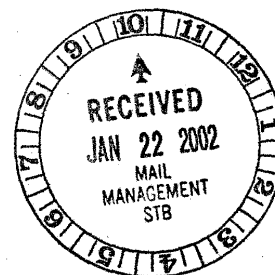


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BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34111

NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

REQUEST FOR LEAVE TO FILE COMMENT

The California Coastal Commission hereby requests leave to file the attached Comment Regarding *City of Encinitas v. North San Diego County Transit Development Board*. The North San Diego County Transit Development Board has submitted a copy of a recent decision in that case and a letter characterizing that decision to the Surface Transportation Board.

Respectfully submitted,

ENTERED
Office of the Secretary
JAN 22 2002
Part of
Public Record


CHRISTOPHER PEDERSON
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415.904.5220

Counsel for California Coastal Commission

Dated: January 18, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34111

NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

COMMENT OF THE CALIFORNIA COASTAL COMMISSION REGARDING
CITY OF ENCINITAS V. NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

The North San Diego County Transit Development Board ("NCTD") has submitted to the Surface Transportation Board ("Board") a copy of a recent United States district court decision in the case *City of Encinitas v. North San Diego County Transit Development Board, et al.*, Case No. 01-CV-1743-J (AJB) (S.D. Cal.). The California Coastal Commission is not a party to the lawsuit and has not submitted briefing or otherwise participated in the litigation of the case.

The district court's decision that the City of Encinitas's lawsuit against NCTD is preempted by the Interstate Commerce Commission Termination Act ("ICCTA") presupposes that a primary purpose of the passing track is to improve interstate freight service. The decision does not address the evidence that the Coastal Commission has submitted to the Board establishing that the purpose of the project is to improve mass transportation service.

In addition, the decision does not evaluate the scope of the ICCTA's exclusion of mass transportation projects from the Board's jurisdiction. *See* 49 U.S.C. § 10501(c). It simply

assumes that because NCTD has been designated a rail carrier in certain respects, anything it does to rail line is subject to the STB's jurisdiction, without acknowledging the import of the blanket exemption that the Board granted to NCTD. *See Orange County Transportation Authority, et al. – Acquisition Exemption – The Atchison, Topeka and Santa Fe Railway Co., Finance Docket No. 32173 (served Mar. 12, 1997).* Finally, it does not recognize that the Encinitas passing track is funded with state funds that are restricted to mass transportation projects.

Because the district court decision does not address the arguments or evidence that the Coastal Commission has presented to the Board, it is not relevant to the Board's resolution of NCTD's pending petition for declaratory relief.

Respectfully submitted,



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Dated: January 18, 2002

CERTIFICATE OF SERVICE

I certify that on January 18, 2002 I served by overnite mail a copy of the foregoing Request for Leave to File Comment and Comment of the California Coastal Commission Regarding *City of Encinitas v. North San Diego County Transit Development Board*:

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