

Decision\_\_\_\_\_

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

Application of the County of Monterey  
for an order authorizing the  
Construction of the Castroville  
Bicycle/Pedestrian Path and Railroad  
Crossing Project over the Union Pacific  
Railroad (UP) in the County of  
Monterey.

Application 14-10-008  
(Filed October 10, 2014)

**DECISION AUTHORIZING THE COUNTY OF MONTEREY TO CONSTRUCT A  
GRADE-SEPARATED PEDESTRIAN CROSSING OVER THE UNION PACIFIC  
RAILROAD COMPANY TRACKS IN AN UNINCORPORATED AREA OF THE  
COUNTY OF MONTEREY**

**Summary**

This decision grants the County of Monterey authorization to construct a new grade-separated pedestrian crossing over the Union Pacific Railroad Company Coast Subdivision tracks just north of State Route 156 in an unincorporated area of Monterey County. The crossing will be identified as California Public Utilities Commission Crossing Number 001E-106.60-AD and United States Department of Transportation Number 440819S.

This proceeding is closed.

**Discussion**

The County of Monterey (County) requests authority to construct a new grade-separated pedestrian crossing (crossing) over the Union Pacific Railroad Company (UPRR) Coast Subdivision mainline track. The County will construct a

Class 1 trail to run a total of 0.74-mile from McDougall Street to Castroville Boulevard and provide a structural bridge connection between two dead-end roads, eliminating the informal crossing over the tracks. The crossing will provide safe access between the residential areas and the local schools for pedestrians and bicyclists.

Rail operations include four freight trains per day traveling 60 miles per hour and two National Railroad Passenger Corporation (Amtrak) passenger trains per day traveling 70 miles per hour at the crossing.

The County will include the following features in the construction of the Castroville Bicycle/Pedestrian Overpass:

- The design and construction of the crossing structure will comply with all minimum clearance requirements set forth in California Public Utilities Commission (Commission/CPUC) General Order (GO) 26-D, as well as all UPRR design standards;
- The structure will be approximately 1,170-feet long and 14-feet wide;
- The lighting design will be in accordance with all applicable County, California Manual on Uniform Traffic Control Devices, and Federal Highway Administration guidelines;
- County will install type 3 chain link railing at both sides of the overhead structure; and
- The structure will be compliant with the Americans with Disabilities Act (ADA) requirements.

The crossing will be identified as CPUC No. 001E-106.60-AD, and United States Department of Transportation (DOT) No. 440819S.

## **Environmental Review and CEQA Compliance**

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) 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 County is the lead agency for this project because it is constructing the project, and the project is subject to its review and approval. 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

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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).

acting on or approving this project.<sup>3</sup> Also, 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>

The crossing is part of the Castroville Bicycle/Pedestrian Path and Railroad Crossing Project, which will provide a safe railroad crossing for bicyclists and pedestrians by constructing the aforementioned 0.74 mile trail and structural bridge connection. The County prepared a Mitigated Negative Declaration (MND) and an Initial Study (IS) for the project. On September 20, 2013, the County issued its Mitigated Negative Declaration (MND) stating that the Castroville Bicycle/Pedestrian Path and Railroad Crossing Project will not have significant effect on the environment. The County issues a finalized IS in January 2014, and issued a Notice of Determination approving the project in February 2014.

Impacts identified under CEQA relating to the rail crossing are within the scope of the Commission's jurisdiction. The IS identified multiple impacts as less than significant or less than significant with the incorporation of mitigation measures. Environmental impacts considered to be less than significant with mitigation measures incorporated that may be related to the rail crossing are

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

<sup>4</sup> CEQA Guidelines, Section 15096(h).

impacts related to aesthetics, agriculture and forestry resources, biological resources, air quality, cultural resources, hazards and hazardous material, hydrology and water quality resources, and noise. The County determined that the project would not have a significant effect on the environment because all identified impacts can be mitigated to a less-than-significant level.

To address aesthetic impacts, the project will implement mitigation measures that address exterior lighting and the use of reflective materials. Specifically, mitigation measures identified in the IS will require the County to prepare a detailed exterior lighting plan that indicates the location and type of lighting that will be used and ensures that all exterior lighting is consistent with the Monterey County General Plan. All exterior lighting shall be indicated on final improvement plans, subject to review and approval by the County. The County shall be required to restrict the use of reflective materials to minimize daytime glare. Finally, all exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. With implementation of these mitigation measures, potential impacts to residents and wildlife associated with project lighting would be reduced to less than significant level.

Agricultural and forestry impacts include conversion of agricultural lands. Mitigation measures consist of implementation of an agricultural mitigation plan. The County will mitigate permanent impacts to farmlands by the preservation of equivalent agricultural farmland at a 2:1 ratio.

Air quality impacts associated with the project include emissions associated with construction activities such as grading, excavation, and on-site vehicular traffic. These impacts can be reduced to a less than significant level

with incorporation of mitigation requiring the County to implement best available control measures to reduce emissions of particulate matter during construction activities.

Biological impacts include potential adverse effects on species identified as candidate, sensitive, or special status species. Impacts to these species could occur should these species disperse in the project corridor prior to construction. Mitigation measures consist of conducting preconstruction environmental training, keeping a qualified biologist on-site, halting any work that might affect federal or state listed species if discovered, and notifying the California Department of Transportation and the Department of Fish and Wildlife. Additional impacts involve the potential removal of existing large blue gum trees within the railroad right of way during bird nesting season. If vegetation suitable for nesting in the railroad right of way is scheduled to be removed during bird nesting season, the IS adopts mitigation measures to reduce any impacts to a less than significant level. Mitigation measures consist of conducting a bird nesting survey prior to vegetation removal to determine if any bird species protected by the Migratory Bird Treaty Act and the California Fish and Game Code have active nests in the vegetation to be removed or in the adjacent area. If nesting birds are found, a qualified biologist will establish a protective barrier around the active nest until the young have fledged or the nest has been determined to be inactive.

Regarding cultural resource impacts, the project is not within an area that is sensitive for buried or surface prehistoric archeological deposits. Nevertheless, should construction of the footing and abutments for the overcrossing structure unearth previously unidentified cultural materials, the IS identifies mitigation measures to reduce impacts to a less than significant level.

Specifically, work shall be halted immediately within 50 meters of the find until a qualified professional archaeologist can evaluate it. The County and a qualified archaeologist shall develop proper mitigation measures required for the discovery. In the event of the discovery or recognition of any human remains there shall be no further excavation or disturbance of the site until the Monterey County coroner has determined whether the remains are subject to the coroner's authority. If the human remains are of Native American origin, the coroner must notify the Native American Heritage Commission within 24 hours of identification in order to facilitate the Native American Heritage Commission's identification of a "Native American Most Likely Descendent" to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods.

The IS also identified impacts regarding Hazards and Hazardous Materials associated with project construction. Four Recognized Environmental Conditions (RECs) were identified in the proposed project area. RECs are defined as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, past release, or a material threat of release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. Mitigation measures would be implemented to reduce these potential impacts to less than significant levels. Specifically:

If the proposed project requires removal of any existing power poles with transformers, the project contractor shall have the transformer oil tested for polychlorinated biphenyls (PCB) prior to removal. Additionally, any leaking transformer shall be considered a potential PCB hazard unless tested and shall be handled accordingly during construction.

Should any dewatering be required during construction of the proposed project, dewatering activities shall comply with the individual permit consistent with National Pollution Discharge Elimination System (NPDES) Construction General Permit requirements.

At least two working days prior to subsurface excavation, the project contractor shall notify the Underground Service Alert of Northern California by calling 811 to ensure that the utility owners mark the locations of underground transmission lines and facilities.

Prior to construction, a site-specific Health and Safety Plan shall be prepared consistent with California Department of Transportation (Caltrans) requirements.

During construction activities (especially excavation) of the proposed project, should any previously unknown hazardous waste/material be encountered, the procedures outlined in the Caltrans Unknown Hazards Procedures Manual shall be followed.

Prior to construction, the project contractor shall develop a work plan which addresses soils containing aeriually deposited lead and which provides protective measures in working with such soils per the Caltrans /Department of Toxic Substance Control Variance.

Hydrology and water quality impacts include the potential to generate pollutants of concern, including pet waste and litter, which can potentially result in water quality impacts. Mitigation measures would require the County to implement Best Management Practices (BMPs), which consist of installing pet waste disposal signs, designing trash storage areas, and implementation of a litter control program. Further, prior to construction activities and after the final design phase and environmental determinations, a construction Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring and Reporting Program shall be developed for the project as required by the Construction General

Permit. The construction phase SWPPP shall be designed to identify potential pollutant sources associated with construction activities; identify nonstorm water discharges; and identify, implement, and maintain BMPs to reduce or eliminate pollutants associated with the construction site.

Additional hydrology and water quality impacts stem from the project being located within or near a 100 year flood zone. Mitigation measures consist of submitting detailed development plans to the County of Monterey – Water Resources Agency specifying the base elevation of the project to ensure the base elevation is at or above the base flood elevation.

Noise impacts include increased noise during construction. Mitigation measures consist of restricting the hours of construction, placement of stationary construction equipment directed away from sensitive receptors, muffling and maintenance of construction equipment, and placement of equipment staging areas to maximize the distance between construction-related noise sources and noise-sensitive receptors.

The County found that these impacts will be less than significant after adopted mitigation measures are implemented. All other environmental factors required to be studied under CEQA, the County found no impacts or less than significant impacts. The Commission reviewed and considered the County's IS and MND as these documents relate to this grade-separated pedestrian-rail structure and finds these documents adequate for our decision-making purposes.

### **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 highway across a railroad.

The Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch has inspected the site of the crossing, reviewed, and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossing be granted for a period of three years.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3344, dated October 16, 2014, 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**

Elizaveta Malashenko is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on October 16, 2014.
2. The County requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated pedestrian crossing over mainline track owned by UPRR in an unincorporated area of County of Monterey. The crossing

will be identified as CPUC Crossing Number 001E-106.60-AD, and DOT No. 440819S.

3. The crossing design and construction will conform to ADA requirements.
4. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.
5. The County is the lead agency for this project under CEQA.
6. On September 20, 2013, the County issued the MND for the Castroville Bicycle/Pedestrian Path and Railroad Crossing Project.
7. In January 2014, the County issued the IS for the project.
8. The environmental findings of the IS indicate that the grade-separated rail crossing will have significant effects on the environment. Environmental impacts considered to be significant to the crossing include aesthetic, agriculture and forestry resource impacts, air quality impacts, biological resources impacts, cultural resource impacts, hazards and hazardous material impacts, hydrology and water quality resource impacts, and noise impacts. All impacts will be reduced to a less-than-significant level by adopting mitigation measures.
9. Regarding aesthetic impacts, the County will implement mitigation measures which address exterior lighting and the use of reflective materials. With implementation of these mitigation measures, potential impacts to residents and wildlife associated with project lighting would be reduced to less than significant level.
10. Regarding agricultural and forestry impacts, the County shall implement an agricultural mitigation plan, and to preserve converted farmland with equivalent farmland at a 2:1 ratio. The County's IS found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.

11. Regarding air quality impacts, the County shall implement best available control measures to reduce emissions of particulate matter during construction.

12. Regarding the biological impacts, the mitigation measures consist of conducting preconstruction environmental training, keeping a qualified biologist on-site, halting any work that might affect federal or state listed species if discovered and notifying the California Department of Transportation and the Department of Fish and Wildlife, conducting bird nesting surveys, and establishing protective barriers around active nests. The County's IS found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.

13. Regarding cultural resources, construction work shall be immediately halted within 50 meters of any archeological find until a qualified professional archaeologist can evaluate it. The County and a qualified archaeologist shall develop proper mitigation measures required for any archeological discovery. The County coroner shall be contacted in the event of the discovery of human remains and the Native American Heritage Commission shall be contacted if the human remains are of Native American origin.

14. Regarding hazards and hazardous materials impacts, mitigation measures consist of testing any power poles for polychlorinated biphenyls (PCB) prior to removal, treating any leaking transformer as a potential PCB hazard, complying with National Pollution Discharge Elimination System permit terms for dewatering activities, contacting 811 at least two working days prior to subsurface excavation, preparation of a Health and Safety Plan consistent with California Department of Transportation (Caltrans) requirements, following the procedures outlined in the Caltrans Unknown Hazards Procedures Manual should any previously unknown hazardous

waste/material be encountered, and developing a work plan which addresses soils containing aerially deposited lead and which provides protective measures in working with such soils per the Caltrans/Department of Toxic Substance Control Variance.

15. Regarding the hydrology and water quality impacts, the mitigation measures consist of implementing Best Management Practices that consist of installing pet waste disposal signs, designing trash storage areas, and implementation of a litter control program. The County shall also develop a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring and Reporting Program and submit detailed development plans to the County of Monterey – Water Resources Agency specifying the base elevation of the project to ensure the base elevation is at or above the base flood elevation. The County’s IS found that these impacts will be reduced to less-than-significant levels by the adopted mitigation measures.

16. Regarding noise impacts, the mitigation measures consists of restricting the hours of construction, placement of stationary construction equipment directed away from sensitive receptors, muffling and maintenance of construction equipment, and placement of equipment staging areas to maximize the distance between construction-related noise sources and noise-sensitive receptors. The County’s IS found that these impacts will be less than significant after adopted mitigation measures are implemented.

17. The crossing, part of the Castroville Bicycle/Pedestrian trail, will provide safe public access between a residential zone and local schools and will result in increased public safety.

### **Conclusions of Law**

1. Safety, traffic/transportation, noise, and other impacts related to the crossing are areas within the scope of the Commission's permitting process.
2. The design features selected by County for the crossing are consistent with GO 26-D requirements.
3. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's IS and MND.
4. The IS and MND, titled *Castroville Bicycle/Pedestrian Path and Railroad Crossing Project*, dated January 2014 and prepared by the County as the documentation required by CEQA for the project are adequate for our decision-making purposes.
5. The IS and MND were completed in compliance with CEQA.
6. The application is uncontested and a public hearing is not necessary.
7. The application should be granted as set forth in the following order.
8. The proceeding should be closed.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The County of Monterey (County) is authorized to construct a new grade-separated pedestrian-rail crossing over the Union Pacific Railroad Company's Coast Subdivision mainline tracks, in an unincorporated area of the County of Monterey, as described in the Monterey County's application.
2. The grade-separated pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 001E-106.60-AD and United States Department of Transportation Number 440819S.

3. The grade-separated pedestrian-rail crossing shall have the crossing treatments and configuration described above and specified in the application and attachments.

4. The County of Monterey 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 County of Monterey shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least five (5) business days prior to opening the grade-separated pedestrian path structure. Notification must be made to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within 30 days after completion of the work under this order, the County of Monterey shall notify the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings and Engineering Branch 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 California Public Utilities Commission web site Form G page at <http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg.htm>. This report may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. Within 30 days after completion of the work under this order, Union Pacific Railroad Company shall notify the Federal Railroad Administration of the existence of the crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently Union Pacific Railroad Company shall provide a copy of the inventory form to the California Public Utilities

Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

8. This authorization shall expire if not exercised within three years, unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

9. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

10. The application is granted as set forth above.

11. Application 14-10-008 is closed.

This order is effective today.

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