

Decision \_\_\_\_\_

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

Application of the City of San Diego for an order authorizing the construction of a multi-use bicycle/pedestrian pathway at three locations below an elevated MTS rail structure within the City of San Diego, County of San Diego.

Application 12-11-021  
(Filed November 21, 2012)

**DECISION GRANTING AUTHORIZATION TO THE CITY OF SAN DIEGO TO  
CONSTRUCT THREE BICYCLE/PEDESTRIAN GRADE-SEPARATED  
CROSSINGS UNDER THE METROPOLITAN TRANSIT SYSTEM  
MISSION VALLEY LINE TRACKS IN THE CITY OF SAN DIEGO,  
COUNTY OF SAN DIEGO**

**Summary**

This decision grants the City of San Diego authorization to construct three new bicycle/pedestrian grade-separated rail crossings under the Metropolitan Transit System Mission Valley Line tracks located in the City of San Diego, County of San Diego. The new crossings are to be identified as CPUC Crossing Numbers 081MV-6.67-BD, 081MV-6.76-BD, and 081MV-6.86-BD.

**Discussion**

The City of San Diego (City) proposes to construct three new bicycle/pedestrian grade-separated rail crossings (crossings) under the Metropolitan Transit System (MTS) Mission Valley Line (MV) tracks. The purpose of City's San Diego River Multi-Use Pathway project is to provide pedestrian and bicycle access to the north side of San Diego River Park and connect the existing San Diego River Pathway located on the east and west sides

of State Route (SR) 163. MTS operates approximately 148 passenger trains per day at a maximum speed of 45 MPH over the track at the crossings. The City's proposed crossings are to be identified as follows:

<u>Crossing Name</u>	<u>CPUC Crossing No.</u>
Fashion Valley	081MV-6.67-BD
Mission Center	081MV-6.76-BD
Mission Center	081MV-6.86-BD

The proposed crossings are part of City's project to provide a safe and continuous dedicated passage for pedestrians and bicyclists underneath SR 163 and MTS tracks, connecting the Fashion Valley and Mission Valley retail centers and providing access to the beaches to the west.

This 1,200 linear-foot segment of the proposed bicycle/pedestrian concrete pathway is approximately 12 feet wide running predominantly east-west along the north bank of the San Diego River, and crossing under the existing MTS tracks at the three locations. The pathway will be fenced to channel users to the grade-separated crossings where there will be appropriate signage, striping and other trail facilities to designate the appropriate path of travel to pathway users. California Manual on Uniform Traffic Control Devices compliant signage and pavement markings will be used. The pathway's design and construction will conform to Americans with Disabilities Act (ADA) requirements, City engineering standards and will adhere to Chapter 1000 of the Caltrans Highway Design Manual relating to Class I bicycle pathway standards.

The crossings will comply with all minimum clearance requirements set forth in California Public Utilities Commission (Commission) General Order (GO) 26-D. The proposed pathway will maintain a minimum of eight (8) feet

vertical clearance from the pathway surface to the bottom of the overhead structures at the crossings.

For safety and security purposes, lights will be installed underneath the SR 163 bridge structure to illuminate the pathway, per San Diego Gas & Electric Company's standards.

### **Environmental Review and CEQA Compliance**

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,<sup>1</sup> or the one with the greatest responsibility for supervising or approving the project as a whole.<sup>2</sup> Here, the City is the lead agency for this project, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting

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<sup>1</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

<sup>2</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

on or approving this project.<sup>3</sup> As a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.<sup>4</sup>

Pursuant to CEQA, the City prepared an environmental document titled *San Diego River Multi-use Bicycle & Pedestrian Pathway/Project No 175757*, which identifies environmental impacts and associated mitigation measures related to the project. On June 13, 2012, the City adopted a Notice of Determination (NOD) indicating an initial study for the proposed project overall would not have a significant effect on the environment, and any potential impacts would be reduced to less-than-significant with implementation of identified mitigation measures. Therefore, the City adopted a Mitigated Negative Declaration (MND) for the project and a Mitigation Monitoring and Reporting Program (MMRP) was made a condition of approval for the project.

Biological resources and land use/planning were identified as potentially significant impacts in the MND. Implementation of the mitigation measures identified in "Section V - MMRP" of the submitted MND would reduce potentially significant impacts to sensitive biological resources and land use to below a level of significance.

No significant impacts were identified under CEQA relating to safety or traffic/transportation.

The Commission reviewed and considered the MND and MMRP and finds the documents adequate for our decision-making purposes.

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<sup>3</sup> CEQA Guidelines, Sections 15050(b) and 15096.

<sup>4</sup> CEQA Guideline Section 15096(g).

**Filing Requirements and Staff Recommendation**

The application is in compliance with the Commission's filing requirements, including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public road across a railroad.

The Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section staff has reviewed and analyzed the application and recommends that the requested authority to construct the subject crossings be granted for a period of three (3) years.

**Categorization and Need for Hearings**

In Resolution ALJ 176-3306 dated December 20, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

**Assignment of Proceeding**

Emory J. Hagan is the assigned Examiner in this proceeding.

**Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on November 30, 2012. There are no unresolved matters or protests. A public hearing is not necessary.

2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct three new bicycle/pedestrian grade-separated crossings under the MTS Mission Valley Line tracks located in the City of San Diego, County of San Diego, to be identified as CPUC Crossing Numbers 081MV-6.67-BD, 081MV-6.76-BD, and 081MV-6.86-BD.

3. The 1,200 linear-foot bicycle/pedestrian dedicated pathway along the San Diego River will be fenced.

4. The pathway's design and construction will conform to ADA requirements.

5. The crossings will comply with all minimum clearance requirements set forth in Commission GO 26-D.

6. For safety and security purposes, lights will be installed underneath the SR 163 crossing bridge structure.

7. The City is the lead agency for this project under CEQA, as amended.

8. The Commission is a responsible agency for this project.

9. The City performed a CEQA analysis which identified several environmental impacts.

10. Safety, traffic/transportation, and noise impacts are areas within the scope of the Commission's permitting process. The Commission finds that no significant impacts are created because the design features selected by the City for the grade-separated pedestrian crossing are consistent with the adopted policies, plans, and programs regarding bicycle and pedestrian facilities.

11. The Commission further finds that the safety impacts are rendered not significant by the design, construction and signage of the pathway to meet Chapter 1000 of the Caltrans Highway Design Manual relating to Class I bicycle

pathway standards, the City's engineering standards, as well as the California Manual on Uniform Traffic Control Devices.

12. The City adopted reasonable and feasible mitigation measures to reduce biological resources and land use/planning impacts to less-than-significant levels with implemented mitigation measures.

13. Under CEQA, the City adopted an NOD indicating that the project overall, with mitigations, will not have a significant effect on the environment. Mitigation measures were adopted as part of the approval.

14. The City adopted an MND for the project and an MMRP was made a condition of approval for the project.

15. The Commission has reviewed and considered the information contained in the MND and MMRP.

16. The NOD and MMRP reflect the Commission's independent judgment and analysis.

### **Conclusions of Law**

1. The MND and MMRP are adequate for our decision-making purposes.
2. The NOD and MMRP were completed in compliance with CEQA.
3. The application is uncontested and a public hearing is not necessary.
4. The application should be granted as set forth in the following order.

**ORDER****IT IS ORDERED** that:

1. The City of San Diego is authorized to construct three new bicycle/pedestrian grade-separated rail crossings under the Metropolitan Transit System Mission Valley Line track, as described in its application, which is located in the City of San Diego, County of San Diego.
2. The three new grade-separated bicycle/pedestrian grade-separated rail crossings shall be identified as California Public Utilities Commission Crossing Numbers 081MV-6.67-BD, 081MV-6.76-BD, and 081MV-6.86-BD.
3. The three new bicycle/pedestrian grade-separated -rail crossings shall be built as described above and specified in the application and attachments.
4. The City of San Diego shall comply with all applicable rules, including California Public Utilities Commission General Orders, the United States Department of Transportation's Americans with Disabilities Act Standards for Transportation Facilities and the California Manual on Uniform Traffic Control Devices.
5. The City of San Diego shall notify the California Public Utilities Commission's Safety & Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section at least five (5) business days prior to opening the crossing. Notification should be made to [rces@cpuc.ca.gov](mailto:rces@cpuc.ca.gov).
6. Within 30 days after completion of the work under this order, the City of San Diego shall notify the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section in writing, by submitting a completed California Public Utilities Commission Standard Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work. Form G requirements

and forms can be obtained at the CPUC web site Form G page at [www.cpuc.ca.gov/PUC/safety/Rail/Crossings](http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings). This report may be submitted electronically to [rces@cpuc.ca.gov](mailto:rces@cpuc.ca.gov) as outlined on the web page.

7. This authorization shall expire if not exercised within three (3) years unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so requires.

8. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety & Enforcement Division, Office of Rail Safety – Rail Crossings Engineering Section at least 30 days before its expiration of that period. A copy of the extension request shall be sent to all interested parties.

9. This application is granted as set forth above.

10. Application 12-11-021 is closed.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.