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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the matter of the Application of the
Southern California Regional Rail Authority
For authority to construct a pedestrian
At-grade crossing for the Vincent Grade/
Acton Station, Metrolink Valley Subdivision
Mile Post 61.4, proposed CPUC Number
VY-61.40-D; USDOT932896C.

A.10-03-008
Filed March 5, 2010

COMMENTS OF THE ACTON TOWN COUNCIL ON THE PROPOSED DECISION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Acton Town Council submits these comments on the Proposed Decision regarding modifications to the Vincent train station that are proposed by the Southern California Regional Rail Authority ("SCRRA") in the above captioned proceeding.

Currently, the Vincent station is configured in such a manner that precludes pedestrian access from the south side of the railroad right of way. The modifications to the Vincent substation proposed by the SCRRA in the instant proceeding remove existing barriers and provide opportunities for pedestrian access to the trains from both sides of the right of way. As pointed out in our Motion filed May 28, 2010, the Acton Town Council has expressed concerns regarding the Vincent station modification proposed by the SCRRA from the time it was first revealed to the Community of Acton in February, 2009. From that time to this, the Acton Town Council has firmly opposed any modification to the existing Vincent station which could enable pedestrian or commuter access from the south side of the railroad right of way. We remain intent in our purpose to ensure that *all* access to the Vincent Grade station from the south side of the railroad right of way is precluded, including pedestrian access directly from the south side of the

right of way or via overpass or underpass walkways. Any modification to the Vincent substation which enables pedestrian access from the south side of the railroad right of way is inherently inconsistent with the development goals and policies enumerated in the Los Angeles County General Plan and the Antelope Valley Areawide Plan, and violates the County zoning code. The Acton Town Council notes that the proposed decision does not properly represent the Acton Town Council's position on these matters, and it does not preclude pedestrian access from the south side of the railroad right of way. Thus it contains various factual and legal errors which are addressed in more detail in the following paragraphs.

The Acton Town Council points out that, unless it specifically precludes all manner of pedestrian access from the south side of the railroad right of way, the Commission's decision in this proceeding violates the California Environmental Quality Act ("CEQA"). The Commission is serving as a Responsible Agency under CEQA, and (according to the Proposed Decision), the Commission concurs with the SCRRA that the proposed project is exempt from CEQA because "CEQA does not apply to mass transit projects which institute or increase passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, or which include the modernization of existing stations and parking facilities." The Commission is reminded that this exemption applies only to projects which institute or increase passenger service on rail lines already in use; it *does not* apply to projects which expand, or *could* expand, passenger or commuter *access* to existing rail lines. Thus, this CEQA exemption does *not* apply to the Vincent station modifications as proposed by the SCRRA because these modifications expand access to the tracks at the Vincent station beyond what is permitted in the current station configuration. Thus, the Commission *cannot* rely upon this CEQA exemption in any decision that is issued in this proceeding *unless* a specific condition is imposed which eliminates all manner of pedestrian, commuter, and passenger access from the south side of the railroad right of way. In short, the lack of a condition in the Proposed Decision which precludes pedestrian access from the south side of the railroad right of way constitutes a substantial legal error.

The Proposed Decision alludes to the Acton Town Council's concerns regarding the proposed project in the following comment:

“ ATC believes no access to the south side of the tracks should be allowed. The Commission’s Consumer Protection and Safety Division – Rail Crossings Engineering Section has investigated this concern and notes that the platform and associated crossing will be the only facilities placed on the south side of the tracks. Moreover, to prevent access from the south side of the tracks, a welded wire mesh fence will run along the south right-of-way line of the tracks near the station”

The Acton Town Council asserts that a meager discussion of a welded wire fence proffered in the “Local Concerns” section of the Proposed Decision does not address our concerns and since the Proposed Decision does not include the fence as a condition of project approval, the mere mention of the fence carries no weight in this proceeding. Second, the Proposed Decision improperly represents the Acton Town Council’s concerns and fails to articulate our position that it is precisely the proposed platform and associated crossings which improperly expand pedestrian access opportunities. Rather than grasping that “the platform and associated crossing” are at the heart of our concerns, the proposed decision trivializes their impacts by merely stating that the platform and crossing will be “the only facilities placed on the south side of the tracks”.

The only remedy to these legal errors in the Proposed Decision is to amend the “Findings of Law” to clarify that the SCRRA’s determination that the project is statutorily exempt from CEQA is not adequate for the Commission’s decision making purposes, and that the statutory exemption claimed by the SCRRA will only apply to the project if it is specifically conditioned to preclude all pedestrian access from the south side of the right of way, either directly onto the platform, or via overpass or underpass walkways. Any subsequent request by the applicant to amend the decision to eliminate this condition would invalidate SCRRA’s claim that the project is statutorily exempt from CEQA.

Additionally, the Proposed Decision erroneously reports that the application is uncontested (see Item 2 under “Findings of Law”). The Acton Town Council has, from inception, contested the expanded pedestrian access opportunities provided by this project, and we have made our protestations clear in the record of this proceeding. Very early in this proceeding, we filed a motion to become a party, in which we raised substantive matters of vital concern to the community of Acton. We have explained why we were unable to submit a timely protest to the

application, and we have indicated a firm commitment to fully participate in this proceeding. However, we were never given the opportunity to do so; the Commission ignored our motion and never solicited formal input from the Acton Town Council after the motion was filed. The Commission is advised that the Acton Town Council has contested, does contest, and will continue to contest this project unless and until it is properly conditioned to preclude all pedestrian access from the south side of the right of way, whether directly onto the platform or via overpass or underpass walkways.

If the Commission adopts the Acton Town Council's recommendations discussed herein and modifies the decision accordingly, the Acton Town Council would have no objection to the proposed project.

Respectfully Submitted;

/s/ Jacqueline Ayer

On Behalf of the Acton Town Council

The Acton Town Council
P.O. Box 810
Acton, CA 93510
(661) 269-0706

January 3, 2011 PST

CERTIFICATE OF SERVICE

I, Jacqueline Ayer, certify that I have on this 3rd day of January, 2011 PST caused a copy of the foregoing

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to be served on all known parties to A.10-03-008 listed on the most recently updated service list available on the California Public Utilities Commission website (see below) via email to those listed with email and via U.S. mail to those without email service.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of January, 2011 PST at Okinawa, Japan

/s/ Jacqueline Ayer

Jacqueline Ayer

SERVICE LIST AS OF JANUARY 3, 2011:

Doranw@scrra.net

ByronBetts0706@yahoo.com

rwc@cpuc.ca.gov

vdl@cpuc.ca.gov

dar@cpuc.ca.gov