

Decision 04-11-027 November 19, 2004

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

Application of the City of San Juan Capistrano requests authorization to construct a pedestrian/ bicycle undercrossing located on the Orange Subdivision at railroad mile post 197.88 in the City of San Juan Capistrano, County of Orange.

Application 04-07-006  
(Filed July 6, 2004)

**O P I N I O N**

**Summary**

This decision grants the City of San Juan Capistrano's (City) request to construct a pedestrian/ bicycle trail grade-separated crossing (underpass) under two tracks owned by Orange County Transportation Authority (OCTA) and maintained by Southern California Regional Rail Authority (SCRRA) at milepost 197.88 of SCRRA's Orange Subdivision in the City of San Juan Capistrano, Orange County.

**Discussion**

OCTA was formed in 1991 through a consolidation of seven separate transportation agencies to develop and implement unified transportation programs and services for Orange County. It is governed by an 11-member Board of Directors, which consists of four county supervisors, six city council representatives, and one public member. A governor-appointed representative of the California Department of Transportation (Caltrans) also sits on the board in a non-voting capacity. SCRRA is a five-county joint powers authority created by Senate Bill 1402 of 1990, under Public Utilities Code Section 130255 pursuant

to Government Code Section 6501 et al., to build and operate the Metrolink commuter rail system. OCTA is one of the five SCRRA member agencies and owns the right-of-way within the project limits, which were originally owned and operated by Atchison, Topeka, and Santa Fe Railway Company (AT&SF). The Burlington Northern Santa Fe Railway Company (successor to AT&SF) operates freight trains and the National Railroad Passenger Corporation (Amtrak) operates passenger trains over these tracks.

The pedestrian/bicycle underpass proposed to be built under a new railroad bridge is part of the Orange County Master Plan “Mountains to the Sea” bike trail. The trail begins at Doheny State Beach and, except for the underpass, continues approximately 15 miles upstream along San Juan Creek to the eastern City limit. OCTA provided the City with funds from its Federal Transportation Enhancement Act allocation for construction of the underpass. Ultimately, the trail will continue an additional 15 miles to Casper’s Regional Park. The underpass will provide access to the downtown, schools and parks within the City. The underpass is proposed to provide the following benefits:

1. Pedestrians and bicyclists currently use a detour of two miles, which includes an at-grade highway-rail crossing on the Orange Subdivision at Del Obispo Street, one of the three busiest streets in the City. Construction of an improved undercrossing at this location will provide a more direct connection and increase public safety.
2. The proposed alignment for the trail is the most direct and safest alignment to be taken by trail users. The trail is included on the OCTA Commuter Bike Plan as it serves the San Juan Capistrano Multi-Model Transportation Center and is also included in the San Juan Capistrano Master Plan of Bike Trails.

3. By constructing the underpass (e.g. access ramps, approximately 600 feet of asphalt path, retaining walls, a drainage system, etc.), safety will be enhanced for all trail users and trains.

City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, as stated in Public Resources Code Section 21000 et seq. and Caltrans under the National Environmental Policy Act of 1969 (NEPA). In order to satisfy the CEQA requirements, on July 28, 2000 the City prepared and adopted a Negative Declaration. The Negative Declaration, a copy of which is included in Appendix A, found that the project would have no significant effect on the environment. Specifically, there would be no significant effects to specified environmental concern areas including, but not limited to, land use, community growth, population, housing, open space, recreation, agriculture, aesthetics, air quality, cultural resources, noise, and water.

In order to satisfy the NEPA requirements, on November 4, 2003, Caltrans adopted a Categorical Exclusion for the project. The Categorical Exclusion, a copy of which is included in Appendix B, found that the proposed project is anticipated to have no significant environmental consequences.

Furthermore, on April 2, 2004, the Federal Highway Administration (FHWA) determined the project meets the criteria and is properly classified as a Categorical Exclusion; also shown in Appendix B.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider that portion of the environmental consequences of a project within its area of expertise that is subject to its discretionary approval. The specific activities that must be conducted by a responsible agency are contained in CEQA Guideline Section 15096.

The Commission reviewed and considered the lead agency's environmental documents and finds them adequate for our decision-making purposes. Based on these documents, we believe that the City, Caltrans and FHWA reasonably concluded that the project was exempt from CEQA and would have no significant effect on the environment.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section staff (RCES) inspected the site of the proposed pedestrian/bicycle underpass. After reviewing the need for and the safety of the permanent pedestrian/bicycle underpass, RCES recommends that City's request be granted.

The application is in compliance with the Commission's filing requirements, including Rule 38 of Rules of Practice and Procedure, which relates to the construction of public highway across a railroad. A site vicinity map of the permanent pedestrian/bicycle underpass is shown in the application and in Appendix B attached to this order. The City requests that the 30-day period for public review and comment be waived since it is in jeopardy of losing its Federal Transportation Enhancement Act allocation

In Resolution ALJ 176-3137, dated August 19, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no protests were filed, this preliminary determination remains accurate and it is not necessary to revise the preliminary determinations made in Resolution ALJ 176-3137.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. The Commission published a Notice of the Application in the Commission Daily Calendar on July 12, 2004. There were no unresolved matters or protests; a public hearing is not necessary.

2. City requests authority for a pedestrian/bicycle underpass under two tracks owned by OCTA and maintained by SCRRA at milepost 197.88 of SCRRA's Orange Subdivision in the City of San Juan Capistrano, Orange County.

3. The pedestrian/bicycle underpass is necessary to provide the most direct and safest alignment to be taken by the "Mountains to the Sea" bike trail to access the beach and east to the city limit.

4. Public convenience, safety and necessity require the pedestrian/bicycle underpass.

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

6. On July 28, 2000, the City prepared and adopted a Negative Declaration finding that the project would have no significant impact on the environment.

7. Caltrans is the lead agency for this project under NEPA and adopted a Categorical Exclusion for the project, On November 4, 2003.

8. On April 2, 2004, the FHWA determined the project meets the criteria and is properly classified as a Categorical Exclusion.

9. The Commission is a responsible agency for this project and has reviewed and considered City's Negative Declaration, and Caltrans' and FHWA's Categorical Exclusion.

10. The Commission adopts the findings of the Negative Declaration and Categorical Exclusion for purposes of our project approval.

**Conclusions of Law**

1. There are no unresolved matters or protests; a public hearing is not necessary.
2. The application should be granted as set forth in the following order.

**O R D E R**

**IT IS ORDERED** that:

1. City of San Juan Capistrano (City) is authorized to construct a pedestrian/bicycle trail grade-separated crossing at mile post 197.88 on Southern California Regional Rail Authority's Orange Subdivision in the City of San Juan Capistrano, Orange County, at the location and substantially as shown by plans attached to the application and Appendix B of this order, to be identified as CPUC Crossing No. 101OR-197.88-BD.
2. City shall notify the Consumer Protection and Safety Division's Rail Crossings Engineering Section in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), within 30 days after completion of construction.
3. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. The Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.
4. The application is granted as set forth above.

5. Application 04-07-006 is closed.

This order becomes effective today.

Dated November 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

APPENDIX A - NEGATIVE DECLARATION



**NEGATIVE DECLARATION**  
city of san juan capistrano, california

DATE POSTED: 7-25-00  
REMOVE POSTING: 8/14-00  
 20 days or  
 30 days for SCH review

1. **APPLICANT:** City of San Juan Capistrano; Attn. Tony Foster
2. **ADDRESS:** 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
3. **PHONE NUMBER:** (949) 443-6351
4. **LEAD AGENCY:** City of San Juan Capistrano, 32400 Paseo Adelanto, 92675
5. **PROJECT MGR.:** Tony Foster, (949) 443-6351
6. **PROJECT TITLE:** North San Juan Creek Trail/Los Angeles San Diego Rail Corridor Grade Separation.
7. **DESCRIPTION:** The City, in partnership with the Orange County Transit Authority is proposing a grade separation for the Vereda (San Juan Creek) Trail crossing of the Los Angeles San Diego (LOSSAN) Rail Corridor. The proposed grade separation of the LOSSAN Corridor is the final missing link of the Vereda Bikeway. The bikeway is located along the north levee of San Juan Creek within the Cities of San Juan Creek and Dana Point. This trail section will connect the completed sections of the 4.4 mile long Vereda Bike Trail. This trail is located on both the City and County's master plan of bikeways, and connects Doherty State Beach to the eastern City limits of San Juan Capistrano.

**ENVIRONMENTAL ADMINISTRATOR (EA) DETERMINATION:** This project has been evaluated by the Environmental Administrator of the City of San Juan Capistrano in accordance with the Section 21080 of the California Environmental Quality Act (CEQA). On <date>, the Environmental Administrator determined that this project will not have a significant effect on the environment and issued a <Negative Declaration; or, Mitigated Negative Declaration>. The basis for the Administrator's determination is the attached Initial Study (copies may be obtained from the Planning Department, City Hall, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675). All public comments on the negative declaration must be provided in writing to the Planning Department on or before the "Posting Removal Date" cited above.

**FILED**

**POSTED**

JUL 28 2000

JUL 28 2000

*C. J. Amstrup*  
C. J. Amstrup, Environmental Coordinator

GARY L. GRANVILLE, Clerk-Recorder  
By *[Signature]* DEPUTY

GARY L. GRANVILLE, Clerk-Recorder  
By *[Signature]* DEPUTY

The City Council has delegated authority for issuing Negative Declarations to the Environmental Administrator by Resolution 94-7-5-1 adopting the City's Environmental Review Guidelines. Pursuant to Section 9-2.314, Appeals of the Land Use Code, any person may file an appeal of the Environmental Administrator's decision to issue a Negative Declaration. Appeals must be filed in writing with the City Clerk within fifteen (15) days of the "date posted". The filing of an appeal stays the issuance of a negative declaration until a determination on appeal by the City Council. If the City determines that the appeal is based on environmental factors not previously considered which may have a significant effect on the environment, the City Council may require preparation of an environmental impact report (EIR).

Recorded in Official Records, County of Orange  
Gary Granville, Clerk-Recorder

*FEE EXEMPT # 6103*

NO FEE

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170 52 201  
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

20'd 58:6 #002 #2 dag  
Sep 24 2004 9:35

## APPENDIX B FINDING OF CATEGORICAL EXCLUSION

### CATEGORICAL EXEMPTION CATEGORICAL EXCLUSION/PROGRAMMATIC CATEGORICAL EXCLUSION DETERMINATION FORM

12-ORA-0 SJCP Dist.-Co.-Rte. (or Local Agency)	KP (PM) K.P./K.P.(P.M./P.M.)	965100 E.A. (State project)	STEP 5372(008) Proj. No. (Local project) (Fed. Emp. Pref. Prof. No., Agr. No.)
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**PROJECT DESCRIPTION:** (Briefly describe project, purpose, location, limits, right-of-way requirements, and other issues involved.)

The project proposes the construction of a new undercrossing of the Los Angeles-San Diego (LOSSAN) Rail Corridor, creating a grade separation for the Vereda trail crossing within the City of San Juan Capistrano. The project includes a new paved bikeway, new railroad bridge, retaining walls, and modification of the existing drainage system.

**CEQA COMPLIANCE** (for State Projects only)

- Based on an examination of this proposal, supporting information, and the following statements (see 14 CFR 15001 et seq.):
- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
  - There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
  - There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
  - This project does not damage a scenic resource within an officially designated state scenic highway.
  - This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 (Cultural Site List).
  - This project does not cause a substantial adverse change in the significance of a historical resource.

**CALTRANS CEQA DETERMINATION**

Exempt by Statute (PRC 21000)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

Categorically Exempt Class (Click here), or  General Route exemption (This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061(b)(3)))

N/A

Signature: Environmental Office Chief	Signature: Project Manager
Date	Date

**NEPA COMPLIANCE** (23 CFR 771.117)

- Based on an examination of this proposal, supporting information, and the following statements:
- This project does not have a significant impact on the environment as defined by the NEPA.
  - This project does not involve substantial controversy on environmental grounds.
  - This project does not involve significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act.
  - In nonattainment or maintenance areas for Federal air quality standards: this project comes from a currently conforming plan and Transportation Improvement Program or is exempt from regional conformity.
  - This project is consistent with all Federal, State, & local laws, requirements or administrative determinations relating to the environmental aspects of this action.

**NEPA DETERMINATION**

Based on an examination of this proposal, supporting information, and the statements above under "NEPA Compliance", it is determined that the project is a:

PROGRAMMATIC CATEGORICAL EXCLUSION (PCE): Based on the evaluation of this project and supporting documentation in the project files, all the conditions of the September 7, 1990 Programmatic Categorical Exclusion have been met.

CATEGORICAL EXCLUSION (CE): For actions that do not individually or cumulatively have a significant environmental effect and are excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). Requires FTRWA Determination.

Signature: Environmental Office Chief	Signature: Project Manager/DLA Engineer
Date: 11/3/03	Date: 11/4/03

**FHWA DETERMINATION**

Based on the evaluation of this project and the statements above, it is determined that the project meets the criteria of and is properly classified as a Categorical Exclusion.

Signature: FHWA Transportation Engineer

Date: 02 APR 2004

Additional information attached or referenced, as appropriate (e.g. Mitigation commitments for NEPA only; Air Quality studies or documentation of exemption from regional conformity or use of CO Protocol; §106 commitments; §4(f) or Programmatic §4(f); State of COW nationwide permit; §7 species survey results; Wetlands Finding; Floodplain Finding; additional studies; design conditions. Rev. 4/2001

CATEGORICAL EXEMPTION  
CATEGORICAL EXCLUSION/PROGRAMMATIC CATEGORICAL EXCLUSION  
DETERMINATION FORM  
CONTINUATION SHEET

12-ORA-D-SJCF		965100	STP/ER-5372(008)
Dist.-Co.-Ris. (or Local Agency)	K.P./K.P.(P.M./P.M.)	F A (State project)	Proj. No. (Local project) (Fed. Proj. Prefix Proj. No., Agr. No.)

No significant environmental consequences are anticipated with the proposed project. In addition to the measures relating to construction noise, air pollution control, and erosion, as given in Caltrans Standard Specifications, the following measures are required:

1. If cultural remains are discovered during excavation and/or construction activities, all earth moving activity within and around the site area must be diverted until a qualified Archaeologist can assess the find. If human remains are discovered, State Health and Safety Code Section 7050.5 states that disturbances and activities shall cease. The County Coroner must be notified of the find immediately so that he/she may ascertain the origin and disposition, pursuant to Public Resources Code Section 5907.98. Further, an archaeologist must be notified of the find immediately. If the remains are determined to be prehistoric then the coroner will notify the Native American Heritage Commission (NAHC) who will then notify the Most Likely Descendant (MLD). The MLD may inspect the remains with the approval of the Landowner or the authorized representative. The MLD must complete this inspection within 24 hours after notification of the NAHC. The MLD may recommend scientific removal and nondestructive analysis.
2. All disposal sites, borrow sites, staging areas and haul roads associated with this project which are selected by the contractor, or have not been identified with this project, require environmental review and compliance. Environmental review and compliance is also required for any earthwork or vegetation clearing and grubbing which has not been identified to date.
3. Technical studies performed for this project include:
  - Water Quality Study
  - Floodplain Study
  - Biology Study
  - Wetlands Study
  - Hazardous Waste Study
  - Section 106 Study

APPENDIX C  
VICINITY MAP AND PLANS



