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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.

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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,



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