

**CALIFORNIA COASTAL COMMISSION**

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# Th10a

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

**SEPTEMBER 8, 2022**

**REVISED FINDINGS CORRESPONDENCE**

**(RECEIVED AFTER 5PM ON**

**SEPTEMBER 2, 2022)**

# FRIENDS OF THE NORTH COAST

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ITEM Th 10.a

September 5, 2022

California Coastal Commission  
455 Market St, Suite 223  
San Francisco, CA 94105-2219  
[eorfc@coastal.ca.gov](mailto:eorfc@coastal.ca.gov)

**Re: Item 10.a Thursday September 8, 2022**  
**Consistency Determination CD-0001-21 Revised Findings**  
**Proposal to Enable Compliance with *FANS* Court Ruling without Delaying Project**

Dear Commissioners:

The current proposed action by the Coastal Commission will violate the holding of the *FANS* Court Ruling earlier this year because the Federal Proposal before you includes nighttime closure and there has been no environmental review of the impacts of requiring 24/7 access instead (on a 5-4 vote).<sup>1</sup> There is no desire to delay this Federal Consistency Concurrence, however, it would be counter-productive to force local community organizations to consider their legal remedies. Therefore, **Friends of the North Coast (FONC) proposes the below “win-win” italicized language change to Condition 3** at the bottom of page 10 of the Staff Report on Revised Findings. Underlining represents a Staff addition to the previous Staff recommendations, and strikeovers a deletion proposed by FONC.

Condition 3. **Closure Hours.** The public shall have access to the North Coast Trail (MBSST Segment 5: Northern Reach), including all associated parking lots, without restriction of hours *if at least three years after Trail opening, after consideration of annual reports commencing October 1, 2023 analyzing the baseline and impacts on the environment and public safety, the Coastal Commission finds sufficient evidence to support this change to the Federal Project. The Commission’s finding shall occur after a noticed public hearing and be based on its determination that ~~if increased~~ nuisance, vandalism, or other problematic activities did not emerge as a significant problem associated with the presence of the Trail, the activities can be documented, and FHWA could propose additional measures to address this issue, which would be the subject of any necessary, supplemental consistency review.*

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<sup>1</sup> All as pointed out by Davenport North Coast Association in its letters dated December 10, 2021, March 31, 2022 and September 2, 2022, its testimony during the 12-16-2021 Public Hearing, and by Friends of the North Coast in its letters dated April 4, 2022 and this letter, all of which are entitled to be part of the Administrative Record and hereby requested to be included.

This approach would be similar to that taken in Revised Condition 1.h requiring annual reports for at least five years re wetlands impacts. It also takes into account the testimony of FHWA representative Preston that Rail Trail construction would possibly commence in 2023 or 2024 and take 12 to 15 months to complete (4:36 of the video archive of the 12-16-2022 meeting).

This approach would also dovetail with the North Coast Facilities & Management Plan contracted for and commenced under the auspices of the North Coast Multi-Agency Working Group which could likely contribute to developing information relevant to the annual reports.

Furthermore, the action of the Commission did not limit future consideration of this issue to measures proposed by the FHWA so we have removed that phraseology.

The Staff Report for the Revised Findings states that:

“Staff has not seen a specific argument as to why a night-time closure of the Davenport parking lot or portions of the trail would eliminate the nuisance issues.”

First of all, under the *FANS* case, it is the legal obligation of the Coastal Commission to investigate the impacts of opening the Rail-Trail at night as to the nuisance issues indisputably demonstrated in the Administrative Record. No effort whatsoever has been made by the Commission to comply. This legal obligation is undeniable in the face of the Sheriff’s professional judgment that unlimited hours of access after dark are antithetical to the public safety in light of:

specific criminal activity the [Sheriff’s] department has experienced including assaults, unlawful fires, commercial grade fireworks, alcohol related crimes, and alcohol related deaths such as drownings [and that] [a]side from crime, significant impacts continue to occur from trash and human waste. In addition, other destructive behavior continues to occur such as graffiti on the cliffs, **which is done predominantly at night.**

FHWA Consistency Determination p.26, emphasis added.

In any event, the evidence in the record makes clear that nighttime closure as to the expansive public lands to be served by the Rail-Trail is the rule. By opening the Trail itself to nighttime use the Commission will create confusion and make violation of the rule on the adjacent public lands more common, including prohibitions on overnight camping, with more impacts on the wildlife and other biota which depend on the darkness and quiet of nighttime. It will also make requests for compliance more contentious and difficult. Further, the Rail-Trail will make it attractive for more people to more frequently use the adjacent public and private lands for the harmful activities identified by the Sheriff due to the bluffs and trestles creating

hidden beaches. And the Rail-Trail makes “get-aways” more efficient by bicycle if enforcement efforts are made and if nighttime use of the Rail-Trail is a violation it is easier to prove than connecting an offender to commercial grade fireworks at the foot of the bluffs.

For those reasons and others, investigation and evaluation and a report of the impacts are legally prerequisite to the Commission deleting the nighttime closure included in the FHWA Project Description and upon which its environmental review was based making such closure a mitigation measure.

Pages 80-81 of the Staff Report on Revised Findings identifies some situations in which the Commission has allowed some nighttime closure.

Lastly, we note that the Staff Report erroneously describes the Commission as having conditionally concurred on December 16, 2021. Commission staff has confirmed that final action on the concurrence had to come back to the Commission, which is the purpose of the upcoming September 8, 2022 Commission item.<sup>2</sup>

Respectfully,  
Friends of the North Coast  
Jonathan Wittwer  
Jonathan Wittwer, President

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Davenport North Coast Association

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<sup>2</sup> See DNCA letter dated March 31, 2022, p.3



September 7, 2022

**California Coastal Commission**

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**Re: Support for CD-0001-21 (Federal Highway Administration, Santa Cruz Co.)  
Revised Findings - Item Th10a on your 9/9/22 Agenda.**

Dear California Coastal Commissioners:

The Santa Cruz County Friends of the Rail & Trail (FORT) urges you to approve the proposed revisions, additions and modifications to the previous report in support of the revised findings and your action to concur with the FHWA's consistency determination for the North Coast Rail Trail project.

Since FORT submitted a prior letter of support on December 10th, 2021 (see attached) and since the prior public hearing on December 16th, 2021, two important events relevant to this project and the Santa Cruz Branch Rail Line have occurred.

First, on June 7th, 2022, 73% of the voters in Santa Cruz County, soundly rejected Greenway's Measure D which called for replacing the rail line with a trail only. This landslide defeat sent a clear message that the people of Santa Cruz County want to keep the rail line in place for future use and complete the rail trail alongside, not in place of, the existing tracks.

Second, on August 1st, 2022, the Santa Cruz County Regional Transportation Commission unanimously voted to move forward with using the rail line when they authorized staff to seek proposals for the engineering services necessary to complete the preliminary design and environmental documentation for future passenger rail service and, for the remaining segments of the Coastal Rail Trail between Aptos and Watsonville.

Thank you for your thoughtful consideration of FORT's comments.

Respectfully submitted,

Mark Mesiti-Miller  
FORT Board Member  
Civic Engagement Committee Chair

Attachment: File named "Letter to CCC from FORT - N Coast Rail Trail - 2021 12 10 .pdf"

Copy: Santa Cruz County Regional Transportation Commission  
FORT Board  
FORT Civic Engagement Committee