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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 36433**

**ENTERED**  
Office of Proceedings  
June 29, 2022  
Part of  
Public Record

**NORTH COUNTY TRANSIT DISTRICT –**

**PETITION FOR DECLARATORY ORDER**

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**CALIFORNIA COASTAL COMMISSION'S  
SECOND UPDATE REGARDING RECENT APPROVAL  
OF BLUFF STABILIZATION PROJECT**

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Commission*

The California Coastal Commission (Commission) provides this second update in response to the update North County Transit District (NCTD) filed on June 14, 2022. The Commission provides additional information regarding NCTD's recent actions that NCTD has not mentioned to this Board.

In its June 14, 2022 update, NCTD discussed the Commission's conditional concurrence with the San Diego Association of Governments' (SANDAG) federal consistency certification for the Del Mar Bluffs Stabilization Project 5 (Project). (NCTD June update, pp. 11-15.) NCTD expressly objected to the Commission's conditions, including the term limit, the public access and recreation mitigation, and the costs of those components. (NCTD June update, pp. 11-13.) NCTD urged these conditions provide additional support for its petition to this Board.

However, the Commission has learned that NCTD met with SANDAG on June 17, 2022, and reached an agreement with SANDAG that would allow the Project to proceed as conditioned. As stated in the attached memorandum from Mary Dover, NCTD's Government Affairs Officer, dated June 23, 2022, "Recognizing the criticality of the Del Mar Bluffs Stabilization Project 5, SANDAG and NCTD staff met via teleconference on June 17, 2022, and based on those discussions, NCTD believes that we have collectively reached an agreement that supports the advancement of the project into construction, addresses NCTD concerns related to the conditions imposed by the CCC, and allows NCTD to

continue to advance its petition with the Surface Transportation Board (STB) without being prejudiced by SANDAG's acceptance of the CCC project conditions pertaining to access and recreation. Staff is working on finalizing the terms of the agreement. NCTD's advancement of the project is contingent upon the execution of the final agreement between SANDAG and NCTD." (Exhibit A, attached.)

Based on the agreement between NCTD and SANDAG, it is clear that NCTD seeks an advisory opinion from this Board as to the validity of conditions it has already agreed to and regarding a project NCTD recognizes is critical for the safety of the rail line. NCTD has agreed to allow the project to proceed in accordance with the Commission's conditional concurrence. The Board should decline to issue an advisory opinion in this matter.

Dated: June 29, 2022

Respectfully submitted,

ROB BONTA  
Attorney General of California  
DANIEL A. OLIVAS  
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s/Jamee Jordan Patterson  
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# **EXHIBIT A**



**MEMO**

810 Mission Avenue  
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GoNCTD.com

**Date:** June 23, 2022

**To:** North County SANDAG Board of Directors

**From:** Mary Dover, Government Affairs Officer, NCTD 

**Re:** SANDAG Board of Directors Meeting on June 24, 2022

This Memorandum identifies items on the June 24, 2022 agenda of SANDAG's Board of Directors meeting that may impact the North County Transit District (NCTD), including a summary of the impact and NCTD's recommendation. If you have any questions or concerns, please feel free to contact me at (760) 967-2895 or via email at [mdover@nctd.org](mailto:mdover@nctd.org).

**Consent Agenda - Item 6: Specialized Transportation Grant Program: Cycle 12 Call for Projects**

***SANDAG Action Requested: Approve***  
***NCTD Action Requested: Approve***

The Board is asked to approve the Transportation Committee's recommendation to issue a call for projects for the Specialized Transportation Grant Program (STGP), of which \$7.9 million is available in Cycle 12. STGP provides funds from the TransNet Senior Mini-Grant program and Federal Transit Administration (FTA) Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities program for projects that fill mobility gaps for seniors and individuals with disabilities. SANDAG is proposing that Facilitating Access to Coordinated Transportation (FACT), acting as the Consolidated Transportation Service Agency (CTSA) for the region, be given a \$790,758 allocation of these funds for mobility management activities.

**Consent Agenda - Item 8: Transportation Development Act: FY2022 Productivity Improvement Program and FY2023 Allocations**

***SANDAG Action Requested: Approve***  
***NCTD Action Requested: Approve***

Pursuant to California Public Utilities Code Section 99244, a transit operator can be allocated no more in FY2023 than it was allocated in FY 2022 unless the region's transportation planning agency determines that the operator made a reasonable effort to implement the productivity improvement recommendations adopted after the last triennial TDA audit (completed in June 2019). SANDAG evaluates operators based on the performance measures monitored as part of the TDA Productivity

Improvement Program and has determined that MTS and NCTD have made reasonable efforts toward achieving their FY2022 productivity improvements and should be allocated their respective full allocation of FY2023 TDA funds.

The Transportation Committee reviewed this item at their June 3, 2022 meeting and recommended that the full Board approve NCTD's eligibility to receive the FY2023 allocation (as described below in Item 9). If approved, NCTD will receive approximately \$2.4 million more for FY2023 than it did in FY2022.

**Consent Agenda - Item 9: FY2023 Transportation Development Act and State Transit Assistance Claims**

***SANDAG Action Requested: Approve***  
***NCTD Action Requested: Approve***

Each fiscal year, SANDAG allocates funds from the TDA to both MTS and NCTD. Each entity can then make a claim for those funds. For FY2023, NCTD can claim \$50,860,299 in TDA 4.0 (of which \$46,847,886 will support non-ADA operations, \$3,000,000 will support ADA operations, and \$1,012,413 will be programmed for capital projects) and \$2,668,010 in TDA 4.5 funds for ADA operations.

The same process is used for State Transit Assistance (STA) funding, which comes from the state diesel tax. NCTD has filed a claim to receive \$11,088,448 million in STA funds for FY2023.

The SANDAG Board is asked to approve the TDA and STA claims and approve the finding as certified by NCTD, per the Transportation Committee's recommendation.

**Consent Agenda - Item 10: Annual Report to the State Legislature on Public Transit**

***SANDAG Action Requested: Approve***  
***NCTD Action Requested: Approve***

AB 805, passed by the Legislature and signed by Governor Jerry Brown in 2017, requires SANDAG to submit an annual public transit report to the Legislature. The report details public transit needs in the region, including various double tracking projects, a proposed extension of the COASTER line to National City, SPRINTER double tracking and grade separations, FLEX service expansion, and future plans to increase frequencies across all NCTD modes. The report also includes a breakdown of funds spent on studies and public transit, as well as recommended funding levels for various transportation operations. The Board is asked to approve the submission of the report to the State Legislature.

**Consent Agenda - Item 11: Transportation Development Act Triennial Performance Audit**

***SANDAG Action Requested: Approve***

***NCTD Action Requested: Approve***

As described in Item 8, SANDAG commissions a TDA audit every three years of NCTD, MTS and SANDAG. The most recent triennial audit covering the period from July 2018 to June 2021 was recently completed by an independent consultant and found NCTD to be in full compliance, with one recommendation. The recommendation is for NCTD to work with SANDAG on external reporting of the Farebox Recovery Ratio. MTS received the same recommendation. NCTD responded to the recommendation, stating the District already performs the Farebox Recovery Ratio calculations, but will provide further clarity when applicable. The Transportation Committee reviewed this item at their June 17, 2022 meeting and recommended that the Board allow SANDAG to transmit the audit to the state.

**Reports Agenda - Item 16: Del Mar Bluffs Stabilization Project Update**

***SANDAG Action Requested: Information—No Action Necessary***

***NCTD Action Requested: Information—No Action Necessary***

The stabilization of the bluffs is a critical safety project that supports the continued and uninterrupted operations of passenger and freight rail services.

On June 8, 2022, the California Coastal Commission (CCC) provided conditional concurrence for the Del Mar Bluffs 5 (DMB5) project (Project) based on the negotiated agreement between SANDAG and the CCC. NCTD identified the following conditions as unacceptable.

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

NCTD believes that the conditions imposed by the CCC may have significant impacts on the costs of projects and are outside of the CCC's authority based on the 2002 determination made by the Surface Transportation Board (STB) regarding the double-tracking project in the City of Encinitas. In that case, the STB concluded that the preemption provision of 49 U.S.C. [§ 10501\(b\)](#) and the Interstate Commerce Commission Termination Act of 1995 (ICCTA), expressly provides that the jurisdiction of the STB over "transportation by rail carriers", such as NCTD, is "exclusive" and determined that the City's Coastal Act permitting process was preempted by 49 U.S.C. § 10501(b) and ICCTA. (*City of Encinitas v. North San Diego County Transit Development Board, et al.*, Case No. 01-CV-1734-J [AJB]). It

is well settled precedent that Section 10501(b) categorically preempts requirements to obtain permits or other review before engaging in activity regulated by the STB.

Accordingly, NCTD believes that the STB will reaffirm its 2002 decision in its review of the petition that NCTD filed in 2020 that cited specific concerns related to local and state agency attempts to provide oversight and control over interstate rail projects.

Recognizing the criticality of the Del Mar Bluffs Stabilization Project 5, SANDAG and NCTD staff met via teleconference on June 17, 2022, and based on those discussions, NCTD believes that we have collectively reached an agreement that supports the advancement of the project into construction, addresses NCTD concerns related to the conditions imposed by the CCC, and allows NCTD to continue to advance its petition with the Surface Transportation Board (STB) without being prejudiced by SANDAG's acceptance of the CCC project conditions pertaining to access and recreation. Staff is working on finalizing the terms of the agreement. NCTD's advancement of the project is contingent upon the execution of the final agreement between SANDAG and NCTD.

The agenda can be found here: [Board of Directors | Friday, June 24, 2022 \(sandag.org\)](https://www.sandag.org/Board%20of%20Directors/Board%20of%20Directors%20-%20Friday,%20June%2024,%202022)

## CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on June 29, 2022, I served a copy of this **CALIFORNIA COASTAL COMMISSION'S SECOND UPDATE REGARDING RECENT APPROVAL OF BLUFF STABILIZATION PROJECT** on all parties of record by first-class mail and email as follows:

|                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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A. Lopez

Declarant



Signature