Decision **DRAFT DECISION OF ALJ ECONOME** **(Mailed 11/9/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of Petaluma, a Municipal Corporation, for an Order Authorizing the Relocation of One At-Grade Crossing of the Tracks of the Sonoma Marin Area Rail Transit District in the City of Petaluma, County of Sonoma.	Application 04-06-030 (Filed June 21, 2004)

OPINION CONDITIONALLY GRANTING APPLICATION

I. Summary

The City of Petaluma (Petaluma) is authorized to relocate an at-grade crossing of the railroad tracks of the Sonoma Marin Area Rail Transit District (SMART) according to the design set out in the Supplement to Application and the conditions set forth in this decision. Petaluma's authorization continues as long as no passenger rail service operates along the SMART tracks. This authorization shall expire in the event that passenger rail service initiates along the SMART tracks because the institution of passenger rail service may affect the safety, and may require changes in the rail crossing. In the event passenger rail service commences along the SMART railroad tracks, Petaluma must apply to the Commission for continued authorization of this at-grade crossing.

Additionally, if Petaluma extends Caulfield Lane past Hopper Street, Petaluma must make any changes to the design or signalization of the intersection of Hopper Street and Caulfield Lane and the railroad crossing

required by the Commission's Consumer Protection and Safety Division's Rail Crossing Engineering Section (RCES) prior to extending Caulfield Lane past Hopper Street.

II. The Application

A. Procedural Background

On June 21, 2004, Petaluma filed an application requesting that the Commission authorize the relocation of the at-grade crossing of SMART's railroad tracks. The Transportation Solutions Defense and Education Fund (TRANSDEF) filed a protest to the application. TRANSDEF is a non-profit corporation which promotes improvement in transportation and land use planning and air quality in the San Francisco Bay Area.

The Commission held its prehearing conference in this application on October 14, 2004. A further telephonic conference call among the parties, Commission rail safety staff, and the Administrative Law Judge (ALJ) was held on October 21, 2004. This conference led to a subsequent meeting among the parties and Commission staff rail safety staff on October 25, 2004. This meeting resulted in Petaluma's preparation of a detailed engineering drawing of the proposed at-grade crossing, which was filed as a supplement to the application.

The parties exchanged testimony in anticipation of evidentiary hearings. However, because no party had cross-examination, no evidentiary hearings were held. The testimony was admitted based upon stipulation, by an ALJ ruling dated January 3, 2005. The case was then submitted with the filing of reply briefs on February 9, 2005.

Subsequently, the ALJ issued a March 14, 2005 ruling setting aside submission and reopening the record to take supplemental testimony. The March 14 ruling directed Petaluma to submit supplemental testimony

responding to three questions concerning environmental review. Petaluma submitted such testimony on March 30, 2005. On April 22, 2005, TRANSDEF submitted a reply brief addressing Petaluma's supplemental testimony, together with a motion requesting the Commission take official notice of an interim federal rule. Petaluma filed a response to TRANSDEF's brief on April 29, 2005 and a response to TRANSDEF's motion on May 6, 2005.

On May 6, 2005, TRANSDEF filed a motion to file a sur-reply brief to Petaluma's April 29 filing. TRANSDEF also filed a second motion for the Commission to take official notice of certain listed documents. Petaluma filed its response to TRANSDEF's two motions on May 23, 2005.

Based upon the content of these filings, the ALJ issued a ruling requesting further briefing on additional questions concerning environmental review, and held a prehearing conference on August 29, 2005, to take oral argument on the issues.

On October 7, 2005, TRANSDEF filed a motion requesting an order to show cause why this application should not be summarily denied. Petaluma filed its response on October 21, 2005, and this application is submitted as of October 21, 2005.

In the November 4, 2004 Scoping Memo, it was determined that hearings may be necessary and that it was prudent to schedule them. Because Resolution ALJ 176-3136 found that hearings were not necessary, we placed the determination on the need for hearing on the Commission's Consent Agenda for approval of that change. After the testimony was served, no party requested cross-examination. Therefore, we again change the determination and conclude that hearings are not necessary in this application.

B. The Application's Proposal

Petaluma seeks to relocate one existing at-grade crossing on the SMART railroad tracks to Hopper Street, a public street. Petaluma proposes to close the crossing at its current location and to relocate the crossing about 2,000 feet to the east, from its current location at milepost 5-38.3 to milepost 5-37.8. At the relocated site, Caulfield Lane, another public street, will be extended southward across the SMART tracks at railroad milepost 5-37.8, and Caulfield Lane will terminate at Hopper Street in an inverse "T."

When completed, at its point of crossing of the railroad tracks, Caulfield Lane will be a four-lane public street about 60-feet wide. The proposed new crossing will be located generally to the south and the west of the intersection of U.S. Highway 101 and State Highway 116 (the Lakeville Highway), and about 1,400 feet north of the Petaluma River. At the point of the proposed new crossing, the SMART railroad tracks run east to west. Caulfield Lane will be a north/south public street at its point of crossing with the railroad tracks.

Existing crossings close to the proposed Caulfield Lane crossing are the at-grade Rush Creek crossing to the east (railroad milepost 5-28.5 in the City of Novato) and the at-grade Hopper Street crossing to the west (railroad milepost 5-38.3, in Petaluma). This latter crossing would be closed and replaced with the at-grade Caulfield Lane crossing.

Petaluma states that this relocation will improve vehicular and pedestrian safety and improve traffic circulation upgrades for the area established in the 1987 General Plan of the City of Petaluma and the recently approved Central Petaluma Specific Plan (CPSP). The application states that by emergency order of the Federal Railroad Administration, dated December 9,

1998, all train operations on the railroad line were discontinued and no train operations have occurred since December 9, 1998.

C. Support for Application

Many public agencies support the application. On May 19, 2004, the Board of Directors of SMART, the owner of the railroad line that the proposed crossing will cross, voted to support the closure of the Hopper Street at-grade crossing and its relocation to the proposed Caulfield Lane at-grade crossing. The North Coast Railroad Authority, the licensing agency for freight operations on the rail line, also supports the application, as does the Northwestern Pacific Railway Co., LLC, the sole freight railroad authorized to operate on the line.

D. Protest to the Application

TRANSDEF does not oppose approval of the at-grade crossing as long as its proposed conditions are imposed. TRANSDEF agrees that the at-grade crossing will improve safety, even if freight rail traffic resumes. TRANSDEF requests that the Commission approve the application contingent upon Petaluma building a grade separation either upon the resumption of passenger rail service or, alternatively, upon the traffic through the crossing exceeding Commission set thresholds. These thresholds would be set at a specific number of trains, passengers, and vehicles per day.

TRANSDEF's protest also maintains that the application is incomplete due to Petaluma's failure to (a) submit an Environmental Impact Report (EIR); (b) provide average daily traffic volumes for the proposed crossing; (c) conduct environmental review of the safety of the proposed crossing under the condition of resumed passenger rail service; and (d) disclose the Petaluma General Plan policy calling for the conversion of Caulfield Lane into a major east-west arterial directing much automobile traffic through the area. TRANSDEF also believes

that the application should not be reviewed as a relocation but as a new proposed rail crossing.

III. Discussion

Petaluma is requesting authority, under Pub. Util. Code §§ 1201-1205, to relocate an at-grade crossing. Issues relevant to constructing a public road across a railroad (see e.g., Rule 38) are discussed below, followed by a separate discussion of environmental impact issues.

A. Safety

Safety is the overriding issue of importance in authorizing the approval for any at-grade crossing. (See *In the Matter of the Application of the City of Bakersfield*, Decision (D.) 04-08-013, 2004 Cal. PUC LEXIS 390 *7.)

All parties agree that the proposed relocated crossing is safer than the current crossing under existing circumstances. The main issue in this case is whether the at-grade crossing, or a grade-separation, should be required once passenger rail service resumes along the SMART railroad tracks.

Granting this application as conditioned will result in the closure of an unsafe at-grade crossing and its relocation to a new at-grade crossing equipped with Commission-approved crossing protection devices. The Hopper Street crossing (which the proposed crossing will replace) has long been viewed as an unsafe crossing because of the way it intersects the railroad tracks. By contrast, the proposed Caulfield Lane replacement crossing crosses the SMART tracks at a 90-degree angle which provides both automobile drivers and train operators the best line of sight to see each other as they approach the crossing.

The supplemented application indicates that the proposed at-grade crossing will be a double tracked, approximately 60-foot wide four-lane crossing with concrete panel surfaces. Warning devices will consist of two Commission

Standard number 9A automatic gates with flashers and cantilever, as described in the Commission's General Order (GO) 75-C. Extra flashers directed in both directions along Hopper Street will be installed on the northbound warning device. Advanced warning devices will consist of pavement markings, a W10-1 advanced warning sign on Caulfield Lane, and W10-3 advanced warning signs on both approaches on Hopper Street. Stop signs will be installed in both directions on Hopper Street at the intersection of Caulfield and Hopper. Traffic on Caulfield will have the right-of-way to keep traffic from queuing on the tracks. An approximately 150-foot raised median will extend northward from the crossing along Caulfield to deter drivers from driving around the lowered gates.

The construction and safety features of this relocated crossing shall be in compliance with all applicable safety requirements, including Commission GO 26-D (clearances), GO 72-B (pavement construction), GO 75-C (crossing protection), and GO 118 (walkways).

Two situations warrant the imposition of conditions on the relief requested. First, Petaluma's proposed crossing involves Caulfield Lane terminating at Hopper Street in an inverted "T." Petaluma has stated that it plans to extend Caulfield Lane past Hopper Street, but does not have current plans to do so. According to Petaluma, the property south of the SMART tracks is currently being used as the site for the city's wastewater treatment facility. That facility will not be relocated until the new wastewater treatment facility is anticipated to be completed in 2009.

Second, Petaluma did not factually address in detail the possibility of passenger rail service and safety considerations because there is no such service at this time, and it is unclear if and when it will resume. Petaluma argued that

the Commission has approved at-grade crossings with heavy passenger rail service, and also states that if vehicular traffic were to approach volumes where a grade separation should be considered, that costs can be allocated at that time between Petaluma and SMART. At the August 29 prehearing conference, Petaluma stated that the triggering event for such an evaluation could be if there were repeated serious accidents at the crossing. (See August 29, 2005 reporter's transcript at p. 77: 7-17 and discussion generally at pp. 72-79.)

In its advisory role, the Commission's rail safety staff believes that changes to the intersection at Hopper Street and Caulfield Lane which would occur by extending Caulfield Lane through Hopper Street may functionally affect the safety of the crossing, and may require alterations to the crossing. For example, if such an extension were to occur, the Caulfield/Hopper Street intersection would be redesigned into a four way, signalized intersection. The Commission would need to be involved in the intersection's redesign to ensure safety. (See, e.g., General Order 88 B.) Therefore, as a condition to approval of this application, if Petaluma extends Caulfield Lane past Hopper Street, Petaluma must consult with the Commission's Consumer Protect and Safety Division's RCES prior to such extension, and shall make any changes to the design or signalization of the intersection of Hopper Street and Caulfield Lane and the railroad crossing that Commission staff requires prior to extending Caulfield Lane past Hopper Street.

The institution of passenger rail service, depending on the frequency of trains, may also functionally affect the safety of the crossing. Therefore, Petaluma's authorization granted by today's decision continues as long as no passenger rail service operates along the SMART railroad tracks. This authorization shall expire in the event that passenger rail service initiates along

the SMART railroad tracks. In this event, Petaluma must apply to the Commission for continued authorization of this at-grade crossing.

Although the Commission's rail safety staff has not formally stated its position on this record, it worked together with applicant and protestant to obtain the detailed engineering drawings which applicant submitted in its supplemental application, and staff does not oppose the application as conditioned.

TRANSDEF has argued that this application should be conditioned upon Petaluma eventually building a grade separation either upon the resumption of passenger rail service, or upon the traffic through the crossing exceeding Commission set thresholds. These thresholds would be set at a specific number of trains, passengers, and vehicles per day, although TRANSDEF did not propose any particular numbers.[1]

Because of the conditions we impose, we find it unnecessary to impose the further conditions requested by TRANSDEF. For example, if passenger rail service resumes along the SMART railroad tracks, Petaluma must seek continued authorization of this at-grade crossing from the Commission. After analyzing the new circumstances, the Commission may determine that the existing design is adequate for safety purposes, or it may order either minor modification or a grade separation occurs. It is premature to make this determination at this time.

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[1] Much later in the proceeding, TRANSDEF moved to take official notice of the Federal Railroad Administration's Final Rule determining risk levels for crossings in a quiet zone. As stated below, we deny this motion. Moreover, this information is not relevant to this application because Petaluma is not applying for a quiet zone.

We therefore see no need to add the additional conditions which TRANSDEF suggests in this order.

B. Public Need

On January 26, 2004, the Petaluma City Counsel took final action to authorize that this application be filed with the Commission. This project provides two public benefits for Petaluma. The first public benefit is improved safety which is discussed above. The second public benefit is improved traffic circulation that furthers Petaluma's long-range planning efforts. Petaluma's General Plan, adopted in 1987, anticipates and recommends that the public obtain primary access to property termed "the Lower Reach"[2] by extending Caulfield Lane. The more recent CPSP, adopted in June 2, 2003, also anticipates access to the Lower Reach via the Caulfield extension. This access provides more direct access to the Lower Reach from U. S. Highway 101 than does the Hopper Street crossing.

C. Train and Motor Vehicle Traffic

There has been no train traffic on this part of the SMART main line since at least December 1998, as stated above. There have been ongoing discussions regarding the resumption of freight train operations later this year over the rail system, including the line that Caulfield Lane will cross. Commission staff has advised that if freight service resumes, these operations may result in one or two trains a day, and that the train would not operate at high speed. As stated above, although it is unclear whether passenger rail

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[2] The "Lower Reach" is the real property bounded by U.S. Highway 101 to the east, "D" Street to the west, State Highway 116 (Lakeville Highway) to the north, and the Petaluma River to the south.

service will resume along the SMART railroad tracks, SMART is conducting an Environmental Impact Report (EIR) (the draft EIR was released after the draft decision in this case mailed), and a funding measure will be put before the voters in November 2006.

The Final Environmental Impact Report (FEIR) certified by Petaluma in connection with its adoption of the CPSP contains future cumulative traffic volumes for the main intersections within the specific span. These intersections include those along the SMART railroad corridor in the vicinity of the existing Hopper Street crossing and the proposed replacement Caulfield Lane crossing. As discussed below in more detail in Section IV below, the FEIR found that one traffic impact could not be mitigated to a less than significant level. However, Petaluma adopted a statement of overriding consideration finding the significant unavoidable environmental impacts of the project were outweighed by each of the separate and independent benefits of the CPSP. (See Discussion in Section IV below.)

D. Practicability

In applications for at-grade crossings, the Commission has the discretion to approve the request, order a separation of grade or deny the application. Grade-separated crossings provide a higher level of safety than at-grade crossings and Pub. Util. Code § 1202(c) gives the Commission the exclusive power to require, where in its judgment it would be practicable, a separation of grades at any crossing. In this case, grade-separation will not be required at this time because there is no rail traffic currently and it is unclear if or when rail traffic may resume.

However, we grant this application with certain conditions. One of these conditions requires applicant to seek continued authorization for this at-

grade crossing. If this condition materializes, and applicant seeks continued authorization for this at-grade crossing, the Commission can consider all types of crossings, including a grade-separated crossing. (See, *e.g.*, *City of San Mateo*, D.82-04-033, 8 Cal. PUC2d 572.)

Staff has advised us that there have been discussions about resuming freight service on this line. We understand such service would not be high speed freight. Moreover, before any such service may resume, the operator must meet Federal Railroad Administration track and signal standards at each crossing.

E. Staff's Recommendation Regarding Safety

Commission staff has not made a formal recommendation in this case. However, at staff's request, the ALJ directed applicant and protestant to meet with staff to develop detailed engineering drawings for the proposed crossing and to file these drawings in the form of a supplement to the application. Staff has not objected to the supplement, and believes that the crossing is adequate for safety purposes, as conditioned.

IV. The California Environmental Quality Act (CEQA)

The parties strongly disputed whether Petaluma's environmental review was adequate for the relief requested in this application. However, there is no dispute that the environmental review is adequate for the conditional approval we grant. Our discussion below on the adequacy of CEQA is limited to the conditional approval we grant today.

CEQA[3] 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 the potential significant environmental effects of the proposed activities." (CEQA Guidelines § 15002.) Because the Commission must issue a discretionary decision without which the proposed action will not proceed, the Commission must act as either a Lead or a Responsible Agency under CEQA.

Here, TRANSDEF requests that the Commission determine it should be the Lead Agency under CEQA and find that Petaluma failed to complete environmental review for the proposed project. For the reasons set forth below, we conclude that Petaluma has already acted as Lead Agency under CEQA for the project and that the Commission's proper role in this matter is that of a Responsible Agency.

The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines § 15051(b)). The CEQA Guidelines define a Responsible Agency as "a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration." (CEQA Guidelines § 15381.) For purposes of CEQA, the term "Responsible Agency" includes all agencies other than the Lead Agency that have "discretionary approval power" over the project. (*Id.*) The approvals referred to in the definition are those within the jurisdiction of the Responsible Agency, rather than approval of the project as a

[3] Pub. Res. Code § 2100 et seq. and Title 14 of the California Code of Regulations § 1500 et seq. (CEQA Guidelines).

whole. (See, e.g., Pub. Res. Code § 21153(c).) In the present case, the Commission has the responsibility for approving the requested relocation of the Hopper Street crossing to the proposed at-grade Caulfield Lane rail crossing.

CEQA requires that a Responsible Agency consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Responsible Agency must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. (CEQA Guidelines § 15050(b).)

Petaluma states that as Lead Agency under CEQA, it has conducted a full environmental review for the proposed at-grade crossing which is complete and final. In support of that conclusion, it references the environmental review documents prepared for the CPSP. Specifically, in March 2003, Petaluma issued a Program level Draft EIR for the CPSP (DEIR). The DEIR was published for a 45-day public review and comment period. In April 2003, Petaluma issued a FEIR (SCH Number 2002-112-039). On June 2, 2003, the City Council approved the project, certified the FEIR and adopted the associated Mitigation and Monitoring Program by Resolution Number 2003-103 N.C.S. At the same time, the City Council adopted a Statement of Overriding Considerations (Resolution Number 2003-104 N.C.S.) to approve the project despite certain unavoidable significant environmental impacts.

Petaluma asserts that its review of the proposed project has fully complied with the requirements of CEQA which compels government to first identify the environmental impacts of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. (Sierra Club v. State Board of Forestry, 7 Cal. 4th 1215, 1233 (1994).) In addition, Petaluma states that pursuant to CEQA Guideline

§ 15168, a program EIR which is sufficiently comprehensive and specific, permits a local agency like Petaluma to implement a future project without further environmental review. Section 15183(a) of the CEQA Guidelines provides as follows:

> "CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project specific significant effects which are peculiar to this project or its site. This streamlines the reviews of such projects and reduces the need to prepare repetitive environmental studies."

In determining whether Petaluma in fact completed environmental review for the Caulfield Lane crossing, we looked mainly to the FEIR as well as Petaluma's recent Supplemental Testimony and Attachments tendered in response to the ALJ March 14, 2005 ruling.[4] The FEIR encompasses an array of planning recommendations and evaluations regarding land use, circulation, community facilities, and overall community design. In particular, Chapter 6 Circulation, enumerates specific objectives and policies at issue including Policy 1.4 to pursue an additional at-grade crossing at Caulfield Lane.

The FEIR evaluated three alternative scenarios related to the at-grade rail crossing in question to determine whether it would result in significant environmental impacts: the Cumulative No Project Scenario (under which the CPSP would not be adopted); the Cumulative Plus Project Scenario 1; and the

[4] We receive this supplemental testimony as Exhibit E.

Cumulative Plus Project Scenario 2. Both the Scenarios 1 and 2 depict the at-grade crossing by Caulfield Lane and project associated traffic volumes.

Generally, the FEIR identified potentially significant environmental impacts for the CPSP in the areas of land use, transportation and circulation, cultural and historic resources, visual resources, noise, air quality, water, geology, and biological resources. With respect to all but six potential impacts, mitigation measures were adopted to avoid or reduce potentially significant impacts to less than significant levels. The FEIR identified only traffic and circulation impacts 6-3 and 6-4 related to the Caulfield Lane crossing.

Impact 6-3 involved the Cumulative Plus Project Impact on the U.S. 101 Southbound Ramps/East Washington Street Intersection, where under Scenarios 1 or 2, the addition of project traffic would increase level of service during peak hour and creating delays which would be considered a potentially significant impact. Mitigation measure 6-3 was adopted to provide dual right turn lanes at the southbound ramp and under both scenarios would reduce the potential impacts to less than significant levels.

Impact 6-4 involved the Cumulative Plus Project Impact on the Lakeville Street/Caulfield Lane Intersection and also found that the addition of project traffic would increase the average delay at the intersection creating a potentially significant impact. Mitigation measure 6-4 to provide dual right turn lanes for the western approach on Caulfield Lane would reduce some of the potential impacts to less than significant levels during the peak PM hour. However, even with implementation of further adopted mitigation to provide an exclusive right turn lane for the southbound approach on Lakeville Street and dual right turn lanes for the westbound approach on Caulfield Lane, the EIR found average level

of service delays during both AM and PM peak hours that remained significant unavoidable impacts for Scenarios 1 and 2.

In approving the project, the City Council adopted a Statement of Overriding Considerations finding that the significant unavoidable environmental impacts of the project were outweighed by each of the separate and independent benefits of the CPSP. These benefits included: development potential for new dwelling units and commercial and industrial space supporting the principles of the voter-approved Urban Growth Boundary; improvements to the roadway network; development and redevelopment of underutilized land; expansion of retail potential; increase to the number of people living and working in Petaluma; implementation of the Petaluma River Access and Enhancement Plan; improvements to public utilities, streets and bicycle and pedestrian paths; greater awareness of potentially historic resources; and economic benefits realized through increased tax revenue.

Based on our review of the City's FEIR and testimony, we believe Petaluma fulfilled its responsibilities under CEQA to examine the potentially significant environmental impacts associated with the proposed new Caulfield Lane at-grade crossing as conditioned. Accordingly, we believe the appropriate role of this Commission is to act as a Responsible Agency under CEQA. This finding is consistent with our conclusions in *Pasadena Blue Line*, D.02-05-047, 2002 Cal. PUC LEXIS 301, and *Application of Valencia Water Company,* D.03-10-063, 1999 Cal. PUC LEXIS 965, where we determined it would be inappropriate to second guess or attempt to step into the role of the Lead Agency.

Consistent with CEQA's requirements for a Responsible Agency, we have reviewed Petaluma's FEIR and we find the environmental review to be adequate for our decision-making purposes today. We believe that Petaluma adopted

reasonable and feasible mitigation measures, where possible, to reduce the traffic and circulation impacts related to the Caulfield Lane crossing to less than significant levels. We adopt those mitigations for purposes of our approval. With respect to the significant unavoidable impact identified by the FEIR for Caulfield Lane, we believe Petaluma identified reasonable project benefits to justify its approval of the CPSP including the Caulfield Lane crossing. We therefore also adopt Petaluma's Statement of Overriding Considerations for purposes of our approval.

V. Other Issues

TRANSDEF's April 22, 2005, motion requesting official notice of the Federal Railroad Administration's Interim Final Rule regarding the quiet zone process is denied because quiet zones are not relevant to the issues in this application. TRANSDEF's May 6, 2005, motion requesting the Commission take official notice of six documents is denied because, except for further briefing on the environmental issues, the hearing process had concluded.

TRANSDEF's October 7, 2005, motion for an order to show cause is denied. TRANSDEF requests an order summarily denying this application because of recent evidence that shows that Petaluma has recently extended Caulfield Lane to west of the Lakeville Highway, stopping just short of the railroad tracks. TRANSDEF alleges that Petaluma has evidenced contempt for the Commission process and its exclusive jurisdiction over grade crossings because of this construction. Based on the evidence presented with the motion, Petaluma has not undertaken construction across the railroad tracks but on city streets. By undertaking this construction, Petaluma assumed the financial risk of this construction if the Commission denied the application. We therefore deny TRANSDEF's motion.

TRANSDEF's May 6, 2005, motion to file a sur-reply brief is granted.

VI. Comments on the Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Petaluma and TRANSDEF filed timely comments and replies.

In response to the comments, we modify the draft decision's condition requiring Petaluma to apply to the Commission for continued authorization of the at-grade crossing in the event that Petaluma extends Caulfield Lane past Hopper Street. Rather, as a condition to our approval, our modification requires Petaluma to make any changes to the design or signalization of the intersection of Hopper Street and Caulfield Lane and the railroad crossing required by the Commission's Consumer Protection and Safety Division's RCES prior to extending Caulfield Lane past Hopper Street.

We also make changes to the draft decision to more fully set forth the parties' positions, to improve the flow of the discussion, and to correct typographical errors.

VII. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. Petaluma seeks to relocate one existing at-grade crossing on the SMART railroad tracks to Hopper Street, a public street. Petaluma proposes to close the crossing at its current location and to relocate the crossing about 2,000 feet to the east, from its current location at milepost 5-38.3 to milepost 5-37.8. At the relocated site, Caulfield Lane, another public street, will be extended southward

across the SMART tracks at railroad milepost 5-37.8, and Caulfield Lane will terminate at Hopper Street in an inverse "T."

2. Existing crossings close to the proposed Caulfield Lane crossing are the at-grade Rush Creek crossing to the east (railroad milepost 5-28.5 in the City of Novato) and the at-grade Hopper Street crossing to the west (railroad milepost 5-38.3, in Petaluma). This latter crossing would be closed and replaced with the at-grade Caulfield Lane crossing.

3. Many public agencies support the application.

4. TRANSDEF filed a timely protest to the application.

5. Granting this application as conditioned will result in the closure of an unsafe at-grade crossing and its relocation to a new at-grade crossing equipped with Commission-approved crossing protection devices.

6. Changes to the intersection at Hopper Street and Caulfield Lane which would occur by extending Caulfield Lane through Hopper Street may functionally affect the safety of the crossing, and may require alterations to the crossing. Similarly, the institution of passenger rail service, depending on the frequency of the trains, may also functionally affect the safety of the crossing.

7. The project provides two benefits for Petaluma, improved safety and improved traffic circulation.

8. There have been ongoing discussions regarding the resumption of freight train operations later this year over the rail system, including the line that Caulfield Lane will cross. Although it is unclear whether passenger rail service will resume along the SMART railroad tracks, SMART is conducting an EIR and a funding measure will be put before the voters in November 2006.

9. Potential safety hazards associated with the crossing will be eliminated with the conditions attached to the relief requested by this application.

10. Commission staff has not objected to Applicant's design supplement filed on November 9, 2004, and has advised that the crossing, as conditioned, is adequate for safety purposes.

11. Petaluma is the CEQA lead agency for the project, and the Commission is the responsible agency for the project under CEQA.

12. In March 2003, Petaluma issued a Program level Draft EIR for the CPSP (DEIR). The DEIR was published for a 45-day public review and comment period.

13. In April 2003, Petaluma issued a FEIR (SCH Number 2002-112-039). On June 2, 2003, the City Council approved the project, certified the FEIR and adopted the associated Mitigation and Monitoring Program by Resolution Number 2003-103 N.C.S. At the same time, the City Council adopted a Statement of Overriding Considerations (Resolution Number 2003-104 N.C.S.) to approve the project despite certain unavoidable significant environmental impacts.

14. The Petaluma FEIR adopted mitigation measures to avoid or reduce almost all potentially significant traffic and circulation environmental impacts for the Caulfield Lane crossing to less than significant levels.

15. The Petaluma FEIR identified one significant unavoidable environmental impact related to the Caulfield Lane crossing and adopted a corresponding Statement of Overriding Considerations.

16. Hearings are not necessary in this application.

Conclusions of Law

1. Petaluma's application for a relocation of an at-grade crossing should be granted pursuant to the conditions set forth in this order.

2. The construction and safety features of this relocated crossing should reflect the drawings filed on November 9, 2004, as a supplement to this

application, and should also be in compliance with all applicable safety requirements, including but not limited to Commission GO 26-D (clearances), GO 72-B (pavement construction), GO 75-C (crossing protection), and GO 118 (walkways).

3. We have reviewed Petaluma's FEIR and we find the environmental review to be adequate for our decision-making purposes today. We believe that Petaluma adopted reasonable and feasible mitigation measures, where possible, to reduce the traffic and circulation impacts related to the Caulfield Lane crossing to less than significant levels.

4. With respect to the significant unavoidable impact identified by the FEIR for Caulfield Lane, we believe Petaluma identified reasonable project benefits to justify its approval of the CPSP including the Caulfield Lane crossing.

5. We adopt the mitigation measures of Petaluma's FEIR, and also adopt Petaluma's Statement of Overriding Considerations for purposes of our approval.

6. Exhibit E is admitted.

7. TRANSDEF's April 22 and May 6, 2005, motions requesting official notice, and October 7, 2005, motion requesting an order to show cause, should be denied. TRANSDEF's May 5, 2005, motion to file a sur-reply brief should be granted.

8. In order to allow the relocation of the at-grade crossing to proceed expeditiously, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The City of Petaluma (Petaluma) is authorized to relocate an at-grade crossing of the railroad tracks of the Sonoma Marin Area Rail Transit District

(SMART) from its current location at milepost 5-38.3 to milepost 5-37.8, according to the design set out in the November 9, 2004, Supplement to Application and the conditions set forth below.

2. Petaluma's authorization continues as long as no passenger rail service operates along the SMART tracks. This authorization shall expire in the event that passenger rail service initiates along the SMART tracks. In the event passenger rail service commences along the SMART railroad tracks, Petaluma shall apply to the Commission for continued authorization of this at-grade crossing.

3. As a further condition of our approval, if Petaluma extends Caulfield Lane past Hopper Street, Petaluma shall make any changes to the design or signalization of the intersection of Hopper Street and Caulfield Lane and the railroad crossing required by the Commission's Consumer Protection and Safety Division's Rail Crossings Engineering Section (RCES) prior to extending Caulfield Lane past Hopper Street.

4. The construction and safety features of this relocated crossing shall reflect the drawings filed on November 9, 2004, as a supplement to this application, and shall also be in compliance with all applicable safety requirements, including but not limited to Commission General Order (GO) 26-D (clearances), GO 72-B (pavement construction), GO 75-C (crossing protection), and GO 118 (walkways).

5. Petaluma shall adequately maintain the relocated crossing.

6. Prior to construction of the relocated crossing, Petaluma shall file with Consumer Protection and Safety Division's RCES final construction plans, approved by Petaluma and all other necessary entities.

7. Within 30 days after completion of the work under this order, Petaluma shall notify RCES in writing, by submitting a completed standard Commission

Form G (Report of Changes at Highway Grade Crossings and Separations), that the authorized work is completed.

8. This authorization shall expire if not exercised within two years of the effective date of this order, unless the Commission grants an extension.

9. This authorization may be revoked or modified if public safety, convenience or necessity so requires.

10. This authorization shall expire if the above conditions are not complied with.

11. The Transportation Solutions Defense and Education Fund's (TRANSDEF) April 22 and May 6, 2005, motions requesting official notice, and October 7, 2005, motion requesting an order to cause, are denied. TRANSDEF's May 5, 2005, motion to file a sur-reply brief is granted.

12. Exhibit E is admitted.
13. Hearings are not necessary in this application.
14. Application 04-06-030 is closed.

This order is effective today.

Dated _____, at San Francisco, California.