

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
March 29, 2021
Part of
Public Record

Finance Docket No. 36433

NORTH COUNTY TRANSIT DISTRICT
PETITION FOR DECLARATORY ORDER

STATUS REPORT

The North County Transit District ("NCTD") respectfully submits its status report as ordered by the Surface Transportation Board ("STB" or "Board") and respectfully moves the Board to continue to hold this matter in abeyance until December 31, 2021. The three key parties in this proceeding have been engaged in promising discussions regarding this dispute and believe further talks are warranted at this time to explore a resolution of the issues raised in this matter.

On August 28, 2020, NCTD filed a Verified Petition for Declaratory Order ("Petition") to eliminate uncertainty pursuant to the STB's authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. First, NCTD asked that the Board find that 49 U.S.C. § 10501(b) of the ICC Termination Act of 1995 ("ICCTA") preempts any attempts by the City of Del Mar ("Del Mar") and the California Coastal Commission ("Commission") to regulate NCTD's rail line maintenance and any other upgrading activities in its rail right-of-way pursuant to the state and local coastal permitting regime in California. Second, NCTD sought a declaratory order that an application of the Coastal Zone Management Act (CZMA) Federal Consistency Review by the Commission, when a federal

action is involved related to rail maintenance and upgrade projects in the NCTD right-of-way, could not possibly be "harmonized" with the ICCTA because this land use regulation of crucial rail work would directly interfere with and even defeat rail operations, thereby causing an irreconcilable conflict between these two (2) statutes.

On October 5, 2020, the Commission and Del Mar filed replies in opposition to the Petition. Both parties argued that the Board should reject NCTD's request for a declaratory order with respect to these preemption issues.

On October 26, 2020, NCTD moved the Board for leave to file a rebuttal and simultaneously filed the rebuttal. On October 29, 2020, the Commission objected to NCTD's filing of a rebuttal. On November 5, 2020, the City also objected to NCTD's filing of a rebuttal.

On November 6, 2020, NCTD filed a motion to hold this proceeding in abeyance, stating that it had recently engaged in constructive discussions with the City and the Commission and that those parties have agreed that they should engage in further discussions to attempt to resolve the matters at issue. On November 30, 2020, the Board issued its decision, noting that it favors the private resolution of disputes whenever possible. The Board granted NCTD's unopposed request and held this matter in abeyance until March 30, 2021. The Board also directed NCTD to file a status update by March 30, 2021.

Since this Board decision, NCTD has continued to have constructive discussions with the Commission and Del Mar about the matters at issue in this proceeding. The parties have agreed that they should engage in further talks to attempt to resolve these important issues and that the proceeding should be held in abeyance until December 31, 2021, while these discussions continue.

Consequently, NCTD, with the concurrence of the Commission and Del Mar, respectfully moves the STB to hold the above-captioned proceeding in abeyance until December 31, 2021, while these settlement discussions continue.

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March 29, 2021

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on March 29, 2021, I served a copy of this Status Report on counsel known to represent the parties of record by the most expedient method as follows:

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