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

Application of the City of Santa Rosa for Approval
to Construct a Public Pedestrian and Bicycle At-
Grade Crossing of the Sonoma-Marín Area Rail
Transit ("SMART") Track at Jennings Avenue
Located in Santa Rosa, Sonoma County, State of
California.

Application No. A1505014
(Filed May 14, 2015)

**RESPONSE BY JOINT PARTIES TO APPLICATIONS
FOR REHEARING OF DECISION 16-09-002**

**I.
INTRODUCTION**

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure (Title 20, California Code of Regulations) the Sonoma County Transportation and Land Use Coalition, Sierra Club, the Friends of SMART, and Stephen C. Birdlebough ("Joint Parties") respectfully oppose a rehearing of Decision 16-09-002 ("Decision").

**II.
THE DECISION ADHERES TO PRECEDENT IN DETERMINING
THAT A GRADE SEPARATION AT THE JENNINGS AVENUE
LOCATION IS NOT PRACTICABLE**

The Decision in this matter correctly applies the reasoning of *San Mateo* D.82-04-033, *Blue Line* D.02-05-047, and subsequent decisions of the Commission to determine whether a useable grade separation for pedestrians and bicycles is *practicable* within the

available rights of way at the Jennings Avenue site.¹ The convincing evidence that overcomes the presumption favoring a grade separation is as follows:

- 1) The City Council has unanimously approved the at-grade crossing rather than a grade separation; the at-grade crossing is also supported by the railroad. (Decision, pp. 30-31.) At the Public Participation Hearing, members of the Council and the county supervisor for the district described why the grade separation's lengthy ramps would lead to the use of unprotected shortcuts across the tracks and would be a barrier for many residents.²
- 2) City fire and police chiefs describe security and access concerns posed by a grade separation; they support an at-grade crossing. (Decision, p. 31.)
- 3) Speakers at the Public Participation Hearing attended by more than 100 individuals expressed concerns that the grade separation's challenging ramps would result in people using shortcuts to cross the tracks and that the grade separation would be a barrier.³ No one spoke in favor of a grade separation. (Decision, p. 31)
- 4) The projected cost of a grade separation was \$9.2 million, compared with \$1.6 million for an at-grade crossing, and grant funding for a grade separation has been reprogrammed. (Decision, p. 32.)
- 5) The Decision has reviewed the facts of eight Commission precedents and determined that in *San Diego*, D.03-12-018, and *LA. Crenshaw*, D.14-08-045) facts leading to approval of at-grade crossings are similar to the factual situation at Jennings Avenue. (Decision, p. 35.)
- 6) The warning bells, lights and gates of the Jennings Avenue at-grade pedestrian-bicycle crossing shall comply with all safety and ADA standards; sight-lines are clear; and the City will work with the school district to determine if a crossing guard should be located at the crossing in order to eliminate all potential safety hazards. SED has stipulated that the design itself is safe, although it did not agree to an at-grade crossing, nor provide an analysis of the proposed design. (Decision, pp. 30-31, 41 & 42.)

¹ Although the *Blue Line* decision notes that light rail systems "generally support a different safety standard" than commuter rail systems (D.02-10-023, p. 5) nowhere does it suggest that its multi-factor inquiry to *determine whether a grade separation is practicable* should be restricted to light rail systems. In the years since 2002, several decisions regarding at-grade crossings of heavy rail systems have relied upon the inquiries used in the *Blue Line* case, including: *City of San Diego*, D.03-12-018, *City of Bakersfield*, D.04-08-013, and *City of Gridley*, D.06-06-032.

² See, PPH, pp. 14-16, 20-23, 23-25, Attachment: Letter dated 2/1/16 from Sonoma County Supervisor Shirlee Zane stating in part that: "There is real danger that the inconvenience of a bridge would lead some people to use a shortcut, such as a hole in the fence to cut across the tracks, with tragic results."

³ See, PPH Transcript, and attached written statement by Johanna James, dated 2/1/16.

The foregoing evidence supports the Decision under the reasoning of both the *San Mateo* Decision (which states that a practicable grade separation must not only be capable of being constructed, but must be able to be *used*) and the *Blue Line* Decision.

**III.
THE DECISION ADHERES TO COMMISSION PRECEDENTS
ON THE NEED FOR AND SAFETY OF AT-GRADE CROSSINGS**

Safety of the public is the primary consideration in all grade-crossing cases, including those that the Decision relies upon in granting the City’s application for an at-grade crossing. (*Supra.*) Consideration of the “public interest” and its relationship to safety is set forth in the December 11, 2015 Scoping Memorandum for this proceeding, and is recognized in General Order 75-D (13.3). If the SED had any concerns about reliance on public interest in this matter, those concerns should have been raised prior to the briefing.⁴

The SED application for Rehearing fails to acknowledge that the Decision in this matter rests on strong evidence of need for a crossing of the tracks at Jennings Avenue , and that an official at-grade crossing provides the safest solution for the public. (Decision pp. 24-26.) The crossing has been frequented by nearby residents and employees for more than 100 years, and the demonstrated hazards and inconvenience along the detour make it likely that in the absence of a safe at-grade crossing people will

⁴ As used in this matter, “public interest” is virtually identical to the consideration of “public convenience and necessity” in *City of San Mateo*, D.82-04-033. Public convenience and necessity has been defined as a public matter, without which the public is inconvenienced to the extent of being handicapped in the practice of business or wholesome pleasure or both, and without which the people of the community are denied, to their detriment, that which is enjoyed by others similarly situated. Public necessity does not mean indispensable to the public but an urgency less pressing. *Luxor Cab Co. v. Cahill* (1971) 21 Cal. App. 3d 551, 557-558; *San Diego etc. Ferry Co. v. Railroad Com.*, 210 Cal. 504, 511, 292 P. 640.

use breeches in the fencing to risk unprotected crossings of the tracks. (Decision, pp. 14, 17-18, 21.)

The at-grade crossing design includes exit swing gates, accounts for the double track configuration, and will have warning bells, lights and gates in compliance with General Order 75-D, the FRA Railroad-Highway Grade Crossing Handbook, and the California Manual of Uniform Traffic Control Devices. (Decision, pp. 21-22.) The finalized engineering crossing designs must be presented to SED for evaluation prior to construction. (Decision, pp. 41-42.)

**IV.
THE REVISED DECISION DID NOT MAKE SIGNIFICANT
CHANGES REQUIRING ADDITIONAL TIME FOR COMMENT**

Prior to Commission action on the revised PD, the City of Santa Rosa stated in a notice of ex parte communications with the Advisor to Commissioner Peterman that it had, “indicated its full support for the PD, as revised.” (See, A1505014 Notice of Ex Parte Communication by the City, p. 1, served and filed 9/14/16.) The City’s notice that it accepted all changes in the Decision obviated any need for the Commission to allow further time for comments before taking action in the matter. The Joint Parties have not taken a position with respect to the extent of the Commission’s jurisdiction over the Jennings Avenue crossing.

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**V.
CONCLUSION**

In view of the foregoing facts, the Joint Parties respectfully urge the Commission to deny the requests for rehearing. It is not productive for there to be further delay or uncertainty regarding the Decision.

Respectfully Submitted,

/s/ Stephen C. Birdlebough

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As an individual and representing the Sonoma
County Transportation and Land Use Coalition, the
Sierra Club, and the Friends of SMART

Nov. 1, 2016