

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



**FILED**

04/11/25

04:59 PM

A2404006

Application of the City of Goleta to construct  
a proposed Multipurpose Pedestrian/Bike  
Path under UPRR Santa Barbara Subdivision  
MP 359.679 with the City of Goleta,  
California.

A.24-04-006

**OPENING BRIEF  
OF THE CITY OF GOLETA**

Ryan M. F. Baron  
Chad Colton  
BEST BEST & KRIEGER LLP  
18101 Von Karman Ave., Suite 1000  
Irvine, CA 92612  
Telephone: (949) 263-6568  
[Ryan.Baron@bbklaw.com](mailto:Ryan.Baron@bbklaw.com)

*Attorneys for City of Goleta*

April 11, 2025

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 2

II. PROJECT BACKGROUND AND PROCEDURAL BACKGROUND..... 2

III. COMMISSION JURISDICTION AND GOVERNING REQUIREMENTS..... 8

IV. DISCUSSION ..... 9

    A. The Project’s Current Concept Design Meets All Commission Requirements ..... 9

        1. Issue #1 – The Application meets all Commission requirements, including Rule 3.7 ..... 9

        2. Issue #2 – The City has complied with the California Environmental Quality Act ..... 11

        3. Issue #3 – The Commission should grant the City a period of three years from approval to complete the Project ..... 13

        4. Issue #4: There are no impacts on environmental and social justice communities and the Application achieves all of the Commission Environmental and Social Justice Goals and Social Justice Action Plan ..... 13

    B. UP’s Protest of the Application Should Be Denied ..... 15

        1. The City’s Application Is Timely..... 15

        2. UP’s Objections Are Vague and There is No Data, Information or Engineering Standard Presented as to Why the Project Does Not Meet Commission Safety Requirements or Why UP’s Guidelines are the Appropriate Standard ..... 17

        3. UP’s Objections Are, in Part, Outside the Scope of the Commission’s Review ..... 22

V. CONCLUSION ..... 25

**TABLE OF AUTHORITIES**

**Cases**

**California Code and Regulations**

California Code of Regulations, Title 14, § 15050..... 11  
California Code of Regulations, Title 14, § 15096..... 11  
Public Utilities Code § 1201..... 8  
Public Utilities Code § 1202..... 8

**Commission Rules of Practice and Procedure**

Rule 2.6 ..... 17  
Rule 3.7 ..... 8-10, 22  
Rule 13.12..... 1

**Commission Decisions and Orders**

General Order 26-D ..... 7-10, 22  
General Orders 88-B, 118-A, and 164-F..... 8

**Miscellaneous**

City of Goleta, Bid Authorization,  
<https://goleta.legistar.com/gateway.aspx?m=1&id=/matter.aspx?key=7127>..... 13

City of Goleta, City Council Minutes,  
[https://goleta.legistar1.com/goleta/meetings/2025/2/3062\\_A\\_City\\_Council\\_25-02-18\\_Agenda.pdf](https://goleta.legistar1.com/goleta/meetings/2025/2/3062_A_City_Council_25-02-18_Agenda.pdf)..... 4

City of Goleta, Press Release (Jan. 9, 2025), <https://www.cityofgoleta.org/your-city/advanced-components/news-list/-item-15613> ..... 4

*UP BNSF Guidelines for Railroad Grade Separation Projects* (May 2016)..... *passim*

*Union Pacific Railroad Public Projects Manual* (July 2021) ..... 8

Web page <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf> ..... 13

Web page <https://www.cityofgoleta.org/your-city/public-works/capital-improvement-program-division/project-no-9006-san-jose-creek-bike-path-northern-and-southern-segments> ..... 1

## **SUMMARY OF RECOMMENDATIONS**

- Deny Union Pacific Railroad's protest. UP's objections are vague and, in part, outside the scope of Commission review, and primarily intended to address UP inspection and maintenance efficiencies.
- Grant the Application. The Application meets all Commission requirements, including Rule 3.7. The City has complied with the California Environmental Quality Act. There are no impacts on environmental and social justice communities and the Application achieves all of the Commission Environmental and Social Justice Goals and Social Justice Action Plan.
- Authorize the City of Goleta to construct the Project within the requested three year timeframe.
- Adopt the ordering paragraphs proposed by the Commission's Rail Safety Division, with the proposed modification by the City as to the Application trail closure procedure.

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

Application of the City of Goleta to construct a proposed Multipurpose Pedestrian/Bike Path under UPRR Santa Barbara Subdivision MP 359.679 with the City of Goleta, California.

A.24-04-006

**OPENING BRIEF OF THE CITY OF GOLETA**

In accordance with *Administrative Law Judge’s Ruling Granting Joint Motion of City of Goleta and Union Pacific Railroad Company for Extension to File Opening Briefs*<sup>1</sup> and Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the City of Goleta (City) submits this opening brief. On April 4, 2024, the City filed an Application<sup>2</sup> with the Commission for approval to construct a portion of the San Jose Creek Multipurpose Pedestrian/Bike Path Project under the Union Pacific Railroad (UP) Bridge on the Santa Barbara subdivision Milepost 359.679 located in the City of Goleta (Project).<sup>3</sup> The City requests the Commission (1) deny UP’s protest, (2) grant the Application, (3) authorize the City to construct the Project within the requested three year timeframe, and (4) adopt the ordering paragraphs proposed by the Commission’s Rail Safety Division (RSD), with a proposed modification by the City as to the Application trail closure procedure.<sup>4</sup>

---

<sup>1</sup> Issued April 3, 2025.

<sup>2</sup> Application of the City of Goleta for an Order Authorizing Construction of a Need and Purpose of the San Jose Creek Multipurpose Pedestrian/Bike Path Project Crossing Under the UPRR Bridge (Apr. 4, 2024).

<sup>3</sup> See generally, City of Goleta public available information about the Project, available at <https://www.cityofgoleta.org/your-city/public-works/capital-improvement-program-division/project-no-9006-san-jose-creek-bike-path-northern-and-southern-segments>.

<sup>4</sup> Response of the Rail Safety Division to the Application of the City of Goleta to Construct a New Grade-Separated Crossing for a Multipurpose Pedestrian/Bike Path RSD at 3-4 (May 9, 2024).

## **I. INTRODUCTION**

The City filed an Application to construct and formalize an undercrossing as one segment of a longer 1.6 mile pedestrian and bicyclist trail connecting north and south Goleta and the larger region through multi-modal travel. The Project has broad public and state agency support, is fully funded, and the undercrossing segment complies with state law safety requirements. The Project includes a well-design canopy and a plan to close railroad ties as well as other safety features that will not impact water surface elevation in the creek below UP's bridge. The City believes this is not a controversial or complex project and that the Application and concept design should be approved.

Despite this, UP opposes the Project because it does not want to approve an undercrossing where water exists under its existing bridge. Despite UP's earlier approval of a design similar to the one before the Commission, UP reversed that approval and now opposes the Project. The City and UP have been in discussions for several years where various design plans have been submitted but the City has not secured any design approval that would satisfy UP. The City also believes that UP's design concerns are primarily based on having to adjust its methods of inspection and maintenance at the site for ease of UP workers, and not primarily with safety.

The City has endured a long, drawn-out process to secure approval of an important public project. It believes the Commission can and should approve the Application forthwith and deny the protest on the grounds that safety concerns are vague, unsupported, and outside the scope of Commission review.

## **II. PROJECT BACKGROUND AND PROCEDURAL BACKGROUND**

The Project's proposed path will provide a separate, dedicated non-motorized connection north and south of US-101 and the Union Pacific Railroad tracks for both pedestrians and

bicyclists. The Project would extend 1.6 miles through community neighborhoods and shopping centers and the Goleta Old Town, terminating at the California Coastal Trail near Goleta Beach County Park and the University of California, Santa Barbara.<sup>5</sup> A small section of the Project must cross UP right-of-way under the existing UP structure where San Jose Creek runs under UP's bridge.<sup>6</sup> This is the undercrossing portion of the Project before the Commission.

Currently, the undercrossing location is owned by UP. It is not fenced and is open to individuals using the dirt portion of the creek under the UP bridge to connect north and south.<sup>7</sup> The City is proposing to formalize the undercrossing and construct a trail under the UP bridge in the dirt portion of the creek connecting north to south, which would allow for safe use by pedestrians and bicyclists as a continuation of a non-motorized trail. Although the undercrossing is owned by UP, the City will acquire the property through right-of-way acquisition.<sup>8</sup> Thus, the proposed improvements that are before the Commission will not be located on UP property once final acquisition is completed, but will be located wholly on City property. The improvements then will merely cross under UP's bridge.

In addition to the physical trail features, the Project would serve important public purposes by improving transportation services for environmental and social justice (ESJ) communities, reducing carbon emissions, dedicating a transportation corridor to pedestrians and bicyclists, and providing for safer transportation by eliminating conflicts with motor vehicles.<sup>9</sup>

---

<sup>5</sup> Application at 2-3.

<sup>6</sup> *Id.* Compared with the 1.6 miles of overall trail improvements, the plans show that UP right-of-way is 50 to 100 feet wide, or approximately 1% of the entire trail length.

<sup>7</sup> Rebuttal Testimony of Teresa Lopes on Behalf of the City of Goleta at 7:20-28.

<sup>8</sup> Lopes Rebuttal at 7:29-32.

<sup>9</sup> Application, Ex. E at 1.

The Project has been planned for over 20 years<sup>10</sup> and has broad support from the community, stakeholders, and reviewing state agencies.<sup>11</sup> Negotiations with and review by UP have been ongoing for over 10 years.<sup>12</sup> The City has secured approximately \$30 million in funding for the Project,<sup>13</sup> with \$18 million in jeopardy if the UP segment is not built.<sup>14</sup> Importantly, it has been reviewed by RSD under Public Utilities Code and Commission General Order requirements for rail crossings who found that the current concept design (65% plans)<sup>15</sup> meets state law safety requirements.<sup>16</sup> The City intends to move forward expeditiously with completion of the final design (100% plans) for the undercrossing segment, right-of-way acquisition, and construction upon the Commission's approval.<sup>17</sup>

The concept design has been through several iterations – the larger Project has undergone changes by the City while the undercrossing portion has undergone changes due to numerous rounds of review by UP with approvals, expiration of an approval, design modifications, and a variance.<sup>18</sup> After several years of planning, coordination with reviewing agencies like RSD,<sup>19</sup>

---

<sup>10</sup> Prepared Testimony of Teresa Lopes on Behalf of the City of Goleta at 15:10-16.

<sup>11</sup> Application, Ex. C; Lopes Prepared at 2:8-10.

<sup>12</sup> Lopes Prepared at 15:10-16.

<sup>13</sup> See City of Goleta, Press Release (Jan. 9, 2025), available at <https://www.cityofgoleta.org/your-city/advanced-components/news-list/-item-15613>.

<sup>14</sup> Lopes Prepared at 19:10-13.

<sup>15</sup> *Id.*, at 16-1-2.

<sup>16</sup> RSD Response at 2 and 4.

<sup>17</sup> The City Council approved the full trail project on February 18, 2025. See [https://goleta.legistar1.com/goleta/meetings/2025/2/3062\\_A\\_City\\_Council\\_25-02-18\\_Agenda.pdf](https://goleta.legistar1.com/goleta/meetings/2025/2/3062_A_City_Council_25-02-18_Agenda.pdf).

<sup>18</sup> Lopes Prepared at 15:9 – 27:2; Lopes Rebuttal at 3:11 – 5:5.

<sup>19</sup> As both parties testified, a Project site visit and field diagnostic meeting was held on September 20, 2023. Attendees included representatives from the City, RSD, and UP. The meeting's purpose was to discuss the proposed project, crossing conditions, and safety considerations. See Union Pacific Railroad Company Prepared Direct Testimony of Richard Koerner at 3:4 – 4:2; Lopes Prepared at 18:18-25.



long-term discussions and meetings with UP,<sup>20</sup> and a site visit and diagnostic meeting held September 2023, the City filed its Application with the Commission on April 4, 2024. The City filed a comprehensive application in accordance with Commission rules. The Application provided a detailed description of the Project, including nine attachments covering all Commission requirements plus additional Project information.<sup>21</sup> On May 9, 2024, RSD filed a response in this proceeding “to apprise the Commission of relevant information on the Project, including information on RSD’s past site visit and the type and location of the crossing.”<sup>22</sup> RSD submitted its safety review “checklist” and found that its review of the Application was “completed” and “concluded that it complies with all of the requirements of the Commission’s rules as well as applicable requirements of the Commission’s General Orders.”<sup>23</sup> RSD provided a list of scoping issues as well as proposed ordering paragraphs.<sup>24</sup> Ultimately, RSD has no objections to the City’s Application.<sup>25</sup>

Due to the City inadvertently not serving the application on UP in accordance with Rule 3.7, UP motioned for and was granted party status. The parties to the proceeding filed a joint prehearing conference Statement on June 12, 2024. The City summarized the Project issues and agreed with RSD’s proposed scope and Commission orders. In lieu of filing a formal protest

---

<sup>20</sup> Lopes Prepared at 15:10 – 27:2.

<sup>21</sup> The Application attachments include (1) List of Exhibits, (2) Legal Description, (3) Project Drawings, (4) Local Project Support, (5) Environmental Documents, (6) Environmental and Social Justice Statement, (7) Multi-Use Trail Closure Procedure, (8) Verification, and (9) Commission Application Form.

<sup>22</sup> RSD Response at 1.

<sup>23</sup> *Id.*, at 2.

<sup>24</sup> RSD Response at 3-4.

<sup>25</sup> *Id.*, at 2.

due to the service issue, UP filed its opposition to the Project in the Joint Statement.<sup>26</sup> The general reasons for the objections as provided in the Joint Statement are (1) application untimeliness due to the design being plans in a “concept phase,” (2) adverse impacts on public safety, (3) water flow of San Jose Creek below the railroad bridge, and (4) operational efficiency and property rights.<sup>27</sup> UP further provided “specific” reasons that (1) the Project would adversely affect water flow; (2) the design did not protect hydraulic capabilities and rail needs; (3) the design would make it easier for gathering by the public where damage could be caused to UP structures; (4) design did not include mitigation for trespassers, dumping, and fire protection; and (5) long-term issues for drift, debris and maintenance were not considered.<sup>28</sup> UP agreed with the scope of the issues for the proceeding but raised an additional issue whether UP objections have been adequately addressed by the City.<sup>29</sup> The City, in turn, stated that the Application was timely filed and done so due to delays in the UP review process, was at risk of losing the grant funding due to the delays, the Project configuration was the only feasible alternative, and all safety considerations had been met.<sup>30</sup> Due to concern with the vagueness of UP’s objections, the City’s position was that all factual issues needed to be specifically identified, and such issues could be addressed “within 30 days” of the Joint Statement without the need for evidentiary hearings.<sup>31</sup>

---

<sup>26</sup> Joint Pre-Hearing Conference Statement at 5 (June 12, 2024).

<sup>27</sup> *Id.*, at 5-6.

<sup>28</sup> *Id.*, at 6-7.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 2-5.

<sup>31</sup> *Id.* at 7.

In the Scoping Ruling, dated August 15, 2024, Commissioner Baker set the schedule for the proceeding and adopted the scoping issues put forth by RSD. The Scoping Ruling did not include UP's suggested issue of adequately addressing the railroad's "specific objections," and this issue is not within the scope of the proceeding. The Scoping Ruling also found there were no issues of material fact and no evidentiary hearings were needed.<sup>32</sup>

On October 8, 2024, the City and UP submitted a joint motion to extend the schedule due to ongoing negotiations to resolve UP's objections that were agreed upon in lieu of using Commission alternative dispute resolution. At that time, the City and UP both indicated to the Commission that UP would approve the City's concept plans "anticipated in the next 4 to 8 weeks," and that UP "will withdraw its stated opposition and objections to the Application."<sup>33</sup> The motion was granted on October 15, 2024.<sup>34</sup>

After more meetings between the City and UP, the Commission granted two additional extensions of the schedule.<sup>35</sup> From the initial extension grant on October 15, 2024 through March 2025, the City has continued discussions with UP in good faith and submitted additional design modifications.

To date, approval has not been given and the protest has not been withdrawn. Even though there is an existing area below the bridge that people use to access areas north and south

---

<sup>32</sup> Assigned Commissioner's Scoping Memo and Ruling at 2, 3 and 7 (Aug. 15, 2024).

<sup>33</sup> Joint Motion of the City of Goleta and Union Pacific Railroad Company for Extension of Existing Testimony, Briefing, and Hearing Schedule at 3 (Oct. 8, 2024).

<sup>34</sup> Email Ruling Joint Motion of City of Goleta and Union Pacific Railroad Company for Extension of Existing Testimony, Briefing, and Hearing Schedule at 3 (Oct. 15, 2024).

<sup>35</sup> Email Ruling Granting Joint Request off City off Goleta and Union Pacific Railroad Company for 45 Day Extension of the Proceeding Schedule (Dec. 27, 2024) and Email Ruling Granting Joint Request of City of Goleta and Union Pacific Railroad Company for Extension of the Proceeding Schedule (Mar. 3, 2025).

of the UP structure, UP opposes improving the site with a safe pedestrian and bicyclist trail because it does not want to formalize an undercrossing at that location. The years of UP review that the City has undergone and numerous modifications by UP clearly show the Railroad's opposition to the Project. UP's requested design elements also show its prioritization of inspection and maintenance.

The Project before the Commission is construction of a small segment of a walking and bike trail below a railroad bridge where an area already exists. The Project has been designed to prioritize safety to trail users and the public stemming from UP operations. And while the undercrossing is a small segment of the larger Project, the City cannot construct the larger trail improvements without this proposed undercrossing. If the Commission agrees with UP and denies the Application, the overall Project would be rendered meaningless.

### **III. COMMISSION JURISDICTION AND GOVERNING REQUIREMENTS**

The Commission has jurisdiction over railroad crossings pursuant to Public Utilities Code sections 1201 and 1202. General Order (GO) 26-D prescribes the minimum clearance requirements on railroads and structures and adjacent to railroad tracks.<sup>36</sup> RSD stated that GO 26-D does not apply to the proposed concept design because the City's crossing is not intended for vehicular use. Rule 3.7 of the Commission's Rules of Practice and Procedure governs applications to construct a public road, highway, or street across a railroad. Although not enshrined in a General Order, as a matter of administrative law, RSD guidelines in the form of a "checklist" also apply to the review of the Application. The City notes that it has reviewed and followed *UP BNSF Guidelines for Railroad Grade Separation Projects* and *Union Pacific*

---

<sup>36</sup> GOs 88-B, 118-A, and 164-F can also apply to certain Commission rail crossing and railroad matters, but do not apply here.

*Railroad Public Projects Manual* (UP Guidelines). For purposes of state law safety requirements, the UP Guidelines do not govern Commission application approval. Although UP Guidelines may have some evidentiary consideration, they mostly govern UP's internal review process and its design standards for improvements on its privately owned rights-of-way. Therefore, the only safety requirements that directly apply to the Project are RSD's safety checklist.

#### IV. **DISCUSSION**

##### A. **The Project's Current Concept Design Meets All Commission Requirements**

The issues in this undercrossing proceeding are important but they are also limited. There are four issues set forth in the Scoping Ruling, like most Commission crossing proceedings. The City has addressed all of the issues and meets the applicable requirements.

##### 1. ***Issue #1 – The Application meets all Commission requirements, including Rule 3.7***

The first issue in this proceeding is whether the Application complies with all Commission requirements – including Rule 3.7 – such that the Commission should grant the City's Application to construct a grade-separated crossing for the San Jose Creek multi-purpose pedestrian/bike path. The City has satisfied this issue and the Commission can find that state law requirements have been met and the Application can be granted.

GO 26-D should not apply to the proposed design because the proposed undercrossing is not intended for vehicular use.<sup>37</sup> The undercrossing would be limited to pedestrians and bicyclists and would not be used by motor vehicles. In addition, the City is proposing an 8-foot vertical clearance for the pedestrian/bike crossing, which complies with RSD guidelines. This

---

<sup>37</sup> RSD Response, Attachment A, at A-2.

clearance is clearly laid out in the City's Project Drawings attached to the Application.<sup>38</sup> There are no other General Order safety items that apply.

The City also meets the requirements of Rule 3.7 as follows:

- a) 3.7(a) Rail milepost: As provided in paragraph 8 of the Application and the legal description in Exhibit A-1 (Attachment 2), the undercrossing is at Milepost 359.679.
- b) 3.7(a) Legal description or coordinate system of the proposed undercrossing location: A legal description is provided in Exhibit A-1 (Attachment 2).
- c) 3.7(b) Crossing identification numbers: The crossing number is provided in paragraph 9 of the Application (DOT Crossing No. 975200C).
- d) 3.7(c) Certain statements for at-grade crossings: This subsection does not apply because the Project is a grade-separated crossing.
- e) 3.7(d), (e) Accurate maps documenting the location of listed features within a specified distance of the crossing and the relation of the proposed crossing to existing roads and railroads: The proposed undercrossing map is of suitable scale (100 feet per inch) and is provided as Exhibit D (Attachment 5), page 11, as well as Exhibit B-2 (Attachment 3). A map of suitable scale is also provided showing the relation of the proposed crossing to existing roads and railroads in the general vicinity of the proposed crossing at Exhibit D (Attachment 5), page 10 and Exhibit B-1 (Attachment 3).
- f) 3.7(f) Profile showing the ground line, grade line, and rate of grades of approach on all highways and railroads affected by the crossing: The Application includes a profile in compliance with this rule at Exhibit B-2 (Attachment 3) "Track Plan and Profile."

RSD confirmed in its Response that the Project is not governed by GO 26-D and that there is compliance with Rule 3.7.<sup>39</sup> In addition, the Response provides background on RSD's diagnostic review and site visit where it found "no safety or other issues with the proposed crossing" and that a "grade-separated crossing is inherently safer than an at-grade crossing, as

---

<sup>38</sup> Application, Ex. B.

<sup>39</sup> RSD Response at 2.

the movements of trains and pedestrians will be separated.”<sup>40</sup> Based on this review, RSD concludes that the Project complies with all Commission requirements and applicable rules and General Orders, and recommends the “Commission should approve this Application.”<sup>41</sup>

**2. *Issue #2 – The City has complied with the California Environmental Quality Act***

The City also complies with the California Environmental Quality Act (CEQA) portion of the Commission’s review. The Project, including the proposed undercrossing, constitutes a project for purposes of CEQA review. CEQA applies to discretionary projects proposed or subject to the approval of public agencies. CEQA has as its central purpose the goal of informing decisionmakers and the public about potential significant environmental effects of the proposed project. For purposes of CEQA review, the lead agency is either the public agency that carries out the project, has the greatest responsibility for supervising the project, or has responsibility for approving the project. Here, the City is the lead agency for the Project, and the Commission is the responsible agency.

As a responsible agency under CEQA, the Commission must consider the lead agency’s environmental document and findings before acting on or approving a project.<sup>42</sup> As a responsible agency, the Commission is also responsible for mitigating or avoiding only the direct or indirect environmental effects, if any, of those parts of the project which it decides to carry out, finance, or approve.<sup>43</sup> Specifically, the Commission’s authority under CEQA as the responsible agency is

---

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, at 4.

<sup>42</sup> Title 14, CCR § 15050(b) and 15096.

<sup>43</sup> Title 14, CCR § 15096(g).

limited to mitigating or avoiding the direct or indirect environmental effects of the proposed Project undercrossing.

The environmental document prepared for the Project (Mitigated Negative Declaration or MND) considered all possible environmental impacts, including aesthetics, air quality, biological resources, hydrology and water quality, and noise. Where an impact was determined to exceed the acceptable levels of significance, mitigation measures were adopted to eliminate or reduce the impact below the level of significance. The City concluded in the MND that when considering implementation of all proposed mitigation measures, all impacts could be kept within the acceptable level of significance.<sup>44</sup>

Regarding the City's proposed undercrossing, the MND concluded no significant impacts were directly associated with construction of the undercrossing. For example, although the proposed improvements are within the floodplain, they are outside the active channel.<sup>45</sup> The MND also proposes additional safety mitigation that although UP has constructed a protective steel mesh cover on each side of its trestle bridge, the City would construct additional railroad ties to close any gaps between existing ties to avoid items dropping onto the proposed undercrossing path.<sup>46</sup> Lastly, regarding UP protest on the issue of surface water elevation, the local hydraulic study that was prepared for and addressed in the MND shows that the Project will not result in a rise to the existing condition 100-year flood water surface elevation.<sup>47</sup>

---

<sup>44</sup> Application, Ex. D, San Jose Creek Multipurpose Path Project, Initial Study/Mitigated Negative Declaration at 222-223.

<sup>45</sup> *Id.*, MND at 14.

<sup>46</sup> *Id.*

<sup>47</sup> MND, App. B; *see also* Lopes Prepared at 17:14-15.



The City notes that UP did not comment on the environmental documents where it could have reviewed safety mitigation and otherwise commented on environmental impacts, such as the mitigation for items and debris falling onto the undercrossing path, which would have been timely and the City would have been legally required to address under CEQA.<sup>48</sup> Thus, UP's review is limited in this proceeding to the safety issues in which the Commission has jurisdiction.

Based on the MND adopted by the City Council for the City of Goleta on October 4, 2022, as required by CEQA, the City's environmental documents are adequate for purposes of the Commission's review of the Application as it pertains to the undercrossing.

**3. *Issue #3 – The Commission should grant the City a period of three years from approval to complete the Project***

Based on the Commission's findings on Issues 1, 2 and 4, the City believes it has satisfied Issue 3 and the Commission can grant the City approval for a period of three years to complete the Project and that such time is reasonable. The anticipated completion of the Project is 2026.<sup>49</sup>

**4. *Issue #4: There are no impacts on environmental and social justice communities and the Application achieves all of the Commission Environmental and Social Justice Goals and Social Justice Action Plan***

The City acknowledges the Commission has a responsibility to serve the State in a way that helps address inequities for some populations facing high barriers in accessing safe and affordable utility and transportation services. In April 2022, the Commission adopted an ESJ Action Plan with nine goals to serve as a roadmap to expand public inclusion in Commission decisionmaking and improve services to targeted communities across California.<sup>50</sup>

---

<sup>48</sup> MND, App. A.

<sup>49</sup> See <https://goleta.legistar.com/gateway.aspx?m=l&id=/matter.aspx?key=7127>.

<sup>50</sup> See <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>.

The Application at Exhibit E contains the Project’s ESJ statement. The statement notes that it specifically promotes Goal Three of the ESJ Action Plan to improve access to high-quality transportation services for ESJ communities, such as Old Town Goleta. The Project also reduces the impacts of carbon emissions by creating a new dedicated transportation corridor for pedestrians and bicyclists, and reduces conflicts for such with motor vehicles, thereby promoting public safety. The overall Project removes four significant barriers to north-south connectivity by crossing US-101 and the Union Pacific Railroad bridges. Therefore, the Project aligns with eight of the nine goals of the ESJ Action Plan.

The City notes that RSD in the Joint Statement concurred, in part, with the City’s ESJ submission finding that “[p]ursuant to Section 3.3 of the [ESJ Plan] of April 7, 2022, this application will extend rail safety to the surrounding area and communities.”<sup>51</sup>

In addition to the City’s statement, the City’s Senior Project Engineer testified at length that Commission ESJ goals would be advanced by the Project and benefit the ESJ community throughout the region.<sup>52</sup> The achievement of various Commission goals includes non-motorized transportation options to low income communities, encouragement of multi-modal alternatives, enhancing outreach to the public and non-governmental organizations, safer access to necessary destinations, and City surveys prior to and after Project construction to gather key pedestrian and bicyclist data.<sup>53</sup>

Based on the above discussion, the Commission should find that the construction of the proposed undercrossing is consistent with the goals of the Commission’s ESJ Action Plan.

---

<sup>51</sup> Joint PHC Statement at 10.

<sup>52</sup> Lopes Prepared at 8:1 – 13:17.

<sup>53</sup> *Id.*

**B. UP's Protest of the Application Should Be Denied**

The Commission should deny UP's protest and grant the Application. A thorough review of UP's objections and the relevant Commission rules show that the Application was not untimely. The objections are also vague and, in part, outside the scope of Commission review, and primarily intended to address UP inspection and maintenance efficiencies.

**1. *The City's Application Is Timely***

One of UP's objections is that the City's Project is still in a concept phase where the two parties were continuing to meet to reach agreement prior to the Application being submitted. UP states that it does not have sufficient detail to approve the undercrossing, and thus, the "Application is premature."<sup>54</sup>

There is no time threshold in state law, the Commission's General Orders, Rule 3.7, or RSD guidelines for when a crossing project is considered timely for purposes of filing an application for authority to construct. Certainly, an application must be in a final design concept (65% plans) such that a local agency can certify the project under CEQA, have sufficient engineering plans to address General Order and RSD safety considerations such as clearances, and meet all Rule 3.7 filing requirements for maps, legal descriptions, and profile submissions. A project must also be able to be constructed within the requested construction timeframe, in this case, three years. There is no other timing requirement and no limitation or condition on obtaining the approval of an affected railroad corporation, or how long such discussions regarding project safety must go on, prior to the filing of an application. Certainly, it is prudent to meet with the affected railroad on a proposed public project involving a railroad crossing, and the evidence shows that the City did so for approximately 10 years. To the extent the evidence is

---

<sup>54</sup> Joint PHC Statement at 5.

relevant, testimony also shows that the City has continued to meet with UP throughout this proceeding to attempt to resolve any issues.<sup>55</sup> Throughout the design review period going back to 2012, the testimony indicates that the City has been attempting to meet with UP and resolve its engineering questions, but has been met with denials, changes in a prior approval, untimely review of project plans, and numerous modification requests.<sup>56</sup> The City has studied multiple project location and alignment options, including over *and* below the railroad tracks and analyzed numerous engineering options. It studied an overcrossing that was found to be infeasible.<sup>57</sup> The City analyzed a canopy,<sup>58</sup> then a deck closure,<sup>59</sup> and then fencing with meshing,<sup>60</sup> only to have UP request the City go back to a different canopy structure and deck closure option.<sup>61</sup> In an effort to withdraw the protest and avoid testimony and briefing, the City engaged in good faith negotiations over multiple weeks and months during this proceeding to discuss Project alternatives.

Therefore, the City has been more than prudent in its interactions with UP and the Application is indeed timely. Any further delay by the City in filing the Application would have been unconscionable for the regional public by threatening Project funding, and the very Project itself. As Ms. Lopes testified, “All of the other partner agencies, including Caltrans, have thoroughly reviewed the Project and believe in the benefits it will bring to the community and to

---

<sup>55</sup> Lopes Prepared at 20:3 – 27:2.

<sup>56</sup> *Id.*, at 15:9 – 27:2.

<sup>57</sup> *Id.*, at 3:27 – 4:18.

<sup>58</sup> *Id.*, at 15:12-13, 15:23-26, and 17:11-13.

<sup>59</sup> *Id.* at 20:21-23, 20:28 – 21:1, 22:2-29, 25:9 – 26:4.

<sup>60</sup> *Id.*, at 25:14-17 and 25:23 – 26:3.

<sup>61</sup> *Id.*, at 26:1-13; Koerner Rebuttal 7:8-14.

the region at large. This one small section of the path is the only thing preventing those benefits from being realized and enjoyed by all.”<sup>62</sup>

**2. *UP’s Objections Are Vague and There is No Data, Information or Engineering Standard Presented as to Why the Project Does Not Meet Commission Safety Requirements or Why UP’s Guidelines are the Appropriate Standard***

The City recognizes the right of a railroad corporation to review a crossing project for safety concerns. The City also recognizes the legal ability to file a protest to a Commission crossing. Pursuant to Rule 2.6, however, a protest must state the facts or law constituting the grounds for the protest. Although UP had lodged a protest with several purported “safety” concerns, the protest is vague and does not provide the necessary facts or analysis as to why the undercrossing does not meet Commission safety requirements. UP has not provided specific information or data in the proceeding record on why the actual Project design before the Commission does not meet state law requirements. It has only made bald assertions of safety that appear to focus on inspection and maintenance efficiency. Similarly, UP has not raised specific issues with RSD’s safety checklist or Response (other than the trail closure procedure raised in rebuttal testimony and discussed below), and has not provided examples of actual alternative design features, such as a deck enclosure or cantilever canopy, used at other UP undercrossings. It is UP’s burden to do so.

UP argues that it does not have enough information to approve the City’s design<sup>63</sup> despite 10 years of design submittals, two years of regular review and meetings prior to Application

---

<sup>62</sup> Lopes Prepared at 27:28 – 28:2.

<sup>63</sup> Joint PHC Statement at 5 (“... Union Pacific ... does not currently have enough information to approve.”); Koerner Direct at 6:23-25 (“The proposed initial design included in Ex. B in the Application does not provide sufficient detail to ensure that pedestrian and rail safety will be met. City’s Ex. F ... is similarly incomplete.”).

submission, and detailed plans in the record. UP argues that the design “is still in the concept phase”<sup>64</sup> even though the plans before UP and the Commission are just that – a final concept (“65% complete design plans” where the additional design is detailed building and engineering standards). UP has raised issues of water flow and flood plain impacts, which have been previously analyzed in the City’s MND, such as the location hydraulic study discussed above. UP indicated that the current design does not protect hydraulic capabilities and rail infrastructure needs, and does not consider debris issues, or fire protection, among other general allegations. Nowhere, however, does UP articulate how these safety issues are not specifically met, what the engineering criteria or standard should be, or how the Project does not meet that criteria or standard. UP simply asserts that the proposed design does not consider other important “long-term issues”<sup>65</sup> and that a deck enclosure and cantilever canopy is still required.<sup>66</sup>

In Ms. Lopes’s testimony, she states that design plans have been submitted to UP in various fashion on a number occasions, including January 2012, March 2022, June 2022, April 2023, May 2023, July 2023, and September 2023.<sup>67</sup> Both Ms. Lopes for the City and Mr. Koerner for UP testify to attendance at a site visit and diagnostic meeting held on September 23, 2023 where the Project was discussed.<sup>68</sup> Despite Mr. Koerner submitting evidence of the Field Site Diagnostic Meeting Minutes, there is no testimony that UP objected to Project safety at that time. A review of the minutes shows that RSD raised several issues for the City to consider, but that Mr. Koerner “made a statement about the purpose of the meeting,”

---

<sup>64</sup> Joint PHC Statement at 5.

<sup>65</sup> *Id.*, at 7.

<sup>66</sup> Koerner Direct at 6:7.

<sup>67</sup> Lopes Prepared at 15:12 – 18:23.

<sup>68</sup> *Id.*, at 18:18; Koerner Direct at 3:4.

inquired as to project completion, and even “asked if this segment could be removed from the overall project.”<sup>69</sup> Mr. Koerner acknowledged that “the project design plans have not been reviewed by UPRR as a variance” despite numerous submittals.<sup>70</sup> The meeting minutes further show that Mr. Koerner provided comments on fencing, inquired as to trail users, and asked about the canopy structure.<sup>71</sup> Although the City’s testimony shows that various concept plans have been submitted to UP prior to the September 2023 site visit, and UP’s testimony shows the Project was very thoroughly discussed at the site visit, it does not appear that UP raised the issues it now raises as objections at a required site visit when such issues would naturally be raised. In fact, the minutes show that the proposed 30-foot canopy design was discussed as was surface water elevation, and that the City’s designer, Jose Silva, Project Engineer, Dewberry Engineers, stated there was no rise from the current design based on hydraulic studies.<sup>72</sup>

UP also generalizes many of its safety concerns that canopy support beams will collect debris and allow for the “gathering of trespassers,” “construction techniques are not clear,” and scour has not been evaluated.<sup>73</sup> Not only are some new concerns raised in testimony from those raised in the initial Joint Statement, but more importantly there is no specific engineering explanation for why: 1) this Project undercrossing cannot be below UP’s bridge, 2) how the canopy support beams will collect debris and to what extent, 3) why the railway ties proposed in

---

<sup>69</sup> Koerner Direct, Att. A. There are no page numbers in the attachment but the individual statements can be reviewed in each minutes entry related to Mr. Koerner.

<sup>70</sup> Koerner Direct, Att. A, at 3.

<sup>71</sup> *Id.*, at 3-5.

<sup>72</sup> *Id.*, at 5.

<sup>73</sup> “The initial proposed canopy structure designs can accumulate debris during a flood event, potentially compromising the structural stability of the existing bridge. Additionally, the construction methods for the foundations of the proposed canopy structure and retaining walls are not clearly specified. Due to their close proximity to the existing bridge abutment, there is a potential risk to the abutment’s stability.” Koerner Rebuttal at 5:14-19.

the City's MND will not catch debris, 4) how debris continues to be a safety concern, 5) what construction techniques are missing from 65% final concept plans, or 6) how trespassing and "gathering" is an issue when the property is currently open and will be open to the public when the trail is completed.

UP further states in rebuttal testimony that the "Guidelines prohibit underpass trail crossings which also serve to convey water,"<sup>74</sup> but UP Guidelines contain exceptions, and to the extent the City will acquire and own the underpass trail crossing, the prohibition would not otherwise be binding on the Commission. In addition, UP expands its criteria beyond what is written in the UP Guidelines as to the canopy and deck closure options. In the *UP/BNSF Joint Grade Separation Guidelines*, Section 7.3.2.2 (Crossing Under Existing Structures) states:

#### 7.3.2.2 Crossing Under Existing Structures

- a. The Railroad may reject, at its discretion, the use of any existing Underpass Structure for Trail use.
- b. Existing culvert pipe, box or arch structures, designed to convey water, are not permitted for trail crossing use.
- c. An open deck structure shall be modified to a ballast deck or solid deck structure to maintain a safe crossing under a Railroad structure. If modifying an existing open deck structure is not practical, provide a protective cover over the Trail.
- d. Protection from falling debris is required for the crossing of pedestrians safely under active rail bridges. The overhead protection shall extend a minimum of 30 feet out on each side of the Railroad structure, or further as designated by the Railroad's engineering department. However, the protective cover shall not reduce the existing hydraulic opening, shall not function as a debris catcher and shall not impact proper inspection of the structure by Railroad personnel.
- e. Measuring from bottom of the Railroad structure to the top of the protective cover shall not be less than 3 feet to allow for inspection and shall not be attached to the structure. If the Applicant cannot meet these requirements then the Applicant shall provide a removable hatch to allow Railroad personnel to inspect the bridge structure.

---

<sup>74</sup> Koerner Direct at 5:24 – 6:1, FN 3.



- f. The protective cover shall be removable and can be removed, at the Applicant's expense, without advance notice if deemed necessary by the Railroad.
- g. A protective cover shall be required, meeting the above criteria, for ballast deck bridges unless the superstructure meets the requirement.

Subsection (c) clearly states that if modifying the open deck is not practical, then the applicant should provide a protective cover. UP has previously indicated to the City that a deck closure is practical,<sup>75</sup> therefore a protective canopy is not required. Yet, in rebuttal testimony, UP requests both a cantilever canopy (not found in UP Guidelines) and a deck closure. There is no basis in the UP Guidelines to address structures case-by-case, therefore the design modification appears arbitrary. In addition, UP rebuttal testimony expands this arbitrariness further that a deck closure eliminates the need for canopy with a removable hatch, yet the canopy is still "required."<sup>76</sup> This is not what is stated in Section 7.3.2.2(c).

Moreover, UP has not provided an example of a design or structure that would meet its requirements or other real world examples of UP undercrossings in the 22 states it has rail lines that met its criteria. Although UP in rebuttal testimony requests a cantilever canopy design,<sup>77</sup> it does not testify as to why this design is required and is the only design that can meet Commission safety requirements. Noticeably, UP Guidelines do not, in fact, discuss cantilever canopies at all.

---

<sup>75</sup> Lopes Direct at 23:11-15 and 23:27 – 24:2.

<sup>76</sup> "Q11. Why is Union Pacific recommending construction of both a deck closure and a cantilever canopy? A11. The existing bridge is an open deck design. By installing ties, the space between the existing ties can be removed, with the intention of preventing debris from falling directly underneath the existing bridge structure. The installation of additional ties eliminates the need for City to install a canopy with a removable hatch to allow for bridge maintenance and inspection directly underneath the existing bridge; however, the Guidelines still require the installation of a canopy extending out on each side of the bridge." Koerner Rebuttal at 4:1-8.

<sup>77</sup> *Id.*, at 4:1-8.

In sum, UP has raised vague objections to the City's design with no engineering analysis or specific reasoning as to why the City does not comply with safety requirements or how UP's designs are superior. If UP objects to the City's design, as the protestor in the proceeding and as the current railroad operator and landowner, it has the obligation and burden to provide the Commission with objections based on concrete facts and analysis. If the City's concept design is insufficient or lacks detail, it is UP's obligation to provide specific questions, design modifications, and examples of canopy structures from other UP crossings in the proceeding record. Although UP Guidelines have been submitted into the record, there is nothing in UP's testimony regarding the UP Guidelines specific to the Project. UP merely testifies that "a canopy structure was omitted from City's February 2025 concept plans," which "plans" are not part of the Application for purposes of Commission approval.

**3. *UP's Objections Are, in Part, Outside the Scope of the Commission's Review***

Many of the issues raised by UP are outside of the scope of the proceeding and the Commission's review. UP's objections and testimony raise design issues that may be in UP Guidelines or are UP standards, but they are not necessarily Commission safety standards or are before the Commission. General Order 26-D provides specific overhead and side clearance requirements for at-grade crossings, which do not apply here due to the undercrossing proposal. RSD safety guidelines evaluate compliance with Rule 3.7 requirements and other applicable safety and regulatory requirements that an application must comply. UP Guidelines are also not dispositive as to Commission safety requirements or binding on the Commission's review of the Application. They are simply UP procedures that may govern UP project review but not that of the Commission or RSD.

In addition, UP testimony places great emphasis on the good faith negotiations of the City and UP on an alternative design that includes a cantilever canopy and deck closure. Such testimony by UP is irrelevant as to the Application and the concept design before the Commission (that includes a canopy), and whether the current plans do not meet Commission safety requirements. A deck closure and cantilever canopy are not before the Commission as part of its consideration of the Application because the City has not provided such plans in this proceeding. Any testimony then regarding the parties' October 2024 to March 2025 discussions as to the substantive issue of safety vis-à-vis an alternative design is irrelevant and outside the scope of the proceeding.<sup>78</sup> To the extent the City also cites to these ongoing discussions, it does so to show only that its Application has been timely, the City continues to discuss its plans in good faith without the need for testimony and briefing, and UP continues to request design modifications. As of the date of this brief, the City has not presented a revised design to the Commission.

Lastly, UP's reply testimony appears to raise for the first time the issue of the City's trail closure plan.<sup>79</sup> UP states that trail closure procedures will be developed in the final "PS&E" (plans, specifications, and estimate) after conceptual approval has been granted, as outlined in and governed by *Response to UPRR Variance Submittal Comments*, "Designer's Response," dated January 13, 2023.<sup>80</sup> UP further testifies that the 2023 "commitments" supersede the City's trail closure procedures in its Application at Exhibit E, and that the trail closure plan submitted in

---

<sup>78</sup> Scoping Memo at 2.

<sup>79</sup> Koerner Rebuttal at 8:21 – 9:16.

<sup>80</sup> *Id.*, Attachment F at 1.

reply testimony at Attachment E is “an example of a trail closure plan with greater detail and closure procedures.”<sup>81</sup>

Again, UP has not raised the specific issue in its protest that the City’s trail closure plan is inadequate and did not object to Item V.4 in RSD’s Response that the final decision’s ordering paragraphs include “The City of Goleta shall operate and maintain the crossing as specified in attachment ‘Multi-Use Trail Closure Procedure.’”<sup>82</sup> In Exhibit F of the Application, the City provided detailed information and calculations from its hydraulics study that no increase in water surface elevation for the 100-year storm event is expected as part of the Project improvements. This was similarly analyzed in the MND. In fact, the study concluded that the improvements would improve the capacity of the channel under the railroad bridge. To maintain safety, the City would use standard closure protocols by closing the path to use by announcements, signs and gates.<sup>83</sup>

Notwithstanding the above, the City does not oppose addressing UP trail closure procedures substantially similar to UP’s rebuttal testimony. To the extent the Commission considers this, the City proposes RSD Ordering Paragraph 4 “The City of Goleta shall operate and maintain the crossing as specified in attachment ‘Multi-Use Trail Closure Procedure’” be modified to “The City of Goleta shall operate and maintain the crossing as specified in attachment ‘Multi-Use Trail Closure Procedure’ and as specified in a final closure/reopening procedure substantially similar to UP’s rebuttal testimony, Attachment E, Exhibit A.”<sup>84</sup>

---

<sup>81</sup> *Id.* at 8:17-19.

<sup>82</sup> RSD Response at 3.

<sup>83</sup> Application at Ex. F.

<sup>84</sup> Although outside the proceeding record, on October 2, 2024, the City provided UP with a trail closure/reopening procedure substantially similar to what is proposed in UP’s rebuttal testimony, and has no objection to this procedure being the basis of the applicable Ordering Paragraph.

V. **CONCLUSION**

The City has prepared an undercrossing Project that satisfies all Commission safety requirements. The Project serves an important public purpose by connecting pedestrians and bicyclists in the north and south areas of Goleta and the larger Santa Barbara County. The Project address environmental and ESJ Action Plan goals and has no impacts under CEQA. The Project is ready to be constructed except for the final remaining undercrossing component that has been delayed due to years of negotiations with UP. The City has properly demonstrated that any remaining safety concerns are unfounded and rest on vague and ever-changing assumptions that in some cases are either beyond the scope of Commission review, such as maintenance efficiency, or do not bind the Commission's review. Based on the foregoing, the Commission should deny UP's protest and grant the City's Application with the Ordering Paragraphs proposed by RSD, as modified by the City's trail closure procedure request.

Respectfully submitted,



---

Ryan M. F. Baron  
BEST BEST & KRIEGER LLP

April 11, 2025