



301192

October 19, 2020

ENTERED
Office of Proceedings
October 19, 2020
Part of
Public Record

Office of the Secretary
Surface Transportation Board
395 E. Street. S.W.
Washington, D.C. 20423

Re: Docket No. FD 36433- North County Transit District - Petition for Declaratory Order

Dear Board Members:

The National Railroad Passenger Corporation ("Amtrak") submits this letter in support of the petition filed August 28, 2020 by North County Transit District ("NCTD") with the Surface Transportation Board seeking a declaratory order pursuant to the Board's authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. While we recognize that the deadline for filing comments has passed, we ask that this letter be included in the record. Amtrak was only recently made aware of the petition.

The Petition raises legal issues that are important to Amtrak. Specifically, the Petition addresses the interplay between provisions of the Coastal Zone Management Act ("CZMA") and the ICC Termination Act ("ICCTA"), and the applicability of the California Coastal Act ("California Act") to NCTD. The Petition seeks a declaration that the ICCTA provision, 49 U.S.C. 10501(b), that gives the Board exclusive jurisdiction over the construction and operation of rail lines subject to its jurisdiction, preempts any regulation of NCTD's line maintenance or upgrade projects pursuant to state and local permitting regimes. It further asserts that CZMA Federal Consistency Reviews by state agencies cannot be "harmonized" with ICCTA as applied to rail line maintenance and upgrades and, therefore, are preempted. Petition at 2-3.

Amtrak has a unique interest in the outcome of NCTD's petition that pertains to both the projects that have triggered the petition and the uninterrupted operation, improvement and expansion of Amtrak's National Network. NCTD's rail line is part of the route of Amtrak's *Pacific Surfliner*, a state-supported service along the San Luis Obispo-Los Angeles-San Diego rail corridor (LOSSAN Rail Corridor) that Amtrak operates in partnership with the LOSSAN Rail Corridor Agency. The *Pacific Surfliner* is Amtrak's busiest route outside of the Northeast Corridor, carrying nearly 2.7 million passengers in 2019.. Prior to temporary service reductions attributable to COVID-19, Amtrak operated 26 daily trains on the NCTD-owned portion of the route, on which passenger trains can travel at speeds up to 90 mph. And unfortunately, as the Petition lays out, trespassers are common in this region and have led to multiple tragic accidents, impairing the safety of Amtrak's operations.

Amtrak supports NCTD's efforts on the bluff stabilization and safety fencing projects, and the granting of its Petition that will enable it to undertake those projects without delay or impedance. Enhancing the safety of Amtrak's operations is paramount, and decreasing

trespasser incidents helps us meet this important objective. Allowing the rail carriers over which Amtrak operates to perform necessary maintenance activities is also essential to ensure safe, uninterrupted and reliable operations.

The outcome of this proceeding also has important implications for Amtrak's statutory mission to provide high quality service that is trip-time competitive with other transportation modes and for the statutory goals Congress has enacted for Amtrak, which include working with rail carriers such as NCTD to develop and improve intercity passenger rail service on rail corridors such as the LOSSAN Corridor. 49 U.S.C. 24101(b) and (c). Nearly 95% of Amtrak's 22,300-mile route network is on rail lines owned by rail carriers like NCTD over which the Board has jurisdiction pursuant to the ICCTA. Fulfillment of Amtrak's federal statutory directives to expand and improve intercity passenger rail service requires that these rail carriers be allowed to perform Amtrak- and publicly-funded construction activities necessary to improve, expand and enhance the safety of Amtrak's operations.

Indeed, this is not the first time that the Board has been called upon to address the scope of ICCTA preemption in conjunction with a project that would improve Amtrak's operations on the LOSSAN Corridor. In North San Diego County Transit Development Board- Petition for Declaratory Order, FD No. 34111 (STB served Aug. 21, 2002), the Board found that the ICCTA preempted provisions of the Coastal Act that prohibited NCTD from constructing a passing track to improve the reliability of Amtrak, commuter and freight train operations unless it obtained a permit from the locality in which the track would be constructed. For the reasons stated above, the Board should grant NCTD's petition and reach the same conclusion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'William Herrmann', with a stylized flourish at the end.

William Herrmann
VP Sr. Managing Deputy General Counsel
Amtrak

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served by electronic mail this 19th of October 2020 on the following:

Peter A. Pfohl
City of Del Mar
pap@sloverandloftus.com

Timothy J. Strafford
Association of American Railroads
tstrafford@aar.org

William C. Pate
City of Del Mar
wpate@dpmclaw.com

Jamee Jordan Patterson
California Coastal Commission
jamee.patterson@doj.ca.gov

Kristin Brinner
Surfrider Foundation, San Diego County
kristin@surfridersd.org

Shirli Fabbri Weiss and Laura Schaefer
ls@boyce-schaefer.com

Louise Warren
California Coastal Commission
Louise.Warren@coastal.ca.gov

Daniel Elliott
North County Transit District
danelliottiii@outlook.com

Jeffrey G. Sturgis
The Sturgis Family
jeffsturgis@me.com

Richard Kim

Richard Kim
Sr. Paralegal
National Railroad Passenger Corporation (Amtrak)