ensure that the applicant acknowledges, in writing, that the approval of the permit or the conditions attached thereto shall not be constructed to constitute a waiver of any prescriptive rights which may exist on the parcel itself or on the designated easement area.

In addition to the LUP and IP sections above, Page 85 of the LUP contains a map that depicts existing vertical access west of the 6<sup>th</sup> Street street-end that connects to a lateral existing access trail located west of the improved area under lease from NCTD by the owner of 117 6<sup>th</sup> Street.

### Public Access

The subject site is located between the sea and the first public road (Stratford Court), and therefore the public access and recreation provisions of the LCP and Chapter 3 of the Coastal Act must be analyzed. In the case of the subject approval, the site was incorrectly identified as not being between the first public road and the sea, and therefore the appropriate public access findings have not been made. Under the Coastal Act, the "first public road paralleling the sea" is specifically defined as the nearest publicly maintained, all-weather road open to uninterrupted public use that

provides continuous access with similarly accessible roadways (PRC §30115; §30603; 14 CCR §13577(i)), and Stratford Court meets this definition because it is a publicly accessible, improved road that parallels the shoreline. The railroad line does not meet the definition of the first public road, but was incorrectly identified by the City as such. Because the project has not been analyzed for consistency with the relevant policies, the project raises a substantial issue.

### Adjacent Trail Improvements

The project area is adjacent to the Los Angeles to San Diego (LOSSAN) railroad tracks and some project components are partially located within the existing North County Transit District (NCTD) railroad right-of-way inland of the tracks.

Public parking for access to the blufftop area, as well as the beach, is available at Powerhouse and Seagrove Parks and on public streets near the west end of 13th through 6th Streets. On the blufftop area, a historic network of informal pedestrian trails paralleling the railroad track provide informal access, and two informal trails also go down the face of the bluff to the beach. A variety of horizontal and lateral coastal access trails have been present in the project area since the rail line first came into use in 1910.

In 2022, the Commission conditionally concurred with a Consistency Certification (No. CC-0005-21) by the San Diego Association of Governments (SANDAG) to implement the Del Mar Bluffs Stabilization Project 5 to construct various bluff stabilization and seawall structures along a 1.6-mile-long segment of the existing North County Transit District (NCTD) railroad right-of-way in the City of Del Mar in order to support the existing railroad and maintain its operations until it can be relocated off the bluffs. The planning and implementation of three coastal access and recreation improvements were required as a condition of the Commission's concurrence with this Consistency Certification to address the project's impacts on coastal access and shoreline sand supply, and the loss of beach that would occur immediately and over time due to the armoring installed to protect the railroad. These access improvements – a safe and legal rail crossing and formalization of lateral and vertical coastal accessways - have been longstanding needs in the project area to better serve and expand existing coastal access. As memorialized in Special Condition Two of CC-0005-21, SANDAG committed to work diligently to implement these public access mitigation projects, with deadlines for both initiation and completion of construction. Particularly relevant for this project, Special Condition 2 requires a capital improvement project to complete planning, design, review, and construction of an enhanced north-south trail system east of the rail track between Seagrove Park and 4<sup>th</sup> Street. Along with the other required access improvements, the design of this trail was to be informed by a study ("Coastal Connections Study"), and the construction is not permitted to begin until all necessary authorizations for that project are obtained. The formalization of the lateral blufftop trail is a critical component of the mitigation package required by the Commission and is required to provide a complete, continuous connection between 4th Street and Seagrove Park along the east of the rail track within the NCTD right-of-way.

At the time of Commission action in 2022, SANDAG's Coastal Connection Conceptual Planning Study had not been completed and only the simplest and most fully developed

options from initial versions of that study were included and evaluated by the Commission as part of CC-0005-21. Relevant to this project in particular, the Commission evaluated and authorized construction and formalization of the informal lateral access trails on the landward side of the railroad tracks between Seagrove Park and 4th Street. This was done in order to help expedite their implementation if they are ultimately selected by SANDAG for inclusion in its capital improvement project. However, the Commission contemplated that SANDAG would also retain its full ability to instead decide, at the completion of their Coastal Connections Study process, to pursue an option that the Commission has not already vetted, in which case SANDAG would need to go through the process of seeking Commission concurrence for any changed aspect of the project prior to construction. The Coastal Connection Study was finalized by SANDAG in 2023 and they have since been working on design options in coordination with the City and NCTD, which will be reflected in a Project Study Report that is currently under development. Once consensus is reached on the details of specific improvements, the designs can be advanced for public input and environmental review among the relevant agencies. Depending on the selected designs, additional review by the Commission may be required.

As explained in the Coastal Connections Study the contemplated lateral trail alignment includes areas in which private development has encroached into the NCTD right-of-way, which presents significant challenges for siting portions of the trail. In the area of 117 6<sup>th</sup> Street, it is contemplated that the lateral trail would follow an existing public access path within NCTD's right-of-way above the tracks and adjacent to an existing concrete swale drainage ditch ([Exhibit 3](#)). However, planning and implementation of the lateral trail has not yet been completed and efforts to authorize, formalize, or maintain private encroachments within the NCTD right-of-way along the trail alignment, such as the subject project, would potentially preclude options for the timely completion, maintenance, and adaptive capacity of the lateral trail alignment required through the Commission's conditional concurrence with SANDAG's consistency certification for the Del Mar Bluffs Stabilization 5 Project, as well as preclude options for trail and drainage infrastructure maintenance.

For the reasons listed above, the City's approval raises several potential LCP inconsistency issues regarding Policies IV-22 and IV-23 of the City's LUP, Section 30.61.90 of the IP, and the public access and recreation policies of Chapter 3. The informal trail area is a historic public use trail, and while SANDAG continues to work on formalizing a trail alignment, the replacement of a private encroachment such as the approved fence potentially complicates the full review of all available options.

## **C. Coastal Hazards**

### **Goal III-B:**

Preserve Del Mar's fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion.

Policy IV-6 of the City's certified LUP states:

When new accessways are proposed or required, they shall be sited and constructed to:

- a. Minimize alteration of natural landforms, conform to the existing contours of the land, minimize erosion and siltation, and be subordinate to the character of their setting;
- b. Prevent unwarranted hazards to the land and public safety;
- c. Provide for the privacy of adjoining properties and to minimize conflicts with adjacent or nearby established uses;
- d. Prevent misuse of environmentally sensitive areas, including the provision of access control fencing or barriers along trails adjacent to sensitive habitat where appropriate; and
- e. Correct abuses resulting from existing trail or access way use.

Although the NCTD lot on which the tempered glass fence has been approved is located inland of the railway, it is situated within a highly dynamic coastal bluff system where erosion and instability are known concerns. The nearby coastal bluffs are generally 50 to 70 feet high, have a history of landslides and slope failure, and are highly erosive, retreating on average between 0.4 and 0.6 feet per year. These pressures are likely to be exacerbated by sea level rise. Per the City's certified LUP, development should avoid the risks to life and property associated with bluff failure and shoreline erosion, and specifically per Policy IV-6, new accessways should be sited and constructed to minimize alteration of landforms, prevent unwarranted hazards to public safety, and minimize conflicts with adjacent uses. As described above, private development encroachment within the NCTD right-of-way, such as the new fencing approved by the City, may potentially compromise drainage and stabilization options for protection of the railroad within this highly erosive bluff environment, and overall efforts to ensure safe siting and maintenance of the trail. For this reason, the project as approved raises substantial issue.

#### **D. Substantial Issue Factors**

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the project raises a substantial issue related to public access and coastal hazards. The Commission considers five factors when determining whether a project raises a substantial issue.

The first factor is the degree of factual and legal support for the local government's decision. Here, the City incorrectly determined that the site is not located between the

first public road and the sea, and therefore did not apply the public access findings required under Chapter 3 of the Coastal Act . In addition, the record does not demonstrate that the approved fencing would avoid interfering with historic public access along the bluff-top trail corridor or with the future alignment of the formalized trail required as mitigation for SANDAG's Del Mar Bluffs 5 Stabilization Project.

The second factor is the extent and scope of the development approved. Although the project consists primarily of fencing and hardscape elements, portions of the fencing are located within the NCTD right-of-way alongside an established informal trail.

Development in this location could affect the formalization of the future trail, including elements such as the alignment, maintenance access, and drainage modifications necessary to implement the required Del Mar Bluffs 5 mitigation.

The third factor addresses the significance of the coastal resources affected, and the fifth factor considers whether the issues extend beyond the local level. The area contains a long-standing lateral bluff-top accessway used by the public for many decades, and the Del Mar Bluffs 5 mitigation requires the creation of a continuous, formalized north-south trail between Seagrove Park and 4th Street. Protecting the feasibility of this future trail alignment is critical not only for Del Mar, but for regional coastal access along the Los Angeles to San Diego (LOSSAN) rail corridor. As such, the affected resources are highly significant and have broader regional importance.

The fourth factor is the precedential value of the local government's decision. The informal trail system is documented in Del Mar's certified LUP, and the Commission has long recognized its importance. Allowing private encroachments within the NCTD-owned corridor adjacent to a trail and drainage infrastructure may complicate future implementation of required mitigation and could set an undesirable precedent for how similar encroachments are reviewed in the future. This raises questions regarding the City's interpretation of its LCP and could affect broader public access planning along the bluff-top network.

The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The concerns raised by the appellants involve core public access protections, potential constraints on a required future bluff-top trail, and development within an erosive bluff system, all of which extend beyond the immediate property and have regional significance. In addition, the City's approval of new fencing within the NCTD right-of-way could create an adverse precedent for future interpretation of the LCP as it relates to development within areas used for public access and required mitigation planning.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- CC-0005-21
- [Coastal Connections Study](#)