Decision **PROPOSED DECISION OF ALJ MCKINNEY** **(Mailed 7/18/2016)**

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-Marin Area Rail Transit (SMART) Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.	Application 15-05-014 (Filed May 14, 2015)

DECISION GRANTING APPLICATION FOR AT-GRADE CROSSING

TABLE OF CONTENTS

Title **Page**

DECISION GRANTING APPLICATION FOR AT-GRADE CROSSING 1
Summary 2
1. Background 2
1.1. Factual Background 2
1.2. Parties.....4
1.3. Procedural Background 5
1.4. Public Comment.....7
2. Jurisdiction 12
3. Location and Historical Use 14
4. Grade-Separated Crossing.....18
4.1. Grade-Separated Crossings Reduce Risk of Injury by Train 18
4.2. Grade-Separated Crossing Design for Jennings Avenue.....19
4.3. At-Grade Crossing Design for Jennings Avenue 21
4.4. Policy Favoring Reduction in the Number of At-Grade Crossings.....22
5. Issues before the Commission.....22
6. Discussion 23
6.1. Rule 3.7(c) 23
6.2. Public Interest; Safety Concerns 24
6.3. Seven-Factor Test for Impracticability 26
6.3.1. Current Seven-Factor Test 26
6.3.1.1. Demonstration of Public Need.....29
6.3.1.2. Convincing Showing that the City Has Eliminated all Potential Safety Hazards 29
6.3.1.3. Concurrence of Local Community, Emergency Authorities, and the General Public. 30
6.3.1.4. Recommendation of Staff that it Concurs with the Safety of the Proposed Crossing 31

TABLE OF CONTENTS

Title **Page**

6.3.1.5. Comparative Cost 32
6.3.1.6. Commission Precedent 32
6.3.2. Seven-Factor Standard Supports At-Grade Crossing 35
7. Environmental Review and CEQA 36
8. Comments on Proposed Decision 37
9. Assignment of Proceeding 38
Findings of Fact 38
Conclusions of Law 40
ORDER 41

DECISION GRANTING APPLICATION FOR AT-GRADE CROSSING

Summary

This decision grants the City of Santa Rosa's application to construct an at-grade pedestrian and bicycle crossing across the Sonoma-Marin Area Rail Transit tracks at Jennings Avenue in Santa Rosa. This decision retains the Commission's policy disfavoring at-grade crossings, but finds that, under the unusual facts of this case, an at-grade crossing should be approved. This proceeding is closed.

1. Background

1.1. Factual Background

On May 14, 2015, the City of Santa Rosa (City), filed this application for approval of an at-grade crossing of the Sonoma-Marin Area Rail Transit (SMART) track at Jennings Avenue. On June 4, 2015, the California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED) protested the application on the grounds that Commission policy disfavors at-grade crossings for safety reasons. SED proposed that to allow a new at-grade crossing at Jennings Avenue, another at-grade crossing in the vicinity should be closed.

Jennings Avenue runs in an east/west direction through a predominantly residential neighborhood. Jennings Avenue is bifurcated by the railroad line. There is no record of a permitted rail crossing on Jennings Avenue, but pedestrians and bicycles have been crossing the rail line at this location for at least 100 years. To the west of the crossing is a residential neighborhood made up primarily of single family homes. Helen Lehman Elementary School is also located a few blocks to the west of the crossing on Jennings Avenue. To the east,

there are multi-family dwellings and the Coddingtown Shopping Center. Additional multi-family residences are planned for this area in the near future.

In the recent past, the rail line has been used for freight trains approximately two times per week. SMART is expected toadd approximately 30 passenger trains per day.[1] With the anticipated increase in trains, the City has determined it is necessary to upgrade the crossing to legal status or close it. While SED does not oppose a crossing at this location, SED asserts that the crossing must be "grade separated." The City seeks an at-grade crossing.

An "at-grade" crossing is a rail crossing where pedestrians and/or vehicular traffic cross the tracks at the same level as the train. A grade separated crossing is one in which the pedestrian and/or vehicular traffic goes over or under the rail line. In this case, the crossing would be used by pedestrians and bicycles only. Because Steele Creek is located next to the rail line, it is not possible for a crossing to go under the railroad tracks. The discussion of a separated grade crossing at this location contemplates an overcrossing or bridge.

Members of the public who live and work in the neighborhood, as well as bicyclists and transit supporters from around Sonoma County, support an at-grade crossing at this location and oppose a separated-grade crossing.

---

[1] Application at 2; Response of Joint Parties at 6.

1.2. Parties

Several community groups and residents are formal parties to this proceeding. The parties are as follows:

James L. Duncan (Duncan) is a resident who lives to the west of the crossing. In his June 12, 2015 Response to the application, Duncan asserts that he has used the crossing on a regular basis over the last 35 years. Duncan also asserts that the Commission does not have jurisdiction over this crossing.

Sonoma County Transportation and Land Use Coalition (the Coalition) is an unincorporated association formed in 1991 to advocate for transportation policies, including enhanced bicycling, walking and public transit modes. The Coalition is a registered political action committee.

The Sierra Club is a California Public Benefit Corporation that works for transportation policies to provide "everyone, including pedestrians, bicyclists and transit users, with access to jobs, shopping and recreation."

Friends of SMART (Friends) is an unincorporated association formed in 2004 "to shape county communities by advocating and promoting the benefit of the SMART Train . . ."[2]

Stephen C. Birdlebough (Birdlebough) is an individual.

On June 16, 2015, the Coalition, Sierra Club, Friends and Birdlebough (the Joint Parties) filed a Response to the application in support of locating an at-grade crossing at Jennigs Avenue (Jennings Crossing).

Western Farm Center, Inc., a California corporation and Lou Bertolini, an individual (collectively, Western Farm), are opposed to closing any of the

[2] Response of Joint Parties at 2.

existing at-grade crossings in the Railroad Square district of Santa Rosa. Western Farm is located in the Railroad Square district. In its June 17, 2015 Response to the application, Western Farm states that it was "instrumental in successfully spearheading the effort to transform Railroad Square from the town's midcentury 'skid row' to the showplace of Sonoma's county seat."

1.3. Procedural Background

On May 15, 2015, the City filed this application. On May 21, 2015, in Resolution ALJ 176-3357 this proceeding was preliminarily categorized as ratesetting, and it was preliminarily determined that evidentiary hearings would not be necessary.

On June 4, 2015, SED filed a protest, asserting that a new at-grade crossing should only be approved if an existing at-grade crossing was closed. This would ensure that the total number of at-grade crossings in the state did not increase. SED identified several nearby crossings for consideration, including crossings at Railroad Square.

In light of the protest from SED, this proceeding was re-assigned to the Administrative Law Judge (ALJ) Division.

On June 15, 2016, Duncan filed a Response.

On June 16, 2015, the City filed a Reply and Joint Parties filed a Response.

On June 17, 2015, Western Farm Center filed a response. Western Farm Center's sole interest in this proceeding is to ensure that existing crossings in Railroad Square are not closed.

On September 11, 2015, a prehearing conference (PHC) was held. At the September 11, 2015 PHC, the parties discussed the scope of the issues to be resolved and a possible procedural schedule. Parties agreed that evidentiary hearings would be necessary. Although parties generally agreed that a Public

Participation Hearing (PPH) should be held in Santa Rosa, parties debated the merits of setting the PPH concurrently with testimony or after briefs. The parties agreed to pursue alternative dispute resolution (ADR) through the Commission's ADR program.

On December 2, 2015, at the direction of the assigned ALJ, the City, SED, Western Farm Center and the Joint Parties served a Joint Statement on the status of ADR and proposed dates for a PPH. Duncan served a Separate Statement.

On December 7, 2015, the City filed a motion to limit the scope of the proceeding and Duncan filed a motion for an interim ruling on jurisdictional issues.

On December 11, 2015, the Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) was issued. The Scoping Memo directed parties to promptly brief the issues raised by the two December 7, 2016 motions and set a second PHC on January 15, 2016.

The City's motion sought to formally eliminate closure of an existing at-grade crossing from consideration in this proceeding. This motion was granted at the PHC on January 15, 2016.

Duncan's motion requesting an interim ruling on jurisdiction was granted. At the January 15, 2016 PHC, the assigned ALJ ruled that the Commission does have jurisdiction. The analysis is set forth in Section 2 of this decision and is formally adopted by this decision.

A PPH was held on February 1, 2016.

A publicly noticed site visit was held that afternoon and was attended by the assigned ALJ, the Commissioner's advisor, parties to the proceeding and others. The site visit began with a visit to the College Avenue at-grade crossing. The site visit then shifted to the east side of the Jennings Crossing and

participants walked from that point along the detour to Guerneville Road, then along the detour down Dutton Avenue back to Jennings Avenue. The participants then walked down Jennings Avenue to Helen Lehman School.

Evidentiary Hearings were held on March 14 – 15, 2016.

Opening briefs (OB) were filed on April 15, 2016 by the City, SED, Joint Parties, and Duncan. Reply briefs were filed on April 29, 2016 by the City, SED, and Duncan, and on May 2, 2016 by Joint Parties. On May 3, 2016, Joint Parties filed a motion to strike certain references to freight train speed from SED's Reply Brief. SED filed a response to the motion on May 5, 2016.

This proceeding was submitted on May 3, 2016.

1.4. Public Comment

More than 100 members of the public attended a PPH at Helen Lehman Elementary School on February 1, 2016. Twenty-eight speakers, including both local residents and elected officials, detailed their hopes for an at-grade crossing at the location and discussed how their lives would be impacted if the crossing is permanently closed or if a grade-separated crossing is constructed.[3] Residents cited safety concerns raised by the extended detour route they are now required to walk to avoid the Jennings Crossing. They were also concerned that a "behemoth" overcrossing would present a personal safety hazard.

Residents expressed concern that the size and design of the separated grade crossing would negatively impact the primarily residential

[3] One speaker, who was particularly focused on avoiding busy Guerneville Avenue with her children, indicated that a "bridge" over the crossing would be acceptable. Reporter's Transcript (RT) PPH 55:5-14.

neighborhood. Concerned residents stated they believe that a separated grade crossing would create a visual barrier that would divide the neighborhood in two, decrease residential and commercial property values and detract from the area's appeal to employers and employees.[4]

Both the design of a grade-separated crossing and the overcrossing's sharp turns would interfere with the City's goal of creating a bicycle-commuter-friendly route as part of the North Santa Rosa Station Area Specific Plan for "Bicycle Boulevard," and impede Sonoma County's bicycle/pedestrian planning and "overall greenhouse gas reduction goals."[5] Without a crossing at Jennings Avenue, there would be a gap in the local existing bicycle trail as well as the longer bicycle trail that is planned for the SMART rail corridor. A separated grade would require hairpin turns, a steep slope and additional distance, all of which would make use by bicycle riders difficult. Resident representatives of the North Bay Organizing Project Transit Riders United voiced their support for an at-grade crossing as a safe way to promote greener travel.[6]

Residents characterized the possible closure of the Jennings Crossing as environmental discrimination: "Communities like this have historically been discriminated [against] by the design of transportation infrastructure. To fence this community off from green space and healthy transportation to school is a

---

[4] RT PPH 46:23-48:19.

[5] RT PPH 9:5-8, 17:10-13, 28:3-19, 29:10-31:1, 45:12-46:17, 47:18-48:4, 48:28-49:8.

[6] RT PPH 61:11-62:6, 60:12-19.

travesty shocking to see in the year 2016."[7] Residents unable to afford cars voiced their frustration with having to resort to more dangerous routes, such as crossing at Guerneville Road.[8]

Residents are concerned that a separated grade crossing would come with its own set of safety risks. For example, residents are worried about skateboarders and bicyclists speeding down overcrossing ramps. Residents expressed a larger concern that the separated grade crossing would invite loitering in the confined bridge area. Specifically, it would be difficult to see loiterers due to the "length of approaches, hairpin turns, and vertical curvature of a bridge."[9] Mothers also expressed basic everyday concerns regarding the elevated crossing, such as the challenge of lugging their children across an overcrossing.[10]

The public is also concerned that fencing off the at-grade crossing would lead a pedestrian to attempt to climb or cut through the fence to avoid such an inconvenient overcrossing.[11, 12]

---

[7] RT PPH 50:9-15.

[8] RT PPH 60:4-61:4, 38:17-39:16.

[9] Response of Joint Parties attachment (Johanna James' comment letter #19 to the Project Draft Environmental Impact Report (James Letter)); RT PPH 25:9-27; Exhibit (Exh) SR-2 attachment (letter of comment from Chief of Police Dept. Robert Schreeder (Schreeder Letter)).

[10] RT PPH 27:17-25.

[11] RT PPH 22:11-15.

[12] RT PPH 16:1-8, 57:5-14, 59:15-18; SMART Board of Directors member and Sonoma County Supervisor Shirlee Zane, letter of comment, p. 1; Exh. SCTL-10 (Willard Richards Rebuttal Testimony) at 1:11-4:10.

A detour route is now in place and residents state that the detour poses its own safety concerns. It requires pedestrians to travel an additional quarter mile north to the nearest at-grade crossing of Guerneville Road, a 40 mile-per-hour (mph), four-lane major arterial crossing.[13] One resident described crossing the tracks at Jennings with friends in the 1980s to get to popular destinations like the Coddingtown Library, the theatre, and the mall: "because it was safer than going on Guerneville Road and/or College. If we had to use those, I don't know what the consequences would have been."[14] Mothers shared their existing fears in walking their children to school because of the traffic at the only available crossings.[15]

Numerous elected officials[16] echoed their constituents' concerns about the overcrossing's "longer approaches which will create a serious obstacle to the elderly, people with disabilities, parents with young children, and people managing carts with groceries."[17] At the PPH, physically impaired residents expressed concerns about traveling a farther distance to cross a separated grade system, especially during the rainy season.[18]

The public is also concerned that the cost of building an overcrossing is disproportionately expensive compared to the at-grade design, especially if

---

[13] Application 15-05-014, at 7; RT PPH 24:4-21, 60:12-19, 62:13-22.

[14] RT PPH 53:10-20.

[15] RT PPH 55: 6-14.

[16] Seven elected officials or their representatives spoke at the PPH.

[17] RT PPH 22:18-23, citing Sonoma County Board member Shirlee Zane letter of comment.

[18] RT PPH 33:27-34:26, 51:8-25, 55:27-58:6.

residents will not use the overcrossing structure once it is built.[19] Residents and City Council members denounced the bridge proposal as "fiscal overkill," urging that citizen taxpayer money should be invested in more worthy expenditures like the pedestrian/bicycle bridge that facilitates crossing Highway 101.[20]

At the start of the PPH, SED gave an overview of its position regarding the crossing, stating that safety can only be achieved by a separated grade crossing or no crossing. Alternatively, SED recommended that the City close an existing at-grade crossing.[21]

The Commission also received letters and emails supporting an at-grade crossing on Jennings Avenue. David Bannister wrote "A train that should be enhancement to the neighborhood (where I live) should not be an obstacle for foot transportation!" Lia Supanich emphasized the need to cut down gas emissions from cars by providing walking paths and bike paths. David Schonbrunn, President of Transportation Solutions Defense and Education Fund in San Rafael sent information on traffic calming to promote pedestrian safety. Schonbrunn argues that applications for bicycle/pedestrian crossings should be evaluated differently from applications for vehicular crossings and that the Commission should open a rulemaking on this issue.

---

[19] RT PPH 35:2-6.

[20] RT PPH 52:23-53:4; *see* also James Letter; RT 16:9-18; 17:21-25.

[21] RT PPH 11:12-13:20.

2. Jurisdiction

Pursuant to Section 1201 of the California Public Utilities Code (Pub. Util. Code),[22] the Commission must grant permission before an at-grade crossing can be constructed across the track of a railroad corporation. Section 1202 gives the Commission exclusive authority to determine the point of crossing, the terms of installation, and the terms of operation. As part of this authority, the Commission is tasked with evaluating proposed warning devices, technology and other safety measures, with the consent of the local jurisdiction. (Section 1202(d)).

The basis of the Commission's jurisdiction is not limited to Sections 1201 and 1202. Section 229 defines railroad to include any "commercial, interurban, and other railway, other than a street railroad." Under Section 99152, "Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures." These statutes, when read together, give the Commission jurisdiction over railroad crossings in California.

In his Response, and throughout this proceeding, Duncan has asserted that the Commission does not have jurisdiction over the crossing. Duncan bases his assertion on a 2004 case, *Santa Clara Valley Transportation Authority v. PUC*, 124 Cal. App. 4th 346 (Santa Clara VTA), regarding crossings proposed by the Santa Clara Valley Transportation Authority (VTA). The Scoping Memo included this jurisdictional question as issue No. 5.

---

[22] All subsequent Section references are to the California Pub. Util. Code unless otherwise indicated.

> 5. In view of the holding in *Santa Clara Valley Transportation Authority v. Public Utilities Commission of the State of California*, does the Commission have jurisdiction over the Jennings Avenue crossing?

The Scoping Memo directed parties to brief this issue in December and January so that an interim ruling could be issued at the January 15, 2016 PHC. At the PHC, the assigned ALJ ruled that the Commission has jurisdiction and that jurisdiction was not limited by *Santa Clara VTA*. This decision confirms the interim ruling, and sets forth the legal analysis below.

The issue in *Santa Clara VTA* was whether the exclusive railroad crossing jurisdiction conferred on the Commission by the legislature pursuant to Sections 1201 and 1202 applied to VTA's light rail transit crossings. The court found that the Commission does not have exclusive jurisdiction over the VTA crossing pursuant to Sections 1201 and 1202. The Court examined VTA's enabling legislation and, based on that, determined that VTA was not a railroad corporation or a street corporation subject to Sections 1201 and 1202. The Court found that the Commission did have jurisdiction under Section 99152.

Duncan argues that because SMART's enabling legislation describes it as a public transit agency, it is similarly not subject to Sections 1201 and 1202.

The *Santa Clara VTA* holding is specific to VTA and cannot be applied directly to SMART. The *Santa Clara VTA* court based its decision on analysis of VTA's enabling legislation. Based on this review, the Court found that the enabling legislation altered the scope of the Commission's jurisdiction over VTA. No party has provided an analysis of how or why SMART's enabling legislation,

enacted in 2002, should be subject to the court's interpretation of the 1969 VTA enabling legislation.[23]

Finally, as noted above, the Commission's jurisdiction over the crossing is not premised just on Sections 1201 and 1202. Rather, the Commission is responsible for a number of different rail safety laws that, when read together, establish the Commission's jurisdiction.

For these reasons, on January 15, 2016, the assigned ALJ ruled that *Santa Clara VTA* does not limit the Commission's jurisdiction over the Jennings Crossing. This decision confirms that ruling.

3. Location and Historical Use

The Jennings Crossing is located in Santa Rosa, between PUC Crossing No. 005-55.30 at Guerneville Road and PUC Crossing No. 005-54.44 at College Avenue. Although the Jennings Crossing has never been officially recognized by the Commission,[24] pedestrians and bicyclists have been using the crossing since at least 1904.[25] In November of 2015, while this proceeding was pending, a fence was erected to prevent illegal pedestrian crossings. The City has posted signs directing pedestrians on a detour route that takes them north to Guerneville Road where there is a combined pedestrian/vehicle crossing.

---

[23] Duncan does describe how he would apply the holding of *San Mateo VTA* to SMART, but he does not provide a persuasive argument as to why *San Mateo VTA*, a case that is very specific to a single transit agency and factually different from the case at hand, should apply to SMART. *See*, Duncan Opening Comments at 6-7.

[24] No party was able to locate any documentation of approval of the crossing or abandonment of the crossing.

[25] Response of Joint Parties, at 6.

The Jennings Crossing links two neighborhoods and is an important part of the City's adopted plans for this area, including the City's General Plan 2035, the Bicycle and Pedestrian Master Plan 2010, and the North Santa Rosa Station Area Specific Plan.[26] The Bicycle and Pedestrian Master Plan and the North Santa Rosa Station Area Specific Plan both emphasize the need to improve pedestrian and bicycle access. In addition, the Jennings Crossing is part of the planned bicycle and pedestrian path being built along the rail corridor as part of the SMART project. [27]

Within approximately one-half mile of the proposed crossing are the Helen Lehman Elementary School (3,490 feet from the tracks), various social services, restaurants, the Post Office, Coddingtown Mall, the Transit Center, Business Park, Jennings City Park, and G&G Market; Santa Rosa Junior College is also in close proximity. In addition to the existing residential neighborhoods in the Jennings Crossing vicinity, Range Ranch—a medium-high density residential development—is currently underway on Jennings Avenue just to the east of the crossing.

Observation of the Jennings Crossing over an eight-hour period on October 20, 2013, showed a total of 25 bicycles and 91 pedestrians. Ninety percent of the bicyclists were categorized as recreational users and 30 percent of the pedestrians were categorized as school related.

---

[26] Exh. SR-1 at 4.

[27] Application, Declaration of Caroline Fowler at 2.

SMART is a passenger train and bicycle and pedestrian pathway project located in Sonoma County and Marin County. SMART owns the rail corridor in Santa Rosa. The first phase of SMART will consist of a 42-mile rail and trail project connecting Santa Rosa in Sonoma County to San Rafael in Marin County.[28] Service is set to begin in 2016, and SMART was actively testing portions of the rail line near Jennings Avenue in February 2016. The North Santa Rosa Station for SMART will be situated on Guerneville Road, on the same portion of the track as the Jennings Crossing. The area around the station will be transit-oriented, including improved bicycle and pedestrian access to the station and connectivity between the station and adjacent commercial and residential areas.

In addition to SMART, the NCRA is responsible for operation of railroad service including freight service in the SMART rail corridor, which currently involves approximately two movements per week. The parties have stipulated that the maximum train speed at the designated crossing will be between 35 and 45 miles per hour. Freight trains will be traveling at 25 miles per hour, including at the gauntlet track.[29]

As lead agency under the California Environmental Quality Act (CEQA), the City performed an environmental review of the at-grade crossing. In March 2015, the City Council voted unanimously to (1) certify the Final Environmental Impact Report for the Jennings Avenue Pedestrian and Bicycle

---

[28] Exh. SR-1 at 4.

[29] RT P13:2-3; SED Reply Brief, citing Exh. SED-2, at 8. *See* also Exh. SED-2 at 9:23-25; Exh. SR-1 at 13 (anticipated maximum speed of 45 miles per hour).

Crossing, and (2) approve an at-grade pedestrian and bicycle crossing at Jennings Avenue.[30] The City seeks to replace the existing unapproved crossing with a "CPUC-approved and CPUC-compliant" pedestrian and bicycle crossing.[31]

There are two rail pedestrian/vehicle crossings located less than a mile from Jennings Avenue: Guerneville Road (0.25 mile to the north) and College Avenue (0.6 mile to the south).[32] Both of these crossings are at-grade and put pedestrians in close proximity not only to rail service but also to vehicular traffic using the same crossing.

Currently, access to the Jennings Crossing has been fenced off. Pedestrians and bicyclists are directed to take the detour of approximately one half mile. That detour begins on the east side of the railroad tracks, proceeds north along a pedestrian path that runs between Steele Creek and back fences of residences. The pedestrian must then cross the railroad tracks using the Guerneville Road at-grade crossing. Guerneville Road is a 40-mile per hour, four-lane arterial road used by approximately 25,000 vehicles per day. The detour then turns south on another four-lane arterial road (Dutton Avenue) and returns to Jennings Avenue on the west side of the tracks. Dutton Avenue has a daily vehicle count of 13,600.[33] From there, students would continue their walk to school. The City asserts that this detour route presents its own safety concerns: the path is

---

[30] Exh. SR-1.

[31] City OB at 5.

[30] Application at 6-7.

[31] Application at 7.

at times isolated, the Guerneville crossing and Dutton Avenue portion of the detour put students in proximity to heavy vehicle traffic, and the students will still cross using an at-grade crossing. In addition, the detour route will double the length of the walk to school for students who live east of the crossing.

4. Grade-Separated Crossing

4.1. Grade-Separated Crossings Reduce Risk of Injury by Train

SED argues that a separated grade crossing is inherently safer than an at-grade crossing in relation to the risk of pedestrian/train contact. For this reason, both federal and state policies generally favor grade-separated crossings. For example, SED cites a federal report that found "The most effective strategy to improve grade crossing safety is to simply close the crossing."[34]

SED provided evidence of injuries and deaths at at-grade crossings. According to SED, the majority of crossing incidents happen when trains are traveling less than 30 mph.[35] However, the other parties contend that SED's statistics are misleading because they don't distinguish between highway crossings involving vehicles and street crossings limited to pedestrian and bicycle traffic. No party offered alternative statistics.

---

[34] SED Protest at 1 footnote 2, citing Report on Rail-Highway Grade Crossing Safety, U.S. Office of the Inspector General (September 30, 1999).

[35] Exh. SED-2 at 10.

4.2. Grade-Separated Crossing Design for Jennings Avenue

The City explored the option for a grade-separated crossing at Jennings Avenue. The City obtained a grant from the Metropolitan Transportation Commission of $8 million for a grade separated crossing. As part of this process, extensive drawings were done to illustrate how the overcrossing could be designed to fit within the narrow Jennings Avenue crossing area. The result was described by residents as a "monstrosity," a "behemoth," and a "wall in some other form."[36]

The ramp is required to be compliant with the Americans with Disabilities Act (ADA), which requires that the ramp be no steeper than an 8 percent incline. To accommodate this, the length of the ramps at Jennings Avenue would need to be 450 feet long. This requires switchbacks that obscure sightlines. Parties cited many safety problems, as well as aesthetic problems, with the overcrossing.

First, even though the proposed overcrossing would be ADA compliant, the 8 percent incline will be challenging for disabled residents, people with strollers and the elderly. A 5 percent grade is considered difficult, and this is especially true in wet weather.[37] The Jennings Avenue overcrossing would need to be even steeper. The down ramp will be even more dangerous for wheelchair users than the up ramp.[38]

---

[36] City OB at 24 citing Exh. SR-1 at 18; RT PPH at 51:1.

[37] *See* Exh. SCTL-12; Exh. SR-2 at 8.

[38] City OB citing Paul George and David Alden Testimony; Exhibit SCTL-9 at 2 (Prepared Direct Testimony of Paul George, stating that "Wheelchairs can be particularly scary on a down-ramp; if one loses control, the danger can be extreme.")

Second, the overcrossing will be 950 feet in length. A trip across and back would be 0.17 mile or the length of three football fields. The length of the overcrossing, including 900 feet with an 8 percent grade, will require dozens of resting places. The longer the ramp is, the less likely people are to use it.[39]

Third, the overcrossing would be challenging for first responders. City police and fire chiefs have reported that "grade-separated crossings have a higher instance of crime and illicit activity than at-grade crossings and that there are increased challenges to provide services to a grade-separated crossing over an at-grade crossing, including access."[40]

Fourth, because sightlines are obscured and would provide hiding places, the overcrossing raises personal safety concerns. The Joint Parties presented evidence that crime is higher where there is not constant use and that a safe walking environment relies on the "eyes" of nearby residences.[41] An at-grade crossing is visible to neighbors living near the crossing. Because of its height, activities on the overcrossing would not be viewable, making it susceptible to vandalism and other crimes.

The City and other parties are concerned about visual problems that would be created by the overcrossing. The massive footprint required for the overcrossing would eliminate parking and have negative aesthetics with significant and unavoidable visual impacts. Finally, there remains a concern that

---

[39] City OB citing Exh. SCTL-12.

[40] City OB at 22 citing Exh. SR-2 at 6. A copy of the March 10, 2016 letter from the Santa Rosa Fire Chief is included as an attachment to Exh. SR-2.

[41] Exh. SCTL-9 at 2.

pedestrians will cut a hole in the fence and continue to illegally cross at-grade. A hole has already been cut in the existing fence.[42] SED notes that cutting a hole in the fence is illegal, and that there are stronger fencing materials available.[43]

In light of this, the parties, other than SED, believe a separated grade crossing would act as a visual and pedestrian barrier dividing the neighborhood in half.

4.3. At-Grade Crossing Design for Jennings Avenue

The design of the at-grade crossing proposed in the City's Application is intended to comply with the ADA, Commission safety standards as set forth in General Order (GO) 75-D, Caltrans Highway Design Manual path standards, California Manual of Uniform Traffic Control Devices and Federal Highway Administration Railroad-Highway Grade Crossing Handbook.

Safety improvements include flashing light signal assemblies with automatic gate arms, audible warning signals, pedestrian gates, hand rails, paving, walkways and fencing. The warning devices will indicate when a train is approaching and the gate arms will block pedestrian access. The crossing will have additional safety features including pavement markings and truncated domes.

Additional safety improvements would be made because the site consists of a double track. Electronic signs will be installed to notify pedestrians if a second train is coming in close proximity to the first. Exit swing gates would

---

[42] Exh. SCTL-10 at 2.

[43] Exh. SED-5.

allow pedestrians to exit the track if the gate arms were activated while the pedestrian was in the crossing. Power and fiber optic cable would be available from within the rail corridor for the crossing equipment. Vandal-resistant fencing would be installed to channel pedestrians to the crossing.[44]

The pathway leading to the crossing would be asphalt or concrete, and would be 8 feet wide with 2-foot shoulders on either side. On the east side, the pathway would cross Steele Creek using the existing box culvert. A new streetlamp would also be installed on the east side.[45]

4.4. Policy Favoring Reduction in the Number of At-Grade Crossings

GO 75-D recommends that if a new at-grade crossing is established, an existing at-grade crossing should be closed. In light of this, SED recommended that another crossing in Santa Rosa be closed. Three other crossings were identified: West Sixth Street, West Seventh Street, and West Eight Street. None of the other parties supported closing another at-grade crossing.
In December 2015, the City filed a motion to remove consideration of the closure alternative from the scope of the proceeding. That motion was granted.

5. Issues before the Commission

The Scoping Memo determined that the ultimate issue to be addressed in this proceeding is whether the at-grade track crossing proposed for Jennings Avenue is in compliance with applicable Commission safety rules, procedures, guidelines and criteria. The Scoping Memo set forth five sub-issues, which,

---

[44] Application at 9-11.

[45] Application at 10.

through rulings, were reduced to three.[46] As modified by these rulings, the sub-issues are:

- Is it in the public interest to have a pedestrian railroad crossing at Jennings Avenue?
- Has the City of Santa Rosa met its burden and demonstrated that grade-separating a crossing at Jennings Avenue is impracticable?
- Are there any safety issues not specifically addressed by the questions above? Is there a difference between public interest in the crossing and safety?

6. Discussion

6.1. Rule 3.7(c)

Section 1202[47] gives the Commission the exclusive power to require a separated grade crossing. Rule 3.7(c) provides additional details. As summarized in Decision 14-08-045,

---

[46] The two sub-issues that were removed from scope or addressed earlier in the proceedings are:

> Sub-issue No. 3. If a crossing at Jennings Avenue is in the public interest, and a grade-separated crossing is impracticable, under what circumstances and terms would it be in the public interest to close one of the existing at-grade crossings identified by SED?
>
> Sub-issue No. 5. In view of the holding in *Santa Clara Valley Transportation Authority v. Public Utilities Commission* of the State of California, does the Commission have jurisdiction over the Jennings Avenue crossing?

[47] "exclusive power . . . to require, where in its judgment it would be **practicable**, a separation of grades at any crossing established and to prescribe the terms upon which the separated shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of crossings or the separation of grades shall be divided between the railroad or street railroad corporations affected or between these corporations and the state, county, city, or other political subdivision affected." (Emphasis added).

> Rule 3.7(c) requires applications to construct a railroad crossing be made by the municipal, county, state or other governmental authority which proposes construction and, if the proposed crossing is at-grade, the applicant must demonstrate that: 1) There is a public need to be served by the crossing; 2) A grade separation of the crossing is not practicable; and 3) There are warning signs, signals, and other devices at the crossing. All three elements of Rule 3.7(c) must be satisfied in order for the application to be approved.

The Commission's analysis always begins with the presumption that grade separation is appropriate. The City bears the burden of overcoming this presumption with convincing evidence that this particular crossing will be safely operated as an at-grade crossing.

6.2. Public Interest; Safety Concerns

The City of Santa Rosa, Joint Parties, and Duncan provided evidence of how the public interest will be served by having the pedestrian crossing at-grade. These reasons are well-summarized by the City in its Application:

> a. The crossing would replace an unapproved crossing with Commission-approved and Commission-compliant crossing.
>
> b. The crossing would be upgraded for compliance with the ADA applicable federal regulations.
>
> c. The crossing is an important part of the City's General Plan 2035, the Bicycle and Pedestrian Master Plan 2010, and the North Santa Rosa Station Area Specific Plan.
>
> d. The crossing is necessary to establish a pedestrian and bicycle connection to the SMART pathway (the bicycle and pedestrian trail that is part of the SMART project) from both the east and west sides of the rail.
>
> e. The crossing would fill a gap in a regional bikeway network.

f. The at-grade crossing would provide neighborhood connectivity.

g. The at-grade crossing would provide a safer and more direct route for students walking and bicycling to the school.

h. The at-grade crossing would advance North Santa Rosa's walkable and bikeable goal.[48]

SED does not dispute the factual truth of the City's reasoning or that the City's reasons do not demonstrate that the crossing is in the public interest.

Safety is of paramount importance to the Commission. Ensuring safe utility service is in the public interest. But safety and public interest are not synonymous. Evaluating a particular facility for safety is different from evaluating what is in the public interest as a whole. Usually the safest type of crossing is a separated grade crossing or no crossing. However, the public interest requires a more nuanced review that considers the public interest as a whole. This includes safety impacts of a separated grade crossing and the alternative detour. As discussed above, both of these options present safety concerns.

Those safety concerns include: individuals may choose to cut the fence and walk across the tracks at-grade to avoid the long overcrossing; the overcrossing could attract loiterers and other crime-related activity; the confined bridge area, which is obscured from view, presents personal safety risks; emergency service access to the overcrossing is limited; the detour route requires a 20-minute walk, some of which is along an isolated gravel path and some of

[48] City OB at 7.

which is along busy streets; the detour route also requires the pedestrian to cross the tracks at-grade.

The public interest also takes into account other factors. As set forth above, the parties have demonstrated that the crossing is in the public interest not only because it would be safer than the current illegal crossing, but also because of the numerous benefits it will provide the community.

While SED focuses on safety of the crossing itself, the Commission must evaluate safety and public interest as a whole. In this case, the Commission must consider the fact that safety concerns are raised by both the at-grade crossing and the separated-grade crossing.

SED does not assert that the at-grade crossing, as proposed by the City, does not have the appropriate required safety features necessary for an at-grade crossing. SED's only contention regarding safety is that a separated grade crossing would eliminate the risk of train vs. pedestrian interactions.

6.3. Seven-Factor Test for Impracticability

6.3.1. Current Seven-Factor Test

Determining whether a separated grade crossing is or is not practicable is a fact-specific inquiry. The Commission has evaluated practicability of separated grade crossings on numerous occasions. In *City of San Mateo v. SoPac Transp. Co.*, D.82-04-033 (*City of San Mateo*), the Commission distinguished between impracticable and impractical, focusing primarily on two facts: the physical possibility of constructing the separated grade crossing at the site and the cost of construction. D.82-04-033 found that the high cost of construction might make

the separated grade crossing **impractical**, but the high cost, by itself, did not make the separated grade crossing **impracticable**.[49] Practicable "means being possible physically of performance, a capability of being used, a feasibility of construction."[50]

In the years since D.82-04-033 was decided, the Commission has laid out more specific factors for the analysis. Currently, the Commission uses a seven-factor test to determine practicability.

SED argues that the seven-factor test is not applicable to the Jennings Crossing. SED contends that, rather than considering the seven factors, the evaluation of impracticability should closely adhere to the *City of San Mateo*'s finding that the high cost of a separated crossing did not make a crossing impracticable. SED argues that based on this, the test is simply whether a separated grade crossing could be built.

In contrast, the City, citing recent case law including D.02-05-047 (*Blue Line*),[51] argues that the test for impracticability has evolved since *City of San Mateo*. SED's argument turns on SED's assertion that the *Blue Lin*e test only applies to light rail. To make this assertion, SED makes a novel interpretation of

---

[49] *City of San Mateo*, n.8.

[50] *Id.*

[51] In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Constructions Authority for an Order Authorizing the Construction of Two Light Rail Transit Tracks At-Grade Crossing West Avenue 45 in the City and County of Los Angeles, California, and Related Matters. Several cases have followed *Blue Line* including City of Bakersfield D.04-08-013, City of Los Angeles D.14-08-045, and City of San Diego D.03-12-018.

Blue Line and contends that subsequent Commission decisions applying *Blue Line* to heavy rail were in error.

Blue Line includes a lengthy discussion about whether light rail, like heavy rail, is subject to practicability analysis. *Blue Line* held that light rail is subject to practicability analysis. *Blue Line* then sets forth a six-factor test.[52] SED argues that because *Blue Line* discusses the difference between light rail and heavy rail, the seven-factor test should only apply to light rail. This is incorrect. In *Blue Line,* the sole reason for discussing the difference between light and heavy rail lines was to determine whether the impracticability test applies to light rail. *Blue Line* found that it does and *Blue Line* does not distinguish between light and heavy rail when setting forth the seven-factor test for impracticability. Therefore, whether a rail line is heavy rail or light rail, the same test should apply. Subsequent Commission decisions have confirmed this.[53,54] The difference between light rail and heavy rail must be considered in the fact-specific seven-factor analysis. The seven factors, or criteria, for evaluating impracticability of a separated-grade crossing are as follows:

1. A demonstration of public need for the crossing;
2. A convincing showing that all potential safety hazards have been eliminated;

---

[52] The seventh factor, Commission precedent, was added in 2003 by D.03-12-018.

[53] "The Commission has not been restricting City of San Mateo to instances where there are major, or even moderate, heavy rail movements." *Blue Line* at *14.

[54] "The Commission now uses these seven criteria . . . for judging practicability of all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad)" D.09-02-031; D.14-08-045.

3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions;
6. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation; and
7. Commission precedent in factually similar crossings.

Below, we set forth the analysis required by Rule 3.7(c), including application of the seven criteria. Because SED argued that the seven-factor test does not apply to the Jennings Crossing, SED elected not to brief the criteria. As a result, no party disputes whether the City has met the standard for impracticability using the seven-factor test.

6.3.1.1. Demonstration of Public Need

Rule 3.7(c)(1) requires the City of Santa Rosa to demonstrate that there is a public need to be served by the proposed crossing. The demonstration of public interest, as discussed in Section 6.2 also demonstrates that there is a public need that will be served by the crossing.

6.3.1.2. Convincing Showing that the City Has Eliminated all Potential Safety Hazards

The City has made a convincing showing that it has eliminated all potential safety hazards. The proposed crossing has been designed to comply with numerous legal requirements. The design is ADA compliant. The design includes protection and warning devices in compliance with federal and State regulations (including GO 75-D, Caltrans Highway Design Manual path standards, California Manual of Uniform Traffic Control Devices, and Federal

Highway Administration Railroad-Highway Grade Crossing Handbook).[55] The safety features will be similar to those at the improved at-grade crossing used by pedestrians to cross Guerneville Road. As part of the design process, the City consulted with SMART and SED.

The City states that Pedestrian Clearing Sight Distance is sufficient (visibility 1500 to north and 2000 feet to south), but safety devices including "fencing, emergency swing gates pavement markings, truncated domes, flashing light signals, audible devices and automated pedestrian arms/gates will be installed."[56]

SED has stipulated that the proposed design meets all legal requirements.[57]

In addition to the safe design of the at-grade crossing, a crossing guard during school hours could provide additional protection for school children. For this reason, this decision directs the City to work with the school district to determine if a crossing guard should be located at the crossing. The City is directed to provide a report on the crossing guard analysis to SED as part of City's compliance with this decision.

6.3.1.3. Concurrence of Local Community, Emergency Authorities, and the General Public.

The local community, emergency authorities and the general public all support an at-grade crossing for Jennings Avenue. The City Council approved

---

[55] City OB at 7.

[56] City OB at 8 citing SR-1 at 11.

[57] RT 91:22-27.

the at-grade crossing proposal in a resolution. The City's fire and police chiefs provided written support for the crossing, and indicated that a separated grade crossing would present security and access concerns that could have a negative impact on public safety.

SMART supports the at-grade pedestrian crossing.[58]

Local public officials support the at-grade crossing. Local organizations such as the Sierra Club, Sonoma County Bicycle Coalition, and North Bay Green Belt Alliance support the at-grade crossing because it will increase bicycle and walking access.

No community groups or others came forward to express opposition to the at-grade crossing.

Importantly, all of this support was for an at-grade crossing. In contrast, there was no support for a separated grade crossing.

6.3.1.4. Recommendation of Staff that it Concurs with the Safety of the Proposed Crossing

SED did not recommend the proposed at-grade crossing. SED argues that only a separated grade crossing can eliminate the potential for train/pedestrian interactions. In light of this, SED did not provide analysis of the specific safety features proposed for the at-grade crossing. However, as noted above, SED did stipulate that the design itself is safe.

---

[58] Exh. SR-1 at Exhibit 5.

6.3.1.5. Comparative Cost

Either type of crossing will cost over one million dollars. The City of Santa Rosa performed an estimated cost comparison between the proposed at-grade crossing and an alternative separated grade crossing. The City found the projected cost of the at-grade crossing to be $1,600,000, versus the $9,200,000 cost of designing and constructing a separated grade crossing.[59] The City obtained a grant of $8,200,000 from the Metropolitan Transportation Commission towards construction of a separated grade crossing. This grant has since been reprogrammed to other Bay Area projects.

6.3.1.6. Commission Precedent

The practicability of a separated-grade crossing is a fact-specific analysis that requires a weighing of the factors above. In assessing practicability of a separated-grade crossing, prior cases have considered whether the line is heavy or light rail, whether the crossing is for pedestrians or vehicles, the number of trains, train speeds, and support of the local community and emergency authorities.

At-grade crossings have been authorized most often in situations where the applicant agrees to close an existing at-grade crossing.[60] At-grade crossings

---

[59] A.15-05-014 at 8.

[60] D.15-05-043 (authorizing an at-grade crossing in the County of Santa Cruz); D.13-12-044 (authorizing at-grade pedestrian crossing in Fremont where there was strong community support for a crossing and applicant would close an existing crossing).

have also been approved in situations where it is expected there will be fewer than 10 trains per week and/or trains will be traveling at slow speeds.[61]

In 2003, the Commission held that a separated grade crossing was impracticable for a heavy and light rail crossing that was part of a redevelopment project in San Diego. In that case, the community was divided, with some supporting an at-grade crossing and others opposing the redevelopment project as a whole.[62] Ongoing development in the downtown area proximal to the crossing presented anticipated increased traffic concerns. Separated grade crossings would have cost $30,000,000 more than an at-grade crossing. The Commission found that the separated grade would divide the downtown and interfere with many buildings' views of San Diego Bay.

In 2015, the Commission found that a two-track light rail crossing for trains not exceeding 35 mph did not warrant a $250,000,000 expenditure on a grade-separated crossing.[63] In that case, several community groups opposed the at-grade crossings. When weighing the factors, the Commission emphasized that safety requirements had been met and that the high cost of the separated grade crossing was not justifiable.

The Commission has also denied at-grade crossing proposals in part because of lack of support from local emergency authorities.[64] In this case,

---

[61] D.04-08-013 (authorizing at-grade crossing where low volume of trains (2-3 per day) would be traveling at low speeds (10 mph)).

[62] D.03-12-018.

[63] D.14-08-045.

[64] D.09-02-031; D.06-06-032.

representatives from both the fire and police departments have submitted comments regarding the impracticability of a separated grade alternative.[65] Local authorities have also expressed concern regarding the overcrossing's potential to limit emergency service access and invite loitering and crime-related activity.[66]

The Commission denied an application for an at-grade crossing in the City of Davis. In that case, the rail line was used by 14 freight and 32 passenger trains per day and there was an existing unauthorized crossing.[67] In that case, the Commission did not reach the seven-factor test because the City of Davis failed to meet the threshold requirement of demonstrating a public need for the crossing. A key fact in the analysis was the existence of a legal crossing just 926 feet away.

The Joint Parties have cited *San Clemente*, and SED argues that *San Clemente* should not be treated as Commission precedent for analysis of this at-grade crossing. We agree with SED. *San Clemente* cannot be treated as precedent because it was an all-party settlement. The case involved multiple at-grade crossings leading across the railroad tracks to the beach. The exceptional circumstances of entrances and exit from beaches in San Clemente, located near cliffs, city pier, beach access stairway, and wetlands made building

---

[65] Exh. SR-2 attachment (letter of comment from Fire Chief Tony Gosner; Schreeder Letter).

[66] *Id.*

[67] D.13-02-003.

separated structures "difficult or impossible."[68] Finally, the crossings were related to "special environmental and historical concerns regarding the Coastal Trail and certain access restrictions imposed by the California Coastal Commission."[69]

Commission precedent demonstrates that a finding of impracticability can be made even when it is physically possible to build a separated-grade crossing. Important considerations in other cases authorizing at-grade crossings (without the closure of an existing at-grade crossing) include: support of emergency authorities, safe design and train speeds, barriers to views, and local development plans. All of these considerations are found in the instant case.

The facts in the case at hand are comparable to D.14-08-045 and D.03-12-018. In both those cases, the Commission approved at-grade crossings.

6.3.2. Seven-Factor Standard Supports At-Grade Crossing

The City, the Joint Parties and Duncan all applied the seven-factor test to the Jennings Crossing and found that a separated-grade crossing was impracticable. This decision reaches the same conclusion. All seven of the factors are considered in our determination of impracticability. In particular, the local community has demonstrated strong support for an at-grade crossing rather than a separated-grade. SED did not use the seven-factor test. Instead SED argues that, under earlier case law, impracticability only applies if there is not physically room to construct the overcrossing. There are two problems with

---

[68] SED OB at 15.

[69] *Ibid.*

SED's conclusion. First, SED has applied an earlier test and does not indicate any opinion on the current seven-factor test. Second, SED's analysis does not address the full scope of practicability as set forth in *City of San Mateo*: to be practicable, a separated grade crossing must be able to be constructed and *used*. The evidentiary record in this case reflects the fact that the separated-grade crossing is unlikely to be used for its intended purpose.

7. Environmental Review and CEQA

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.

On March 17, 2015, the Santa Rosa City Council (City Council) passed two resolutions[70] in connection with the at-grade crossing proposed for Jennings Avenue.

In Resolution 28620, the City Council unanimously certified the Final Environmental Impact Report (FEIR) for the Jennings Crossing. The FEIR was based on a draft Environmental Impact Report that was made available to the public in 2014. The City Council held a public hearing regarding the draft EIR on November 18, 2014.

In Resolution 28621, the City Council unanimously approved the proposed at-grade pedestrian and bicycle crossing for Jennings Avenue, as described in the

[70] These resolutions are included in the record as attachments to the City's Application and as attachments to Exh. SR-1.

FEIR. Resolution 28621 notes that the crossing is part of the Santa Rosa Bicycle and Pedestrian Master Plan, North Santa Rosa Station Area Specific Plan, and the Santa Rosa General Plan.

The FEIR found three significant and unavoidable impacts related to noise only. The FEIR sets forth specific mitigation measures including implementations of "Quiet Zones." Because Quiet Zones are under the jurisdiction of the Federal Railroad Administration, the City will have to file for the Quiet Zone separate from this proceeding.

The Commission has reviewed and considered the City's environmental documents and finds them adequate for its decision-making purposes. We adopt and incorporate by reference the significant environmental impacts and proposed mitigation measures set forth in the City's Final Environmental Impact Report.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3. Comments were filed on August 8, 2016 by Duncan, City, and SED, and reply comments were filed on August 15, 2016 by the Joint Parties, Duncan, and City.

The majority of the comments from SED and Duncan repeat arguments from prior briefs. In addition, SED's comments exceeded the 15-page limit. Based on comments, the proposed decision was modified to emphasize that the decision to allow a new at-grade crossing is unique to the facts of this unusual case and that this decision should not be interpreted to lower the legal standards for other cities contemplating at-grade crossings.

9. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Jeanne M. McKinney is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Jennings Avenue is located in Santa Rosa, CA and has historically been used as an unofficial railroad crossing.

2. The Commission has never authorized a crossing at Jennings Avenue.

3. NCRA currently runs freight service across Jennings Avenue approximately two times per week.

4. Beginning in 2016, SMART anticipates running approximately thirty passenger trains per day through the Jennings Crossing, each train not exceeding a maximum speed of 35 miles per hour.

5. There has been an informal unauthorized crossing at Jennings Avenue for over 100 years.

6. A fence was erected to prevent pedestrians and bicyclists from using the Jennings Crossing. A hole has already been cut in the fence.

7. Prior to installation of the fence, approximately 25 bicyclists and 91 pedestrians were utilizing the unprotected rail corridor during an eight-hour weekday period.

8. Helen Lehman Elementary School is located approximately 3500 feet from the Jennings Crossing. In 2014, the school had an enrollment of approximately 518 students.

9. Prior to the installation of a fence at the crossing, Jennings Avenue was a preferred route for schoolchildren at Helen Lehman Elementary School.

10. Following the installation of the fence at Jennings Avenue, pedestrians and bicyclists have been directed to follow a detour of approximately 0.5 miles to use the Guerneville Road at-grade crossing.

11. The crossing at Guerneville Road is shared with vehicles traveling on a 40 mile per hour four-lane arterial. Guerneville Road is used by approximately 25,000 vehicles per day.

12. A new residential development (Range Ranch), located just a few blocks to the east of Jennings Avenue, will likely increase the number of school children attending Helen Lehman Elementary School.

13. The local community supports an at-grade crossing at Jennings Avenue.

14. SED believes that safety can only be achieved by a separated grade-crossing or no crossing.

15. A separated grade crossing prevents pedestrian/train contact.

16. SED recommends that in exchange for an at-grade crossing at Jennings Avenue, the City should close an existing at-grade crossing in Santa Rosa.

17. Civic officials and emergency authorities in Santa Rosa endorse the proposed at-grade crossing.

18. An at-grade crossing at Jennings Avenue is part of the North Santa Rosa Station Area Specific Plan for "Bicycle Boulevard" which connects at Jennings Avenue.

19. An at-grade crossing at Jennings Avenue is part of the City's General Plan.

20. At the PPH, residents expressed concern that a separated grade crossing would interfere with the North Santa Rosa Station Area Specific Plan for "Bicycle Boulevard" which connects at Jennings Avenue.

21. At the PPH, resident representatives of the North Bay Organizing Project Transit Riders United voiced their support for an at-grade crossing.

22. Seniors, disabled citizens and parents with young children are concerned that if a separated grade overcrossing is installed instead of an at-grade crossing, the additional length and slope of the overcrossing will be difficult and unsafe.

23. The estimated cost of the grade-separated overcrossing is $9,200,000. The estimated cost of the proposed at-grade crossing is $1,600,000.

24. Commission GO No. 75-D established a policy favoring reducing the number of at-grade crossings.

25. The presence of Steele Creek and the Sonoma County Agency aqueduct make construction of a grade-separated undercrossing at Jennings Avenue infeasible.

26. In response to public opposition to a separated grade crossing, the City declined an $8,000,000 grant to fund a grade-separated overcrossing at Jennings Avenue.

27. An evidentiary hearing was necessary to develop the evidentiary record in this case.

Conclusions of Law

1. *Santa Clara VTA* does not impact the Commission's jurisdiction over the proposed Jennings Crossing.

2. The seven-factor test for impracticability applies to both light rail and heavy rail crossings.

3. The seven-factor test applies to the Jennings Crossing.

4. A rail crossing at Jennings Avenue is in the public interest and there is a public need for the crossing.

5. Local community and emergency authorities support the at-grade crossing design.

6. The general public, specifically including those who may be affected by an at-grade crossing, support the proposed at-grade crossing and oppose a separated-grade crossing.

7. As a matter of policy, the Commission disfavors new at-grade crossings.

8. The unique facts of this crossing overcome the presumption against an at-grade crossing.

9. Commission precedent in factually similar crossings supports an at-grade crossing.

10. It is impracticable to construct a grade-separated overcrossing at Jennings Avenue.

11. The City has convincingly shown that it has eliminated all potential safety hazards.

12 The City should work with the school district to determine if a crossing guard should be located at the crossing.

13. The Commission has reviewed and considered the FEIR and finds that it is adequate for decision-making purposes.

O R D E R

IT IS ORDERED that:

1. The application by the City of Santa Rosa for an at-grade crossing at Jennings Avenue in Santa Rosa is approved.

2. We adopt and incorporate by reference the significant environmental impacts and proposed mitigation measures set forth in the Final Environmental Impact Report prepared by the City of Santa Rosa.

3. The City of Santa Rosa shall provide the Commission's Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the Safety Enforcement

Division (SED) finalized engineering crossing designs prior to commencement of construction activities. The Commission Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the SED will evaluate their conformance with the crossing designs approved in this decision.

4. The City of Santa Rosa shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

5. The City of Santa Rosa shall notify Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the Safety Enforcement Division at least 30 days prior to the opening of the crossing. Notification should be made by certified U.S. Mail and by e-mail to rces@cpuc.ca.gov.

Within 30 days after completion of the work authorized by this decision, the City of Santa Rosa shall notify Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the Safety Enforcement Division, in writing, by submitting a completed Commission Standard Form G (Report of Changes at Highway Grade Crossing 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. The completed report must be submitted in hard copy and via e-mail to rces@cpuc.ca.gov. The completed report must include a report on whether a crossing guard should be stationed at the crossing during school hours. authorization shall expire if not exercised within three years of the issuance of this decision 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 require.

8. request for extension of the three-year authorization must be submitted to the Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the Safety Enforcement Division at least 30 days before the expiration of that period.

9. The preliminary determination for this proceeding of no hearings necessary is changed to "hearings are necessary."

10. All motions not previously ruled on in this proceeding are denied.

11. Application 15-05-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.