

Decision 07-01-033 January 25, 2007

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

Application of the City of San Diego for authority to construct a bike path below two elevated NCTD and MTDB rail structures within the City of San Diego, County of San Diego.

Application 06-08-007  
(Filed August 3, 2006)

**OPINION**

**Summary**

This decision authorizes the City of San Diego (City) to construct a bike path below the elevated rail structures of the North San Diego County Transit District (NCTD) and the Metropolitan Transit Development Board (MTDB), along the Ocean Beach bike path running from the Ocean Beach and Old Town areas to the retail centers of the Mission Valley area within the City and County of San Diego.

**Discussion**

The City proposes to construct two grade-separated bike path-rail crossings (grade separations); one under NCTD and another under MTDB rail structures as part of its Ocean Beach/Hotel Circle North Bikeway project (Bikeway). The purpose of the City’s Bikeway project is to provide public access to the San Diego River Park. The Bikeway will extend the existing Ocean Beach bike path along the north side of Interstate 8 between Ocean Beach and Pacific Highway to the western terminus of Hotel Circle Place (3,900 feet to the east). The Bikeway will provide non-vehicular traffic with a travel route between the

Ocean Beach and Old Town areas and the retail centers of the Mission Valley area.

To ensure the public's safety while using on the Bikeway, the proposed bike path will pass below two existing elevated rail structures, the NCTD rail and the MTDB rail. The bike path will maintain an eight-foot minimum vertical clearance from the trail surface to the bottom of the existing overhead rail bridge structures. The CPUC crossing number for the proposed grade separation beneath the NCTD right-of-way will be 106-263.89-B. The CPUC crossing number for the proposed grade separation beneath the MTDB right-of-way is 081MV-3.80-B.

### **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 City is the lead agency for this project and the Commission is a responsible agency. As a

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

responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.<sup>2</sup>

The City conducted an Initial Study and found that the Bikeway project could have a potentially significant environmental effect on Land Use/Biological Resources and Historical Resources. Therefore, the City prepared a Mitigated Negative Declaration (MND) dated January 17, 2006.

Safety, transportation and circulation, and noise, as they relate to the two grade-separated bike path rail crossings, are within the scope of the Commission's permitting process. The City, in the MND, identified no environmental impacts among those items within the scope of the Commission's permitting process. Since the identified environmental impacts and the adopted mitigations do not pertain to the scope of the Commission's permitting process, they are not relevant to the specific matters before the commission.

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

### **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. A vicinity map and detailed drawings of the proposed grade separations are shown in Appendices A and B, respectively, attached to the order.

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

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 City's request.

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

In Resolution ALJ 176-3177, dated August 24, 2006, and published in the Commission Daily Calendar on August 25, 2006, 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 176-3177.

### **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 8, 2006. There are no unresolved matters or protests; a public hearing is not necessary.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a bike path below the elevated rail structures of NCTD and MTDB, along the Ocean Beach bike path running from the Ocean Beach and Old Town areas to the retail centers of the Mission Valley area within the City and County of San Diego.

3. Public safety requires construction of the two proposed bike path grade separations.

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

5. The City issued an MND, made mitigation measures a condition of approval, and found that the project as mitigated will not have a significant effect on the environment.

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

### **Conclusions of Law**

1. The MND adopted by the City as the documentation required by CEQA for the Bikeway project is adequate for our decision-making purposes.

2. The project as mitigated 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 City of San Diego (City) is authorized to construct two grade-separated bike path-rail crossings, identified as CPUC Crossing Nos. 106-263.89-B and 081MV-3.80-B, under the elevated rail structures of the North San Diego County Transit District and Metropolitan Transit Development Board, respectively, in the City and County of San Diego, at the locations and substantially as described in the application and Appendices A and B attached to this order.

2. Within 30 days after completion of the work under this order, City 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 at their respective crossings.

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 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. A copy of the request must be sent to all interested parties.

5. The application is granted as set forth above.

6. Application 06-08-007 is closed.

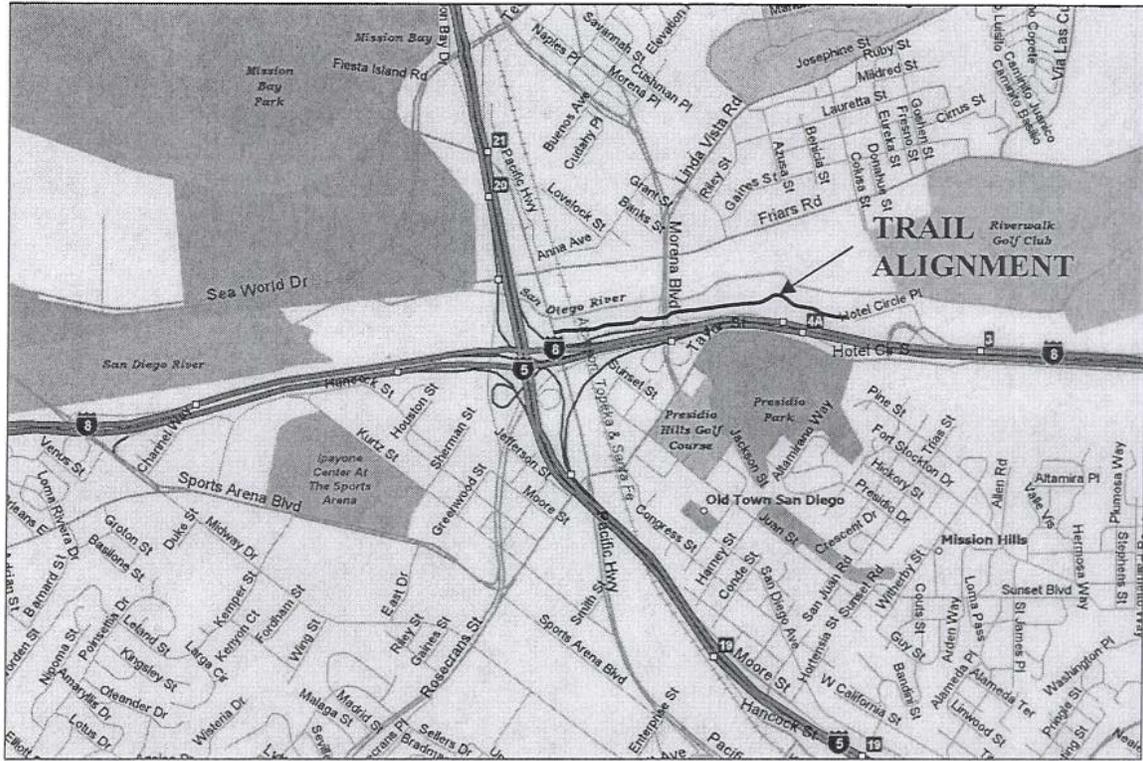
This order becomes effective 30 days from today.

Dated January 25, 2007, at San Francisco, California

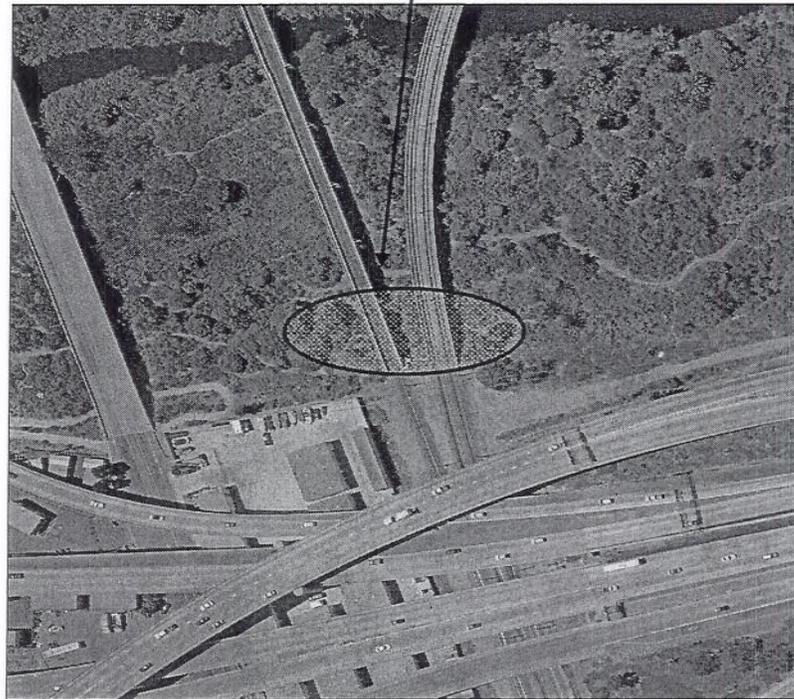
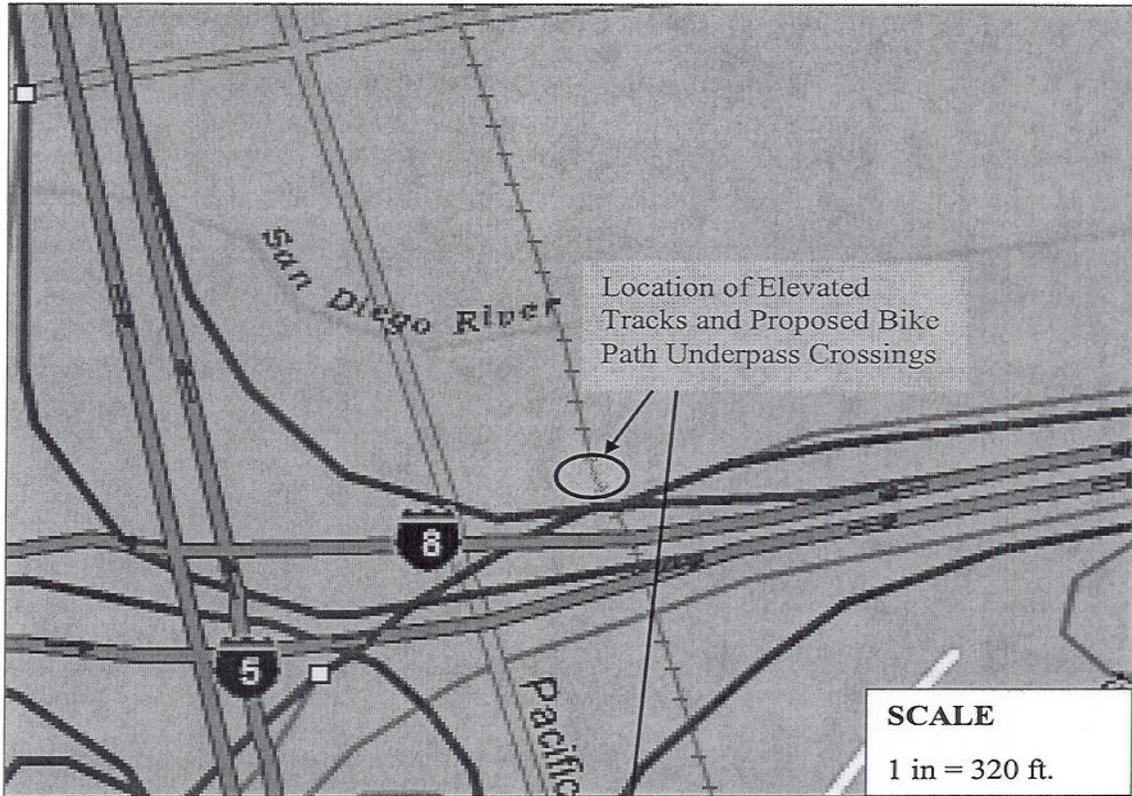
MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

# APPENDIX A

## VICINITY MAP



**APPENDIX B**  
**LOCATION MAPS**



# APPENDIX B

## Bike Path Plan and Profile

