

Decision 06-02-019 February 16, 2006

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

Application of the City of San Clemente for authority to construct a new Mariposa pedestrian underpass rail crossing, proposed CPUC Crossing No. 101 OR-204.35-BD, within the City of San Clemente, County of Orange, California, under the Southern California Regional Rail Authority, (SCRRA), Orange Subdivision.

Application 05-10-032  
(Filed October 28, 2005)

**O P I N I O N**

**Summary**

This decision authorizes City of San Clemente (City) to construct a pedestrian underpass rail crossing, referred to as the Mariposa Pedestrian Underpass, under the single-track Orange Subdivision main line of the Southern California Regional Rail Authority (SCRRA), within the City of San Clemente, County of Orange.

**Discussion**

Proposed Project

The railroad right-of-way is owned by the Orange County Transportation Authority, which is one of the five member agencies of SCRRA. SCRRA is responsible for the maintenance of the tracks and crossing warning devices, and operates Metrolink commuter trains on this line. In addition to Metrolink trains, BNSF Railway Company operates freight trains, and National Passenger Railroad Corporation operates Amtrak passenger trains on this line.

The Mariposa Pedestrian Underpass is a key addition to a system of trails that the City is establishing along the beach. This trail system includes a trail that will run parallel with the SCRRA line. Commission Decision 04-05-053 granted authority to construct crossings for this trail. This application seeks authority to provide one additional beach access point. City proposes to construct a new pre-cast concrete box culvert-type structure to serve as a beach access point for a proposed trail along the inland (east) side of the SCRRA track.

### Environmental Review

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources (PR) 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, City 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 agency's

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

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

The Commission reviewed and considered the lead agency's MND and finds it adequate for our decision-making purposes.

The Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section (RCES) has inspected the site of the proposed Mariposa Pedestrian Underpass. After reviewing the need for and the safety of the proposed Mariposa Pedestrian Underpass, RCES recommends that the Commission grant City's request.

The Application is in compliance with the Commission's filing requirements, including Rule 38 of Rules of Practice and Procedure. A vicinity map of the proposed Mariposa Pedestrian Underpass is shown in Appendix A attached to the order.

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

In Resolution ALJ 176-3162, dated November 18, 2005, and published in the Commission Daily Calendar on November 21, 2005, 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. Given these developments, it is not necessary to revise the preliminary determinations made in Resolution ALJ 176-3162.

### **Waiver of Comment Period**

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

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

### **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 October 31, 2005. There are no unresolved matters or protests; a public hearing is not necessary.

2. City requests authority, under Public Utilities Code Sections 1201-1205, to construct the proposed Mariposa Pedestrian Underpass, a grade-separated rail crossing for pedestrian traffic, under the single-track Orange Subdivision main line of SCRRA, in City of San Clemente, Orange County.

3. The proposed Mariposa Pedestrian Underpass is a key addition to a system of trails the City is establishing along the beach. This trail system includes a trail that will run parallel with the SCRRA track. By Decision 04-05-053 the Commission granted the authority to construct crossings for this trail. This application seeks the Commission's authority to provide one additional crossing for beach access.

4. Public convenience, necessity, and safety require construction of the proposed Mariposa Pedestrian Underpass.

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

6. City adopted an MND pursuant to CEQA.

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

### **Conclusions of Law**

1. The MND adopted by the City as the documentation required by CEQA for the Crossing Project is adequate for our decision-making purposes.
2. We adopt the City's MND finding that the Crossing Project will not have a significant impact on the environment.
3. 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 Clemente (City) is authorized to construct the proposed Mariposa Pedestrian Underpass, under the single-track Orange Subdivision main line of the Southern California Regional Rail Authority, at milepost 204.35, at the location and substantially as shown by plans attached to the Application and Appendix A of this order, identified as CPUC Crossing No. 101OR-204.35-BD.
2. Within 30 days after completion of the work under this order, City shall notify Rail Crossings Engineering Section in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work.
3. This authorization shall expire if not exercised within three years unless the Commission extends the time or if the parties do not comply with the above conditions. The Commission may revoke or modify authorization if public convenience, necessity, or safety so require.
4. The application is granted as set forth above.

5. Application 05-10-032 is closed.

This order becomes effective 30 days from today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

APPENDIX A  
VICINITY MAP

