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September 16, 2021

Mr. Dan Quirk
Councilmember/NCTD Board Member
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014
Via electronic mail: dquirk@delmar.ca.us

Re: Recent Communications to the NCTD Board of Directors

Dear Board Member Quirk:

We write as the Chair and the Vice Chair of the North County Transit District (NCTD), following consultation with NCTD's General Counsel, to express concerns with your continued communications to the NCTD Board of Directors (Board) on matters that are before the Board for consideration in a manner not in compliance with the Brown Act. We are aware that you have been advised on a number of occasions that the Brown Act prohibits Board members from engaging in any form of communication amongst one another outside of a duly noticed public meeting that leads to a majority developing a concurrence on an action to be taken. The purpose of the Brown Act is to ensure deliberations and actions of the legislative body on matters within its subject-matter jurisdiction, except where an exemption applies, are conducted openly and that a concurrence of the Board be reached, if at all, at a duly noticed public meeting.

As you've been advised previously, the Brown Act also prohibits serial communication outside of a duly noticed public meeting that could lead to a concurrence among a majority of the members of the legislative body. As has been discussed previously, a serial communication occurs if one Board member contacts all or a majority of the Board members in an effort to reach a concurrence on a matter before the Board, especially where that communication discusses or argues a member's opinion or point of view on a matter that is on the Board's agenda and/or within the subject-matter jurisdiction of the Board. The focus under the Brown Act is not so much *how* the discussion was communicated among the Board, but rather whether an inappropriate number of members received the serial communication and whether the receipt of that serial communication led to a concurrence among the majority of the members on the issue likely to be considered by the legislative body. Developing a concurrence has been broadly construed to include a discussion or the

dissemination of information by a Board member to a majority of the Board that assists or clarifies a Board member's understanding of an issue and/or provides information that leads to an agreement or compromise among the members that advances the resolution of an item that is within the Board's subject-matter jurisdiction (California Attorney General, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003)).

As you've also been previously advised, penalties for violating the Brown Act can result in many negative impacts to the District, such as decisions of the Board being set aside (voided), the payment of attorneys' fees and costs to a prevailing interested party who brings a challenge, heightened scrutiny of the legislative body through a civil proceeding or grand jury investigations, grant funding ethics clauses being triggered which could result in a limitation or loss of funding for projects or operations, among others. In other words, your actions can directly impact the District in a multitude of ways that undercuts the Board's integrity and jeopardizes the mission of the District.

As the Board Chair and Vice Chair, it is our responsibility to preserve the integrity of the Board and ensure the business of the District is conducted in an ethical and legal manner consistent with the law and other guiding policies and procedures. To that end, we respectfully request that you immediately cease communicating with the members of this Board in any manner that is in violation of the Brown Act. Should you engage in any further non-compliant communications we will be compelled to seek the approval of the full Board to directly report such future Brown Act violation(s) to the Attorney General and to the California Fair Political Practices Commission (FPPC). We are hopeful the Board will not need to take such action.

We appreciate your cooperation and look forward to your continued participation in matters within the subject-matter jurisdiction of this Board. Please be advised that moving forward, your future input should be communicated directly to the Board in compliance with the Brown Act.

Sincerely,



Tony Kranz, NCTD Board Chair



Jewel Edson, NCTD Vice Chair

cc: NCTD Board of Directors
City of Del Mar Council
Leslie Devaney, City Attorney, City of Del Mar