



July 24, 2024

To: California Coastal Commission

Delivered via email to Dr. Caryl Hart, Chair

cc: Kate Huckelbridge, Executive Director

Karl Schwing, Deputy Director, South Coast District

Louise Warren, Chief Counsel

Re: Shoreline Armoring by OCTA/SCRRA Violates the Coastal Act and the Public Trust Doctrine

Dear Honorable Chair and Commissioners:

The Surfrider Foundation ("Surfrider") is a grassroots environmental nonprofit organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people. On behalf of Surfrider Foundation's South Orange County Chapter, our 18 other local chapters in the state, and over 250,000 supporters and members nationwide, we submit the following requests for the protection of Public Trust Lands, public access and coastal ecosystems in San Clemente that are increasingly degraded by shoreline armoring of the railroad in the Los Angeles-San Diego-San Luis Obispo ("LOSSAN") corridor.

Surfrider is gravely concerned with the impacts of both existing and proposed coastal armoring on the south San Clemente shoreline. The Southern California Regional Rail Authority ("SCRRA") and Orange County Transportation Authority's ("OCTA") evasion of necessary environmental review under improper emergency permits has led to irreversible damage to public trust resources. OCTA is now proposing additional armoring, including along a state beach park, and again is seeking to evade necessary environmental review. **We therefore strongly urge the California Coastal Commission ("Commission") to require OCTA/SCRRA to comply with due process, the California Environmental Quality Act ("CEQA") and the California Coastal Act and complete an Environmental Impact Report or its equivalent with the opportunity for public review and comment in order to evaluate the significant harms and alternatives to coastal armoring.**

I. The Commission Must Ensure that Coastal Development Conforms with the Goals and Policies of the Coastal Act

After witnessing decades of assaults on our coastline, Californians called upon the state to protect beach access and prevent destruction of coastal ecosystems in the 1970s, a movement

that inspired the Coastal Act of 1976 and the preceding Coastal Conservation Initiative (Prop 20). California coastal law requires strong protections for public access to the coast and for the preservation of coastal lands and waters.¹ California has a legitimate interest in protecting and maintaining its beaches as recreational resources. A core principle of the Coastal Act is to maximize public access to and along the coast as well as recreational opportunities in the coastal zone.² As discussed below, OCTA/SCCRA falsely claimed that its 2021-2022 beach armoring would not impact public access and would only have minimal and temporary impacts on recreational opportunities and coastal ecosystems.³ In reality, OCTA/SCCRA has permanently blocked public lateral access to an extremely popular state park and is responsible for highly significant impacts to coastal recreational opportunities and ecosystems. Instead of reversing these harms, OCTA/SCCRA is now planning to further impede the public's ability to access and enjoy yet *another* very popular state park and again permanently damage the recreational, habitat and scenic value of immensely important public trust resources.

The Coastal Commission has a duty to the public to ensure that the policies of the Coastal Act are upheld in the face of increasing pressures on the coastal zone. These pressures include competing demands for the shoreline such as the LOSSAN rail line that runs along the San Clemente coast. The Coastal Act must be liberally construed to accomplish its purposes and objectives to balance the rights of the public trust with competing pressures, and any exception to the statute's main purpose must be strictly construed.⁴ The rail line may pre-date the enactment of the Coastal Act, but this does not eliminate the Commission's duty to uphold the Act's purposes and objectives. Any proposed development in the coastal zone must be strictly scrutinized for conformance to the Act's main purpose of protecting coastal resources from further degradation,⁵ particularly highly scenic areas such as this stretch of coastline,⁶ and maximizing public access and recreation opportunities.⁷ This includes any efforts to shore up the rail line at the expense of the beach and coastal habitat. The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the Coastal Act.⁸ The gravity of what is at stake cannot be overstated. If OCTA/SCCRA is allowed to move forward with their planned armoring, the public will lose one of the most popular beaches and last easily accessible stretch of scenic undeveloped coastline in Southern California.

A. OCTA/SCCRA's past and proposed activities violate the goals and policies of the Coastal Act

¹ See, e.g., Chapter 3 policies of the California Coastal Act, including Cal. Pub. Res. Code § 30210, 30211.

² Cal. Pub. Res. Code § 30001.5(c)

³ HDR. (2022, February 25). Resubmittal: Coastal Development Permit Application for Railroad Emergency Stabilization Project – San Clemente Orange Sub MP 206.85. Letter to Ms. Shannon Vaughn, Coastal Program Manager, California Coastal Commission, South Coast District Office, Long Beach, California. (Page 7). <https://tinyurl.com/bd6drv4b>

⁴ Cal. Pub. Res. Code § 30009

⁵ Cal. Pub. Res. Code § 30253 (b) (New development must not create or contribute to erosion or destruction of the site or surrounding area)

⁶ Cal. Pub. Res. Code § 30251

⁷ Cal. Pub. Res. Code § 30210

⁸ Cal. Pub. Res. Code § 30330

In its Coastal Development Permit (“CDP”) Application in 2022, OCTA/SCRRA claims that its placement of over 27,000 tons of rock riprap on south San Clemente beaches from 2021-2022 had little to no impact on public access and recreation.⁹ However, prior to placement of the additional riprap in south San Clemente, the public was able to walk the entirety of the beach from the San Clemente pier south to “Trestles,” the nickname given to what is widely considered the best year-round surf break in the country. This scenic ocean stroll is no longer possible due to the large boulders now occupying the entirety of the Cyprus Shores beach and Cotton’s Point and impeding access to the rest of Trestles and San Onofre State Beach. This is a highly significant impediment to lateral coastal access to extremely popular surf spots, sandy beach recreation areas, wildlife viewing, and open space. Members of the public could previously take free public transit via the San Clemente Trolley to various points north, including Calafia State Beach Park and the San Clemente pier, and easily access one of the premiere strips of coastal habitat and open space in the state, that also provides world class surfing and other recreational opportunities. In addition, the public could previously easily access Trestles and San Onofre State Beach by walking south from one of the most popular campgrounds in the state, with 160 affordable ocean-front campsites at San Clemente State Park. These opportunities are no longer possible as a direct result of OCTA/SCRRA’s placement of riprap on the beach and intertidal zone, in direct violation of the Coastal Act and the California Constitution.¹⁰ See Addendum attachment for photographic evidence.

In addition, world class surfing opportunities at Cotton’s, a break that is part of Trestles fame, have been degraded and diminished due to refraction of the waves off the rock riprap that compromises the natural wave shape and direction.¹¹ These large boulders have also made it more difficult to access the waves and more dangerous to surf them, particularly at higher tides with submerged and potentially loose boulders in the surf zone. The contractor hired to place the riprap states that it was a “temporary mitigation measure” and admits that it was not designed for coastal conditions, including waves and storms, and noting that riprap has been observed to move 5-10 feet vertically downward and 10-30 feet horizontally seaward during single storms.¹² The danger posed by these boulders and loss of surfing opportunities was not considered in OCTA/SCRRA’s after-the-fact CDP application.¹³ The Coastal Act requires that before the Commission can authorize an emergency action, the Commission must give public notice of the proposed action and make specific findings about the emergency and the scope of proposed work, including impacts to recreation and public access.¹⁴ Surfrider and other concerned stakeholders were not given an opportunity to document the impacts this “temporary mitigation measure” would have on the waves. We therefore request that the

⁹ See OCTA’s Coastal Development Permit Application Package, dated February 25, 2022.

¹⁰ Section IV of Article X of the California Constitution, “no individual, corporation, or partnership can prevent public access to navigable waters in California for public purposes.”

¹¹ See L. Benedet et al., *Impacts of Coastal Engineering Projects on the Surfability of Sandy Beaches*, 75 Shore & Beach 3, 13-15 (2007).

¹² See OCTA’s Coastal Development Permit Application Package, dated February 25, 2022.

¹³ Id.

¹⁴ Cal.Code Regs., tit. 14, §13142

Commission require the removal of this riprap and restoration of this world class surf break, as required by the Coastal Act.¹⁵

In its 2022 CDP application, OCTA/SCRRA also falsely claims that this armoring had no impact on sensitive habitat or vulnerable species, including birds, reptiles, fish, and marine invertebrates. The loss of intertidal sandy beach and increased erosion caused by armoring negatively impacted and continues to degrade habitat for numerous species, including the federally and state protected California least tern, Coastal California gnatcatcher, southwestern willow flycatcher, Western Snowy Plover, Southern steelhead, tidewater goby, black abalone, and white abalone, in violation of the Coastal Act.¹⁶ The placement of riprap at Cotton's Point and Cyprus Shores causes wave energy refraction, preventing the natural flow of sand and sediment accumulation on the beach, starving adjacent beaches and impacting sensitive habitats including the San Mateo and San Onofre watersheds and associated natural communities. The San Mateo watershed is the last natural wildlife corridor connecting the Cleveland National Forest to the ocean. In addition, this watershed is home to Panhe, or "place at the water," which the Acjachemen people consider to be their most sacred site.¹⁷

The language of Coastal Act section 30240(a) is simple and direct: "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, *and* only uses dependent on those resources shall be allowed within those areas."¹⁸ The California Court of Appeals determined that the statute unambiguously establishes two restrictions on development in habitat areas: (1) there can be no significant disruption of habitat values; and (2) only resource-dependent uses are allowed.¹⁹ The railroad is not a resource-dependent use and it is significantly disrupting Environmentally Sensitive Habitat Areas (ESHA), in violation of the Coastal Act.

The emergency temporary permits have now expired, and the Cyprus Shores seawall built in 2022 remains unpermitted and unmitigated, in violation of the Coastal Act.²⁰ The railroad is not a coastal-dependent use and the seawall exacerbates erosion and causes adverse impacts on local shoreline sand supply, also in violation of the Coastal Act. This stretch of beach continues to suffer adverse impacts to sand supply and public access from this unpermitted development and OCTA/SCRRA is now proposing to further armor the stretch of beach north of Cyprus Shores. OCTA announced in February 2024 its plans to extend the riprap revetment north for 2/3 of a mile through San Clemente State Beach to the very popular adjacent Calafia State Beach Park, despite recognizing in its Initial Assessment that the majority of this stretch of beach is "stable."²¹ This armoring would span fifty feet wide and effectively eliminate the sandy

¹⁵ Cal. Pub. Res. Code § 30220 (Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.)

¹⁶ Cal. Pub. Res. Code § 30230, 30231

¹⁷ <https://sacredland.org/panhe/>

¹⁸ Cal. Pub. Res. Code § 30240(a) (Italics added).

¹⁹ *McAllister v. California Coastal Com.*, 169 Cal. App. 4th 912, 928 (2008), *as modified* (Jan. 20, 2009)

²⁰ Cal. Pub. Res. Code § 30235

²¹ See OCTA Coastal Rail Resiliency Study, Initial Assessment, January 2024. (page 31).

<https://www.octa.net/pdf/CoastalRailResiliencyStudyInitialAssessment.pdf>

beach and coastal dunes at San Clemente State Beach. A California State Park since 1933, “State Beach” is one of the most popular beaches in California, providing safe refuge for many people from the increasingly oppressive and deadly inland heat and providing increasingly rare affordable overnight coastal lodging, with 160 campsites. The campground includes a coastal path with direct access to the beloved State Beach. If allowed to proceed, the public would lose access to an essential heat refuge and priceless open space and recreational opportunities, including enjoyment of these treasured sandy beaches and surf breaks, in violation of the Coastal Act.²² State Beach is an important surfing area with ample existing parking and easy access to the waves. The adjacent Calafia Beach Park is also an extremely popular beach with ample parking, restrooms and other amenities and easy access to the beach. The proposed armoring will result in loss of this popular surfing area and beaches used by both residents and visitors from around the world, violating the Coastal Act’s mandate to protect oceanfront land for recreational use²³ and to protect lower cost visitor and recreational facilities.²⁴ The proposed armoring will also violate the Coastal Act’s prohibition against development in areas adjacent to ESHA and parks and recreation areas which would significantly degrade those areas, and the requirement that any development shall be compatible with the continuance of those habitat and recreation areas.²⁵

The proposed armoring would also destroy ESHA for threatened species,²⁶ in violation of the Coastal Act. The public has long enjoyed the annual grunion run at State Beach, but the proposed armoring would destroy the sandy beach habitat necessary for the grunion to spawn. According to the California Department of Fish and Wildlife, loss of spawning habitat is the most critical threat to grunion populations.²⁷ The armoring would also destroy established coastal dune habitat with native plant vegetation. This vegetation provides important habitat for birds, reptiles, pollinators and other protected species, including the western monarch butterfly, whose population has declined more than 95% in recent decades. San Clemente State Beach is an essential overwintering site for this endangered population and the coastal dunes’ native vegetation provide critical nectar sources.²⁸ Coastal dunes are considered ESHA and must be protected under Coastal Act Section 30240.

B. Full Environmental Review is Necessary to Properly Evaluate the Potential Harms as well as the Alternatives to Armoring

OCTA/SCRRA must comply with the procedural requirements of the Coastal Act and CEQA. The requirements for public notice and opportunity for review ensure that the public’s due process rights are upheld.²⁹ The requirement to study and document potential environmental harm

²² Cal. Pub. Res. Code § 30221 (Oceanfront land suitable for recreational use shall be protected for recreational use)

²³ Cal. Pub. Res. Code §§ 30220, 30221

²⁴ Cal. Pub. Res. Code § 30213

²⁵ Cal. Pub. Res. Code § 30240(b)

²⁶ <https://www.inaturalist.org/places/san-clemente-state-beach#threatened=1>

²⁷ <https://wildlife.ca.gov/Fishing/Ocean/Grunion>

²⁸ <https://westernmonarchtrail.org/>

²⁹ See *Pac. Shores Prop. Owners Assn. v. Dep’t of Fish & Wildlife*, 244 Cal. App. 4th 12, 29 (2016).

allows regulators and the public to make informed decisions.³⁰ OCTA/SCRRA evaded these procedural safeguards in 2021 and 2022 through a series of emergency permits, claiming that the impacts were minimal and temporary. These misrepresentations were not exposed because proper environmental review was not conducted and the public did not have the opportunity to weigh in and oppose these false claims. As a result, the public has lost irreplaceable recreational opportunities and coastal access and habitat.

Further, OCTA/SCRRA failed to complete the reporting requirements outlined in the temporary emergency permits within the required timeframes.³¹ In addition, OCTA/SCRRA exceeded the parameters of the work authorized by the emergency permits, with approximately 1,200 feet of unpermitted shoreline armoring along south San Clemente's coastline and the unpermitted use of heavy machinery to augment the Calafia Beach Park revetment. This unauthorized work only came to light due to the diligence of the local group Save Our Beaches and the evidence they submitted to Coastal Commission staff. This unpermitted armoring has increased erosion of adjacent and neighboring sand beaches and infringed on the public's Constitutional and statutory right to access public trust lands, as stated in the ensuing letter from Coastal Commission enforcement staff.³² This ongoing trespass and taking of public trust lands is causing direct harm to the public and the coastal ecosystems the Commission is tasked with protecting.

The Coastal Act provides: "If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist."³³ Given the ongoing harm and unpermitted status of the armoring completed in 2021-2022, a cease and desist order should be issued ordering the removal of the unpermitted riprap.

Emergency permits are just that--valid only for an emergency.³⁴ The Commission's regulations authorize the Commission's executive director to grant an emergency permit to allow development only when an emergency exists that requires action more quickly than could be permitted by the procedures for ordinary Commission coastal development permits, and the work is consistent with the Coastal Act.³⁵ Neither of those conditions are met here. OCTA/SCRRA has been on notice for decades that this stretch of rail line was in jeopardy due to rising sea levels and coastal erosion, yet has chosen a reactive approach rather than proactively

³⁰ Cal.Code Regs., tit. 14, § 15002

³¹ See Response to Notice of Incomplete Application, dated August 24, 2022.

³² See Letter from Spenser Sayre, South Coast District Enforcement (Nov. 17, 2023)

³³ Cal. Pub. Res. Code § 30810(a); *11 Lagunita, LLC v. California Coastal Comm'n*, 58 Cal. App. 5th 904, 921, 273 Cal. Rptr. 3d 158, 169 (2020).

³⁴ See *Pac. Shores Prop. Owners Assn. v. Dep't of Fish & Wildlife*, 244 Cal. App. 4th 12, 40 (2016).

³⁵ Cal.Code Regs., tit. 14, § 13009

taking action to remove this stretch of rail line from the beach.³⁶ This pattern of mismanagement and intransigence cannot be rewarded.

In 2003, SCCRA applied for and received emergency authorization for this same stretch of coastline to augment its existing revetment due to erosion concerns. When the Commission reluctantly granted that authorization, noting that they doubted the true existence of an emergency, they also included various conditions to be met to mitigate impacts, including the need to find a long-term solution to this conundrum, such as removing the revetment and implementing an ongoing sand nourishment program or relocating the rail line inland. Surfrider submitted comments in that 2003 matter, pointing out that even then they had long been raising concerns and protesting SCCRA's track maintenance practices. Those concerns are the same as those expressed today, 21 years later, including but not limited to: the expansion of the armoring over time and its encroachment on public trust lands, the taking of public trust lands and lack of public notice, the increase in erosion caused by the larger footprint of the revetment, the harm to the public caused by impeded beach access, and the abuse of the emergency permitting system.³⁷ Despite these warnings, OCTA chose not to pursue relocation as an alternative presented in the 2004 LOSSAN Programmatic Environmental Impact Report/Environmental Impact Statement.³⁸ More recently, in its 2021 Defense Against Climate Change Report, OCTA again opted for increased armoring as its adaptation method of choice, ignoring the science and the unavoidable conclusion that the tracks must be removed from the beach if the beach is to survive.³⁹ These actions also contradict the Ocean Protection Council's Sea Level Rise Guidance and Strategic Plan to Protect California's Coast and Ocean.⁴⁰

Clearly, OCTA/SCCRA has had ample notice and opportunity to address this claimed "emergency" yet has repeatedly failed to take proactive measures to relocate this stretch of rail. The Commission must not continue to allow the evasion of procedural safeguards and resulting harm to our beaches and public trust lands. Given the magnitude of the loss and irreparable harm should the proposed armoring move forward, the Commission must require a full Environmental Impact Report ("EIR") or similar environmental review, complete with an in-depth alternatives analysis, in order to provide ample opportunity for the public to review and comment. An EIR or equivalent environmental review is essential to properly consider the purpose and need of the project, the scope of the harm and the full range of feasible and less environmentally damaging alternatives, including retiring and removing this stretch of railroad, and instead utilizing alternative means of transporting passengers and freight that do not destroy priceless public trust resources. A coastal development permit application hearing must be agendized at the Coastal Commission to allow sufficient opportunity for all concerned stakeholders to participate. This may require a special hearing, such as was necessary to

³⁶ See [2003 Draft Strategic Plan LOSSAN Corridor](#) (discussing need to relocate away from the coast in Del Mar and San Clemente).

³⁷ See OCTA/SCCRA Application Status Letter and Attachment (Apr 19, 2023)

³⁸ See OC Rail Defense Against Climate Change Plan (2021).

³⁹ *Id.*

⁴⁰ <https://opc.ca.gov/>

accommodate the thousands of concerned stakeholders at the 2008 Coastal Commission hearing to determine whether to allow a toll road through San Onofre State Beach.⁴¹

II. The Commission Must Ensure that Coastal Development Does Not Destroy Public Trust Resources

It is well-established that the state owns all lands below the ordinary high tide line and holds those lands, including the beach and submerged waters, in trust and for the benefit of the public.⁴² As the United States Supreme Court announced in the lodestar case *Illinois Central*, the state may not abdicate control of these lands and waters and must preserve them for the use of the public. The Court specifically determined that the state cannot place control of these lands and waters in the hands of a railroad, for the limited purpose of “transportation of passengers and freight.”⁴³ Additionally, any grant of use of these lands and waters is revocable at any time by the state.⁴⁴

The OCTA/SCRRRA rail line is not a public trust resource and may not interfere with the public’s right to the preservation and enjoyment of tidelands “. . . in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.”⁴⁵ The Commission has a duty to consider how the use of non-trust resources will affect public trust resources.⁴⁶ The public trust must be protected “whenever feasible” and the Commission must not alienate public trust lands for the limited purpose of “the transportation of passengers and freight.”⁴⁷ In the report entitled “Protecting Shoreline Resources in the Face of Sea Level Rise”, Dr. Charles Lester notes the Commission’s affirmative duty to protect the public trust, citing multiple examples where the affirmative duties of the public trust doctrine are embedded in state law. Ultimately, the report confirms:

“The California Coastal Act generally embodies many of the values protected by California’s public trust doctrine. The CCC must protect maximum shoreline public access and recreation, including lower-cost facilities and public recreational and water-oriented activities; and ensure that development is compatible with the continuance of recreation areas, such as tidelands. It must maintain, enhance and restore marine resources and protect sensitive shoreline habitats and natural processes. The agency

⁴¹ An [online petition](#) to stop any additional hard armoring of San Clemente’s coast has already garnered over 11,000 signatures.

⁴² Cal. Civ. Code § 670; *People ex inf. Webb v. California Fish Co.*, 166 Cal. 576, 584 (1913); *Marks v. Whitney*, 6 Cal. 3d 251, 259 (1971).

⁴³ *Illinois Central Railroad v. Illinois*, 146 U.S. 454, 460 (1892).

⁴⁴ *Id.* at 455.

⁴⁵ *Marks v. Whitney*, 6 Cal. 3d at 259-60; see also *City of Berkeley v. Superior Court*, 26 Cal. 3d 515, 521 (1980) (holding that public trust uses include the right to “hunt, bathe or swim, and the right to preserve the tidelands in their natural state as ecological units”); *Nat’l Audubon Soc’y v. Superior Court*, 33 Cal. 3d 419, 435 (1983) (concluding that protecting recreational and ecological values and uses, scenic views of a waterbody and its shores, and wildlife, are among the purposes of the public trust doctrine).

⁴⁶ See Pub. Res. Code § 30211; *Nat’l Audubon Soc’y*, 33 Cal. 3d at 435-37 (1983).

⁴⁷ *Nat’l Audubon Soc’y*, 33 Cal. 3d at 446; *City of Berkeley*, 26 Cal. 3d at 521.

also must protect the economic, commercial, and recreational importance of fishing activities, and prioritize visitor- serving commercial recreation over private residential development or general commercial and industrial development. Scenic resources must be protected, including by minimizing the alteration of natural landforms, such as beaches.”

As such, the Commission cannot simply subordinate the public trust protections to appease OCTA and railroad vested interests.

Public trust stewardship mandates allowance of public access to public trust resources.⁴⁸ The proposed armoring of State Beach will eliminate not just vertical and horizontal beach access, but the public trust resource itself. This curtailment of public beach access rights will also infringe on the right to coastal access enshrined in the California Constitution Section X, Article IV and the abdication of stewardship will violate the public trust doctrine. The magnitude and irreversibility of the harm to public trust lands and waters dictate that the Commission deny the proposed armoring.

A. Proposed Mitigation is not an Adequate Remedy

The taking of our public trust lands cannot be remedied by in-lieu fees or inconsistent and insufficient sand replacement. A one-time sand placement will not come anywhere close to offsetting the decades of armoring, if its left in place. Prior sand placements in San Clemente in the early 2010s with 251,0000 cubic yards was quickly washed away within a few storm cycles, wasting millions of tax-payer dollars.⁴⁹ OCTA/SCRRRA cannot create a new San Clemente State Beach once it is destroyed. The complexity and diversity of natural systems that have evolved over millennia, both living and geologic, cannot be recreated. An in-lieu fee is completely inadequate mitigation for the loss of a priceless beach. One-time or intermittent sand replacement is not going to restore Cyprus Shores and Cotton’s while the riprap remains in place. The northern sand transport that occurred during late summer and early fall south swells that previously naturally rebuilt the beach at Cotton’s and Cyprus Shores is now blocked, starving these beaches and adjacent beaches of naturally occurring sand.

A recent study from UC Irvine researchers notes that in the absence of coastal armoring, beaches along the Camp Pendleton and San Clemente coast will have a tendency to widen in the presence of a sand supply, pointing to the potential for effective beach nourishment and living shoreline projects.⁵⁰ Moreover, this suggests that recent trends of beach loss over this stretch of the coast are likely driven by the disruption of sediment supplies from streams and cliff erosion.⁵¹ It should be noted that the railroad tracks and associated hard armoring act as a barrier to the natural sediment supply from eroding coastal sandstone bluffs and seasonal

⁴⁸ See *United States v. Milner*, 583 F.3d 1174 (9th Cir. 2009); *Leslie Salt Co. v. Froehlke*, 578 F.2d 742 (9th Cir. 1978).

⁴⁹ California Coastal Commission. Staff Report for Consistency Determination CD-029-11. <https://documents.coastal.ca.gov/reports/2011/11/W6b-11-2011.pdf>

⁵⁰ <https://www.sciencedirect.com/science/article/pii/S0378383924000218>

⁵¹ *Id.*

streams, including the hoodoos and coastal canyons at State Beach. The sandstone bluffs are also a historical source of sand supply to the beach, but coastal armoring has blocked these natural sources of beach replenishment. For example, at State Beach, heavy accumulations of sediments have been collected and restrained from reaching the adjacent beach with K-rail and stacked concrete Interblock units placed at the mouth of finger canyons to slow sediment transport, disrupting one of the historic supplies of sediment to the beach and contributing to the ongoing erosion and loss of beach along this coastline. This is evidenced by OCTA's own documentation of sediment trapped behind the eastern side of the tracks.⁵² It is fair to say that this stretch of rail stands in the way of stable healthy beaches in San Clemente.

The reported plan to use sand placement at North Beach as partial mitigation for the loss of beach at Cyprus Shores and Cotton's is unacceptable.⁵³ Additionally, the proposal for 150,000 cubic yards of sand potentially from the upper Santa Ana River watershed as mitigation is unacceptable. Surfrider has concerns with both the quality and the quantity of sand, including potential incompatibility of this source of sand compared with naturally occurring sand as well as concerns about the sand quickly washing away. This volume of sand is also wholly inadequate. Five years of monitoring will do nothing to restore the beach if the riprap remains in place and the sand simply washes away.

Only full restoration of coastal access and lost recreational opportunity and sandy beach habitat can serve as an adequate remedy for the armoring at Cyprus Shores and Cotton's Point. Before any CDP is issued or mitigation measures are approved, the public must have an opportunity to review and comment. OCTA has a history of providing misinformation, including claims that their armoring is not adversely impacting access or sand supply, and Commission staff must not simply rely on OCTA's representations. Indeed, instead of working to restore lost lateral access, OCTA has protested Save Our Beaches' proposed extension of the coastal trail landward of the rail tracks along San Clemente State Beach toward San Onofre State Beach, disingenuously claiming that there is not enough space landward of the tracks to meet federal requirements instead of offering to slow the train speed to allow for narrower passage space and now claiming that trail development would negatively impact ESHA.⁵⁴ Meanwhile, OCTA/SCRRRA continues its plans to encroach on cherished public trust lands and waters at San Clemente State Beach. Rather than allowing OCTA/SCRRRA to kill another beach, the Commission must uphold its duty as trustee of public lands and protect our coast. The public must be given an opportunity to review and weigh in on any proposed CDPs and mitigation measures.

B. A Comprehensive Alternatives Analysis is Needed Before Any Future Armoring Occurs

The Commission should not take it as a given that this rail line must be protected at all costs. Alternative modes of transporting passengers and freight exist. Alternative beaches do not. The

⁵² See OCTA Rail Defense Against Climate Change Plan, p. 32 (2021)

⁵³ https://www.picketfencemedia.com/sanclementetimes/eye-on-sc/coastal-commission-waives-permit-requirements-for-local-sand-placement-projects/article_dfabed9e-2e87-11ef-bd9c-4b6d16e94bbc.html

⁵⁴ See OCTA Response to Save Our Beaches August 2023 Proposal for Restoration and Maintenance of Calif. Coastal Trail in South San Clemente.

Coastal Act is clear in its mandate to protect coastal-dependent uses.⁵⁵ The railroad is not a coastal-dependent use. A robust alternatives analysis must consider all feasible less environmentally damaging options, including proven alternative modes of transport such as shuttles, and removal of the tracks from the beach in the near term. With over 300 days of closure since 2022, the rapid implementation of alternative modes of transporting passengers illustrates that this is a feasible option. The purpose and need for any coastal armoring must be evaluated broadly, balancing the need to protect our coastline from irreparable damage. Surfrider strongly supports robust public transit that reduces greenhouse gas emissions in the region. However, an analysis of alternative means of achieving this goal that do not destroy our beaches and have other benefits is necessary under CEQA and the Coastal Act. The Coastal Act is clear that coastal-dependent uses must be protected and prioritized over non coastal-dependent uses.⁵⁶

Under CEQA, the Commission must avoid piecemealing and evaluate the cumulative environmental impacts of coastal armoring, not just the environmental impacts of armoring the coast in San Clemente but also in Del Mar, as these projects are part of the same San Diego segment of the LOSSAN Corridor and further the same purpose.⁵⁷ In addition, the Commission must consider the cumulative environmental impacts of any future relocation. The proposed Del Mar relocation routes all involve massive environmental impacts, in addition to the immediate term impacts due to planned hardening of coastal bluffs. A comprehensive alternatives analysis is necessary to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project to allow for informed decision-making under CEQA.⁵⁸

C. An Alternatives Analysis Must Include a Cost Benefit Analysis

The Commission must also consider the economic impacts to San Clemente and the regional economy as this iconic stretch of beach is lost to coastal armoring. Over 20 million people reside within a 2-hour drive of San Clemente, and out-of-state travelers flock to California's coast, spending money in beachside communities.⁵⁹ San Clemente is an iconic beach community, attracting visitors from around the country and the world to its world class beaches and waves. Our beaches directly benefit the regional economy, including local and state government with the taxes generated from these visits. As the beach is lost and the shoreline hardened, the

⁵⁵ Cal. Pub. Res. Code § 30255

⁵⁶ *Id.*

⁵⁷ CEQA Guidelines define "project" broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." (Guidelines, § 15378, subd. (a)).

⁵⁸ *See Communities for a Better Env't v. City of Richmond*, 184 Cal. App. 4th 70, 82–83 (2010)

⁵⁹ Southern California beaches generated over \$30 Billion in visitor spending in 2023 according to CalChamber.

subsequent reduction in recreational and visual quality causes substantial economic loss as visitors instead seek better beaches and waves elsewhere.⁶⁰

A robust cost benefit analysis conducted by independent experts should consider the economic, social, and environmental tradeoffs involved in maintaining the tracks in place versus removing them.⁶¹ This analysis should take a hard look at the environmental, social, and economic costs of maintaining and eventually relocating this segment⁶² and compare those with feasible alternatives, including more equitable transportation solutions, with a focus on serving lower income communities at a lower price. It should be noted that train travel is quite expensive and is not feasible for many people, with most riders in upper-income brackets.⁶³ In addition, the billions saved on coastal armoring and rail relocation can be spent where it is most needed, improving emissions-free transit opportunities as well as complete street projects to enhance mobility options for under-served communities.⁶⁴ It is inequitable to require lower-income taxpayers to subsidize rail travel for the wealthy, at the expense of more accessible transit options.

The many benefits to our coastal communities and the visitors who seek recreational opportunities as well as respite from inland heat must also be weighed. Removal of the existing armoring will allow for implementation of living shorelines and restoration of coastal dune habitats, benefiting local coastal and wetland ecology. Removal of the existing armoring will also improve natural flow of sediment that is necessary to our regional beaches and associated habitat, will increase resiliency to sea level rise and coastal storms, and reduce the need for ongoing costly sand replenishment.

Conclusion

Put simply, the public is not willing to sacrifice our beaches for the train.⁶⁵ Surfrider speaks for the beaches and those who cherish them. We believe it is possible to have innovative zero-emission public transportation without destroying our beloved coastal bluffs and beaches or other sensitive habitat. We envision a brighter future, with thriving living shorelines, enhancing coastal habitat for our biodiverse region, with healthy sandy beaches, and well-shaped waves providing ample recreational opportunities for residents and visitors and promoting a vibrant local economy.

⁶⁰ Dr. Chad Nelson, A Socioeconomic Study of Surfers at Trestles Beach (2007) (Estimating economic impact of \$8-13 Million/year)

⁶¹ See report by Professors Cramton and Patrick discussing the need for such a study.
<https://cramton.umd.edu/papers2020-2024/cramton-patrick-study-needed-to-explore-rail-options.pdf>

⁶² <https://www.sandiegouniontribune.com/2024/02/29/fixing-san-diegos-coastal-rail-system-will-cost-billions-has-the-time-come-to-retire-it/>

⁶³ A one-way ticket in coach class on the Amtrak Surfliner from San Juan Capistrano to San Diego costs \$26.

⁶⁴ <https://scag.ca.gov/connect-socal>, SCAG Connect SoCal 2024, Emphasizing the need for enhanced investments in these priority development areas.

⁶⁵ <https://www.surfer.com/trending-news/san-clemente-surfers-fight-100-million-railroad-renovation-project>

Sincerely,

Elizabeth Taylor

Elizabeth Taylor, Esq.
Of Counsel
Surfrider Foundation

Addendum



Image: OCTA's emergency armoring fronting Cyprus Shores HOA in August 2023 (placed in 2021/2022). The proximity to Trestles Surf Area is clearly visible.



Image: Surfers at Cotton's Point fronting OCTA's emergency revetment

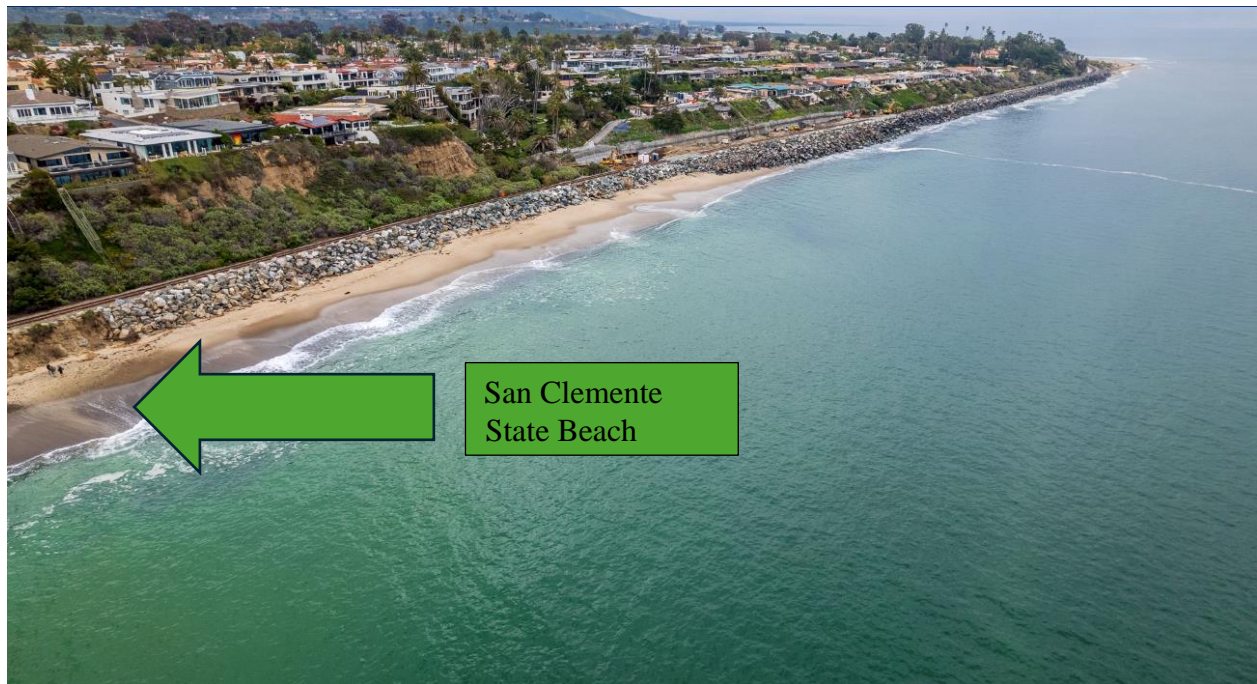


Image: OCTA's entire emergency revetment, including potentially unpermitted armoring and sand dune destruction. The north end of the revetment is adjacent to San Clemente State Beach.



Image: San Clemente State Beach heavily utilized and featuring robust coastal dunes. This image depicts the 2/3 mile shoreline armoring where OCTA proposes to extend the engineered revetment – destroying access and coastal dunes.



Image: This image depicts San Clemente State Beach where OCTA proposes to extend the engineered revetment by 2/3 mile, covering the entire State Beach and parts of Calafia State beach, adjacent to the north (not pictured). In the far distance, you can see the existing emergency revetment fronting Cyprus Shores HOA and Cotton's Point.