

CALIFORNIA COASTAL COMMISSION

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Sent via email (tkranz@encinitasca.gov & clerk@nctd.org) and US Mail

October 15, 2020

North County Transit District
810 Mission Avenue
Oceanside, CA 92054

re: North Coast Transit District and California Coastal Commission Partnership

Dear Board Members,

Along with many members of the public, I was shocked and dismayed by North Coast Transit District's (NCTD) abrupt decision to not only end its collaboration with the Coastal Commission staff on projects related to transportation projects in the San Diego region but to do so without any notice or warning to Commission. We learned of NCTD's efforts to cut the Coastal Commission out of this planning process through formal service of NCTD's Petition to the Surface Transportation Board, without even the courtesy of a phone call to alert us of the pending Petition. This is a disappointing development in what we had believed to be a mutually beneficial partnership.

For decades, NCTD, the San Diego Association of Governments (SANDAG) and the Commission have engaged in cooperative planning, review, and approval of numerous transportation projects in San Diego related to railroad infrastructure. Since 2002, the Commission has reviewed and concurred with at least 28 consistency certifications submitted by NCTD, or its project partner SANDAG, for railroad projects along the LOSSAN corridor in San Diego County. Of the 28 railroad projects submitted by SANDAG or the NCTD, the Commission has not objected to any consistency certifications. These projects have included new segments of double-track, replacement of aging railroad bridges over coastal lagoons with new double-track bridges, scour protection and repair, after-the-fact emergency repairs, and major stabilization projects along the Del Mar Bluffs. We believe that these final projects were better for the public and the environment through the efforts of NCTD, SANDAG, and the Commission to collaborate throughout the planning and approval process.

With regard to the Del Mar bluffs, in particular, the Commission has concurred with three consistency certifications for bluff stabilization projects since 2004: Del Mar Bluffs 2 (CC-048-04 from NCTD), Del Mar Bluffs 3 (CC-020-10 from SANDAG), and Del Mar Bluffs 4 (CC-0004-18 from SANDAG). In March 2020 SANDAG submitted an after-the-fact consistency certification (CC-0001-20) for emergency repair and stabilization measures on the Del Mar Bluffs undertaken in November and December 2019. The Commission reviewed the after-the-fact consistency certification in August 2020, thus providing SANDAG and NCTD with after-the-fact authorization to undertake the needed repair work.

Commission staff believed that we would continue to work with SANDAG and NCTD on upcoming projects. Thus, it came as a complete surprise to learn of NCTD's proposal to unilaterally proceed with a project to fence the Del Mar bluffs without any state or local review. While NCTD disclaims the use of any federal funding that would trigger Commission consistency review, that is inconsistent with the position NCTD took in its petition before the Surface Transportation Board.¹ Setting aside the legal issues raised here, we believe that this is simply bad public policy and hope that the NCTD board will reconsider its position.²

While we agree that it is important to protect public safety, we believe that as public agencies with overlapping jurisdiction, the Commission, NCTD, SANDAG, and the City of Del Mar should continue to work together to craft a collaborative solution to these legitimate safety issues. While the final project is unlikely to satisfy all stakeholders, as with past projects, by working together and having open dialogue, we believe that we could together shape a project that meets NCTD's needs and also those of other agencies and stakeholders. This is just good government.

The Commission believes that a cooperative effort here to explore all options for protecting public safety is warranted. Just this past summer, NCTD publicly committed to improving public safety along the tracks through the use of education and outreach in its adoption of a California Rail Safety Month Proclamation, as reflected in the Board's minutes of the June 2020 meeting. NCTD recognized that public education and outreach serve to improve public safety along the LOSSAN rail corridor. Rather than proceeding unilaterally to construct fencing that will block public access to the coast, impair coastal views,

¹ In its petition, NCTD asserts that the fencing "will be funded with California monies from the Transit & Intercity Rail Capital Program but may later include federal dollars." Petition, p. 13. The potential for federal funding requires Commission review now, before planning and construction render Commission consistency review a nullity. Moreover, in the light of the California Supreme Court's decision in the Friends of the Eel River case, we question NCTD's assertion that a state-created transit agency using state money for its projects is entirely exempt from state oversight, particularly in the realm of environmental regulation.

² As stated in the Commission's Reply to NCTD's Petition to the STB, we think that NCTD is wrong in asserting that NCTD need not comply with the Commission's federal consistency review process.

adversely impact coastal resources, and create a blight on the Del Mar bluffs, the Commission offers to work with NCTD on alternatives, including alternative fencing proposals, that protect public safety and are consistent with coastal resource protection. The Commission requests that the NCTD board vote to withdraw its Petition before the NCTD and direct its staff to re-engage with SANDAG and the Commission on planned projects along its rail corridor.

Sincerely



JOHN AINSWORTH
Executive Director

cc: Hasan Ikhata, Executive Director, SANDAG (via email)