

Decision \_\_\_\_\_

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

Application of the County of San Diego for authority to construct a multi-use trail below one elevated rail structure, under the Metropolitan Transit System and San Diego Arizona and Eastern Railway rails, along the Otay Valley Regional Park Trail running from Saturn Boulevard (19<sup>th</sup> Street) to I-805 in the County of San Diego (Proposed PUC Crossing No. 104-36-10.7).

Application 08-07-040  
(Filed July 16, 2008)

**DECISION GRANTING AUTHORIZATION TO THE COUNTY OF SAN DIEGO TO CONSTRUCT A GRADE-SEPARATED CROSSING OF MTS & SDAE RAIL TRACKS AND A SHARED-USE PATH ALONG THE OTAY VALLEY REGIONAL PARK TRAIL IN THE COUNTY OF SAN DIEGO**

**Summary**

County of San Diego (County) requests authorization to construct a shared-use path (also referred to as a multi-purpose or multi-use trail) below the elevated rail tracks of the Metropolitan Transit System (MTS) and San Diego Arizona and Eastern Railway (SDAE), along the Otay Valley Regional Park Trail running from Saturn Boulevard (19<sup>th</sup> Street) to Interstate 805 freeway (I-805) in the Otay River Valley within the County of San Diego. This decision grants the County’s request to construct the grade-separated rail crossing.

**Discussion**

The purpose of the shared-use path is to implement a portion of the Otay Valley Regional Park Concept Plan adopted by the City of San Diego on April 17,

2001, the City of Chula Vista on May 15, 2001 and the County on May 23, 2001 to create a continuous east/west trail that extends 8.3 miles between Saturn Boulevard (19<sup>th</sup> Street) and I-805. To ensure the public's safety, the proposed trail will pass below the existing elevated MTS and SDAE rail tracks. The shared-use path will maintain a twelve-foot minimum vertical clearance from the bottom of the existing overhead bridge structure for the rail tracks. The CPUC crossing number for the proposed grade-separated crossing will be 036-10.70-BD.

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

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

The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.<sup>1</sup> Here, the County is the lead agency for this project and the Commission is a responsible agency. As a responsible agency under CEQA, the Commission must consider the lead

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

agency's environmental documents and findings before acting on or approving this project.<sup>2</sup>

The County found that the Otay Valley Regional Trail will have potentially significant impacts on the surrounding environment and prepared a Mitigated Negative Declaration (MND), State Clearing House No. 2006041064, dated May 10, 2006. The MND cited the following issues associated with this project: air quality, archeological-historical issues, biological resources, vegetation, water quality, wetland/riparian, and wildlife issues. These impacts were reduced to a less than significant level with the adoption of mitigation measures.

Safety, transportation and circulation, and noise are within the scope of the Commission's permitting process. The County, in the MND, identified no significant environmental impacts among those items within the scope of the Commission's permitting process.

The County subsequently filed a Notice of Determination (NOD) in compliance with the California Public Resources Code on June 16, 2006. The NOD states that 1) the project will have no significant effect on the environment; 2) a Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA; and 3) mitigation measures were made a condition of the approval of the project.

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

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<sup>2</sup> CEQA Guidelines, Sections 15050(b) and 15096.

**Filing Requirements and Staff Recommendations**

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

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the County's request.

**Categorization and Need for Hearings**

In Resolution ALJ 176- 3219, dated August 21, 2008, and published in the Commission Daily Calendar on August 22, 2008, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3219.

**Waiver of Comment Period**

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

**Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

**Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on August 19, 2008. There are no unresolved matters or protests; a public hearing is not necessary.

2. County requests authority, under Public Utilities Code Sections 1201-1205, to construct a grade-separated crossing by constructing a shared-use path below the existing elevated rail tracks of MTS and SDAE, along the Otay Valley Regional Park Trail running from Saturn Boulevard (19<sup>th</sup> Street) to Interstate 805 freeway in the Otay River Valley within the County of San Diego.

3. The County is the lead agency for this project under CEQA, as amended.

4. The County issued an MND, made mitigation measures a condition of approval, and found that with mitigations, the project will not have a significant effect on the environment.

5. The Commission is a responsible agency for this project and has reviewed and considered the County's MND.

### **Conclusions of Law**

1. The NOD and MND adopted by the County as the documentation required by CEQA for the shared-use path project are adequate for our decision-making purposes.

2. The project, with mitigations, will not have a significant effect on the environment.

3. The application is uncontested and a public hearing is not necessary.

4. The application should be granted as set forth in the following order.

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

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

1. The County of San Diego (County) is authorized to construct a grade-separated crossing of existing elevated rail tracks owned by Metropolitan Transit System and San Diego Arizona and Eastern Railway and a proposed shared-use path for the Otay Valley Regional Park Trail, to be identified as CPUC Crossing

No. 036-10.70-BD, in County of San Diego, at the location described in its application.

2. Within 30 days after completion of the work under this order, County shall notify the Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section (RCES) in writing, by submitting a completed standard Commission Form G (*Report of Changes at Highway Grade Crossings and Separation*), of the completion of the authorized work.

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

4. A request for extension of the three-year authorization period must be submitted to RCES at least 30 days before the expiration of that period. Upon written request to this office, the time to complete the project may be extended. Any written request for a time extension must include concurrence letters by involved parties in support of the time extension. If an extension is requested, RCES may reevaluate the crossing prior to granting an extension.

5. The application is granted as set forth above.

6. Application 08-07-040 is closed.

This order becomes effective 30 days from today.

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