

CALIFORNIA COASTAL COMMISSION

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Th10a

**CD-0001-21
(FHWA)**

SEPTEMBER 8, 2022

REVISED FINDINGS CORRESPONDENCE

Received between

8:00am, August 18, 2022 and 5:00pm, September 2, 2022

From: Brian Peoples <brian@trailnow.org>

Sent: Sunday, August 21, 2022 7:13 AM

To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Cc: Guy Preston <gpreston@sccrtc.org>; Grace Blakeslee <gblakeslee@sccrtc.org>; info@sccrtc.org; Manu Koenig <manu.koenig@santacruzcounty.us>; sbrown@cityofsantacruz.com; rlj12@comcast.net; Robertpquinn@gmail.com; greg.caput@co.santa-cruz.ca.us; Ryan Coonerty <ryan.coonerty@santacruzcounty.us>; Andy Schiffrin <Andy.Schiffrin@santacruzcounty.us>; openup@cats.ucsc.edu; Bruce McPherson <Bruce.McPherson@santacruzcounty.us>; Gine Johnson <Gine.Johnson@santacruzcounty.us>; Zach Friend <BDS022@co.santa-cruz.ca.us>; Shebreh Kalantari-Johnson <shebreh4santacruz@gmail.com>; 'jimmy.dutra@cityofwatsonville.org' <jimmy.dutra@cityofwatsonville.org>; eduardo.montesino@cityofwatsonville.org; ari.parker@cityofwatsonville.org; thekristenbrown@gmail.com; Bertrand, Jacques <jbertrand@ci.capitola.ca.us>

Subject: Public Comment on September 2022 Agenda Item Thursday 10a - CD-0001-21 (Federal Highway Administration, Santa Cruz Co.) Revised Findings.

California Coastal Commission,

The following is Trail Now response to September 2022 California Coastal Commission (CCC) CD-0001-21 (Federal Highway Administration, Santa Cruz Co.) to develop a 7.5-mile multi-use coastal trail extending along the RTC-owned railroad corridor from Davenport, CA to Wilder Ranch State Park.

According to CCC Condition 4.d (Armoring/Slope Reconstruction/Alternative Reassessment Plan), the Santa Cruz County Regional Transportation Commission (RTC) and Federal Highway Administration (FHWA) shall acknowledge:

- The new coastal armoring (seawall at Davenport Beach) required for a trail next to the railway is not be a long-term solution to coastal resiliency at Davenport Beach.
- RTC shall include a broader Davenport coastal resiliency project in its next update of its Regional Transportation Plan (RTP).
- RTC will seek funding for a future project that would address the impacts of the existing railroad embankment on the natural environment.
- The future project will be designed to address climate change, including sea-level rise.
- The future project will include the removal of the coastal armoring (seawall) and any necessary reconstruction of the rail and trail facilities adjacent to Davenport Beach.
- RTC shall submit an Alternative Reassessment Plan to the Executive Director within 6 (six) months of a triggering event, defined as the rail line is no longer being preserved for rail service to Davenport.

We believe this triggering event identified by Condition 4.d (Armoring/Slope Reconstruction/Alternative Reassessment Plan) has occurred since:

- There currently are no railroad operations from Santa Cruz to Davenport.
- Current railroad operator Progressive Rail has publicly informed RTC they have no intention of continuing freight services along the Santa Cruz Branchline.
- The RTC has no identified budget for maintaining the railroad operations to Davenport.
- The current condition of the railroad tracks is not capable of railroad operations.
- RTC has submitted forced abandonment request.
- RTC intends to implement federal railbanking process for the entire Santa Cruz Branchline to ensure the corridor remains as a publicly-owned transportation resource.

Therefore, RTC and FHWA should be required to immediately perform an Alternative Reassessment Plan that would construct the trail on the existing railroad bed with removal of tracks and result in the new coastal armoring (seawall) not being constructed.

Best regards,

Brian Peoples

Trail Now

Energy@Coastal

From: Barry Scott <barry_scott@sbcglobal.net>
Sent: Wednesday, August 31, 2022 12:13 PM
To: Energy@Coastal
Subject: Public Comment on September 2022 Agenda Item Thursday 10b - CD-0006-20 (National Park Service, Marin Co.)

Dear Commissioners,

We greatly appreciate your decision to permit coastal armoring at Davenport which will permit construction of the Coastal Rail Trail on the ocean side of the railroad, as well as prevent further risk to the Santa Cruz Branch Rail Line, which is an active rail line subject to use for recreational and passenger service, and which is protected by the federal Surface Transportation Board as a part of the federal freight rail network.

The Santa Cruz Regional Transportation Commission, SCCRTC, has committed to preservation of the railroad and is undertaking planning at this time to utilize the rail line for both freight and passenger rail service. See letter from SCCRTC to the California Transportation Commission to this effect here: <https://catc.ca.gov/-/media/ctc-media/documents/tab-46-4-4-letter-a11y.pdf>

Warm regards,

Barry Scott

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Davenport North Coast Association

Comment on Agenda Item 10(a), September 8, 2022

CD-0001-21 (Federal Highway Administration, Santa Cruz Co.) Revised Findings.

I am Noel Garin Bock, the chairperson of the Davenport North Coast Association (DNCA), the 50-year-old community-based organization, which coordinates between public and non-profit agencies and landowners, law enforcement, and emergency response officials and the community.

We previously testified at CCC hearing regarding our request to align the beach parking hours in Santa Cruz County with the same hours allowed in San Mateo County – as proposed by the Federal Highways Administration and the Regional Transportation Commission. At the December 2021 CCC meeting, it became clear from the remarks made by the coastal commissioners that they were unfamiliar with the unique topography of the Santa Cruz County North Coast Beaches. One commissioner suggested beaches should stay open 24/7 because illegal activities could be curtailed by law enforcement who could easily access the beaches. This is not the case on the north coast of Santa Cruz County where few beaches have improved access paths.

It is important to understand that from Davenport to Santa Cruz, a distance of about 9 miles, the beaches are not visible from Highway One due to railroad embankments. For 100 years, the railroads carried carloads of cement from Santa Cruz cement plant on the north side of Davenport to Santa Cruz. Because of the extreme weight of the freight, the railroad engineers filled in wooden trestles due to the huge weight of loaded trains. Union Pacific Railroad built rails atop the ramparts.



THE SAN VICENTE CREEK TRESTLE BEING FILLED IN, 1906.

When the State of California began straightening the coast highway in the 1930s, their engineers decided to follow along the inland side of the railroad ramparts. The

trestles block the beaches from public view along the highway creating “secret beaches” resulting in uncontrolled, unsafe, and criminal activities.



CURRENT PHOTO OF DAVENPORT BEACH AND RAILROAD; HIGHWAY 1 IS TO THE RIGHT OF RAILS.

Law Enforcement and First Responders have had a difficult time seeing and responding to incidents and emergencies because the beaches are hidden on the coastal side of the highway beyond the railroad tracks and ramparts. Therefore, there has been a long history of illegal campfires, commercial grade fireworks and drunken revelers leaving broken glass and trash due to the lack of visibility.

Night-time parking closure is the only sensible way to manage night-time misuse of these secluded beaches, according to County Sheriff, Jim Hart’s letter to the Coastal Commission.



SHERIFF HIKING DOWN TO DAVENPORT BEACH TO ROUST NIGHTIME PARTY GOERS

For this reason, DNCA strongly supports the RTC Rail Trail’s proposed 5 am to sunset hours of operation for the trail and parking areas, consistent with the open hours for the San Mateo State beaches. Further, as stated in our March 30, 2022 letter to the Commission (attached), we believe that in imposing Condition 3 the Commission made a major alteration to project scope and environmental impact.

DNCA board does not believe the last-minute the Addendum to Condition 3 adequately addresses the uncontrolled, risky, and illicit activities which occurs on north coast beaches when parking areas are open 24/7.

Davenport North Coast Association supports Santa Cruz County's Regional Transportation Commission's North Coast Rail Trail project as proposed but urges the Coastal Commission to close the beach parking areas, consistent with San Mateo beaches parking, from sunset to 5 am.

Thank you for your consideration,
Noel Garin Bock, DNCA Davenport/ North Coast Association

DAVENPORT/NORTH COAST ASSOCIATION
P.O. Box 251, Davenport, CA 95017 ngbock@att.net 831-423-3033

31 March 2022

California Coastal Commission
455 Market St, Suite 223
San Francisco, CA 94105-2219
eorfc@coastal.ca.gov

Re: Consistency Determination CD-0001-21 and the FANS decision

Dear Commissioners:

On November 15, 2021, the California Sixth Appellate District issued its decision in *Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission*, commonly referred to as the “FANS” case. A central holding of FANS was:

We determine that the Coastal Commission’s environmental review was incomplete at the time it approved Heritage’s coastal development permit application on November 8, 2017. This failure to complete the requisite environmental review before approving the application requires that the approval be vacated.

The California Supreme Court has subsequently rejected both the Commission’s request to hear an appeal of the FANS decision and its request for depublication of the decision.

FANS affirms a reasonable premise – that environmental review should precede action on a project; that Commissioners can only take informed action if the information is available.

On December 16, 2021, the Commission approved a federal consistency determination for the Santa Cruz North Coast Rail Trail and associated parking lots. On the recommendation of staff the Commission imposed, by a 5-4 vote, a condition (Condition 3) requiring unrestricted 24-hour use of the new parking lots and trails, overriding the project proponents’ plan to establish and enforce operational hours consistent with those on adjacent state and federal lands within the North Coast area of Santa Cruz County. Restricting against night-time use of the parking lots and trail was an integral project element, a fundamental assumption in the environmental review of the project and listed as a mitigation measure in FHWA’s FONSI prepared for its consistency submission.

Based on evidence of which they were aware, Condition 3 was opposed by local (Supervisor Ryan Coonerty), state (Senator John Laird) and federal (Congresswoman Anna Eshoo) elected officials, local law enforcement and first responders, and local experts familiar with the disproportionate negative impact of night-time use on sensitive species and habitats. Testimony highlighted impacts including injuries and accidents, hazards to first responders, disturbance of species and habitats with food waste, lights, noise, and explosives (both commercial-scale fireworks displays and large explosives tossed into stream-tunnels and ponds), and deposition of plastic and other wastes. (Staff comments at the hearing suggested that these are problems limited to the Davenport Beach, but evidence presented shows they are frequent in like degree at all of the area’s beaches which will be accessed from the Rail Trail and its parking lots.)

Although nominally a “condition of approval,” in effect Condition 3 represents a substantial change in project scope and impact. Mandating night-time access introduces an operational element to the project that was not a component of the project as reviewed under CEQA and NEPA or subject to consultation

pursuant to the Endangered Species Act. The DNCA letter of comment (December 10, 2021) made this point explicitly:

With Condition #3 as proposed by Coastal Commission staff, the amended project fails the consistency test by exacerbating impacts on sensitive habitats and ecosystems and undermining opportunities for enforcement against night-time use of beaches and bluffs. Acceptance of Condition #3 would override current parking restrictions, replacing parking now legally available 6 am to 10 pm with unrestricted parking. **The staff report fails to acknowledge or evaluate the potential impacts of this proposed decision – in effect a substantial change in the project - on sensitive habitats and ecosystems, on public safety, and on the safety of law enforcement and emergency medical first responders.**

Further, in oral testimony, a DNCA representative pointed out the following:

Condition 3 would substantially alter the scope and impact of the project. The environmental impact of this change has not been analyzed. Nor does the staff report consider feasible mitigation measures. Adaptive management - a pledge to consider doing something in the future - is not mitigation.

...

We know that the Commission has a certified regulatory program that substitutes for much of CEQA procedure. **But we also know that the Commission is required to meet the substantive requirements of that law.** (Eaton testimony.)

DNCA also pointed out that Condition 3 is at odds with BLM's adopted Management Plan for the Cotoni-Coast Dairies unit of the National Monument and with existing State Park plans and policies for management of the beaches and bluffs adjoining the Monument and to be connected to it by a pedestrian/bicycle overpass of Highway 1. BLM's plan closes the trails and parking areas at night in the interest of managing fire risk and public safety and of minimizing impacts to sensitive species and habitat. We argued that with Condition 3, the project would undermine BLM's management plan and amplify the kinds of risk - including wildfire - that BLM's plan seeks to avoid. "This impact," we stated, "requires analysis." And we concluded – and continue to believe - that "the record before you does not support approving the project with Condition 3."

In short, the Commission ignored extensive public and expert testimony against imposing Condition 3 and failed to carry out its own analysis of the environmental impacts of Condition 3, including how those impacts might be mitigated. As noted above, FHWA's FONSI, prepared for the consistency submission, establishes the project's restriction against night-time use as a mitigation measure. As in the decision challenged by FANS, the Commission acted on Condition 3 on the Rail Trail Project without analysis of the impact on the environment and public safety or on existing plans and policies, without consideration of less impactful alternatives, and without any evidence to support the change. FANS invalidates the Commission's action in this matter.

We understand from Commission staff that the Commission's consistency determination has not been transmitted in final form to FHWA and RTC and that the matter will come back to the Commission for final action. We believe, in light of FANS, that the Commission cannot lawfully act to impose Condition 3 without additional environmental analysis and review. To comply with FANS, the Commission should reconsider the imposition of Condition 3 with sufficient additional analysis to provide the Commissioners with a CEQA-equivalent understanding of the issues raised by DNCA and other parties.

We respectfully request that the Commission provide DNCA and other interested parties with advance notice of the rehearing of the Rail Trail consistency determination and with sufficient time to review and to comment on any additional analysis developed by staff related to Condition 3.

Sincerely,

A handwritten signature in blue ink, appearing to read "MREaton", with a horizontal line extending to the right.

Michael R. Eaton
Board Member, Davenport North Coast Association
Email: michaelreaton@fastmail.com

Cc: Congresswoman Anna Eshoo
Congressman Jimmy Panetta
State Senator John Laird
California Assembly Member Mark Stone
Supervisor Ryan Coonerty, Santa Cruz County
Ben Blom, BLM Area Director
Chris Spohrer, California State Parks
Grace Blakeslee, Regional Transportation Commission
Dustin Robbins, FHWA
Friends of the North Coast
David Kaiser and Kerry Kehoe, NOAA/OCM