BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California High-Speed Rail Authority for Approval to Construct One New Grade Separated Crossing at Whitley Avenue Under Two Proposed High-Speed Rail Tracks at Whitley Avenue at CHSRA’s MP 241.16, Located in the County of Kings, State of California

Application 20-08-016

DECISION AUTHORIZING THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY TO CONSTRUCT ONE UNDERPASS GRADE-SEPARATED HIGHWAY-RAIL CROSSING UNDER TWO HIGH-SPEED RAIL TRACKS IN KINGS COUNTY

Summary

Pursuant to Public Utilities Code §§ 1201 and 1202, this decision authorizes the California High-Speed Rail Authority to construct one underpass grade-separated crossing under two proposed high-speed rail tracks at Whitley Avenue, at milepost 241.16 in an unincorporated area of Kings County.

This proceeding is closed.

1. Background

On August 21, 2020, California High-Speed Rail Authority (CHSRA) filed Application (A.) 20-08-016 (Application) seeking authorization to construct one new underpass grade-separated crossing under two proposed high-speed rail tracks at Whitney Avenue, also identified as State Route 137, in an unincorporated area of Kings County (the Proposed Project.) The Proposed
Project is a portion of a larger California High-Speed Rail Train System (CHSTS) Project which will, upon completion, connect Sacramento to San Diego via San Francisco, Fresno, and Los Angeles.

The proposed crossing in this instant application is one out of the approximately 36 grade-separated crossings anticipated as part of CHSTS Construction Package 2-3 (CP 2-3) which spans 65.5 miles of two high-speed rail tracks running in the north-south direction between Fresno and Bakersfield, at CHSTS mileposts 218.83, 220.86, and 221.88.

The CHSTS tracks constructed as part of CP 2-3 will be in a closed corridor through Fresno, Tulare, and Kings Counties, with a continuous eight-foot welded wire mesh fence and barrier walls, and intruder detection systems to prevent unauthorized access.¹

During construction, CHSRA needs a temporary street closure of Whitley Avenue between State Road 43 and State Road 137 to construct the underpass structure. CHSRA states that alternate routes to travel from west to east will be Orange Avenue to the north of the proposed crossing. Travelers wishing to use Whitely Avenue from State Route 43 will exit on Orange Avenue and travel south using Road 16. A full motorist information plan for the Proposed Project was provided with the Application.²

The Commission’s Rail Safety Division (RSD) filed a response to the Application on September 18, 2020. No party protested the Application.

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¹ A.20-08-016 at 3.
² A.20-08-016 at 5.
A prehearing conference (PHC) was held on October 12, 2020. Commissioner Genevieve Shiroma issued a Scoping Memo and Ruling setting forth the scope and schedule for the proceeding on October 22, 2020.

2. Jurisdiction

3. Issues Before the Commission
The Scoping Memo and Ruling, issued on October 22, 2020, identified the following issues as the scope of this proceeding:

A. Should the Commission grant CHSRA the authority to construct the Proposed Project (one underpass grade-separated highway-rail crossing under two high-speed rail tracks at CHSRA Milepost 241.16)?

B. Does the Application and the rail crossing configurations proposed within it meet the requirements of Commission Rules 3.7 and 3.9?

C. Does the Application align with or impact the achievement of any of the nine goals of the Commission’s Environmental and Social Justice Action Plan?

D. Do the rail crossings proposed in the Application comply with the California Environmental Quality Act (CEQA)?

E. Should the California High-Speed Rail Authority be granted a period of 36 months from date of approval to complete the Proposed Project, as proposed in the Application?
4. Discussion and Analysis

Applications for the construction of a railroad across a public road must meet the requirements of Rules 3.7 and 3.9, as well as the minimum clearance requirements set forth in GO 26-D.

RSD states that it conducted a site visit of the proposed crossing on March 14, 2019, and upon review of A.20-08-016, concludes that the Application complies with the Commission’s applicable Rules and GO 26-D.

After review of CHSRA’s Application and RSD’s response, the Commission finds that the Application complies with Rules 3.7 and 3.9 and GO 26-D, for the proposed grade-separated high-speed rail crossing as detailed in Appendix A.

RSD also recommends language for the Commission’s Ordering Paragraphs of this Decision, which we find reasonable.³

5. Compliance with the CEQA

The environmental impacts and mitigation plans associated with the Proposed Project are addressed in the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Fresno to Bakersfield section of the California High-Speed Train Project (Fresno-Bakersfield CHSTS Project). CHSRA included a copy of the Final EIR/EIS by reference in the Application.⁴

The Fresno-Bakersfield CHSTS Project constitutes a project under the 1970 CEQA and the National Environmental Policy Act (NEPA).⁵ Under CEQA,

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³ RSD Response to A.20-08-016 at 3-4.
⁴ A.20-08-016 at 6. The Final EIS/EIR was provided to the Commission as Exhibit I to A.17-09-017 which is hereby received into evidence.
the lead agency is either the public agency that carries out the project or has the
greatest responsibility for supervising or approving the project.⁶ CHSRA is the
lead agency under CEQA and the Federal Railroad Administration (FRA) is the
lead agency under NEPA for the purposes of identifying environmental impacts
from the Fresno-Bakersfield CHSTS Project.

CHSRA and the FRA jointly prepared the Final EIR/EIS in April 2014.
CHSRA’s Board of Directors certified the Final EIR/EIS on May 7, 2014
(State Clearinghouse No. 2009091126). FRA reviewed the Final EIR/EIS under
NEPA and issued a Record of Decision on June 27, 2014.

A responsible agency under CEQA “includes all public agencies other than
the lead agency which have discretionary approval power over the project.”⁷ For
the Fresno Bakersfield CHSTS Project, the Commission is a responsible agency
under CEQA and must consider the lead agency’s environmental documents and
findings before acting on, approving, or issuing a discretionary decision allowing
the project to proceed.⁸

The Commission must also consider the environmental impacts identified
in the Final EIR/EIS as that document relates to the Proposed Project, which is a
portion of the Fresno Bakersfield CHSTS Project. The Commission has the
authority to mitigate or avoid only the direct and indirect environmental effects
of those parts of the Proposed Project and must approve any mitigation
measures within the Commission’s jurisdiction that avoid or mitigate the parts of
the Proposed Project the Commission approves, unless the changes or alterations

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⁶ CEQA Guidelines (Title 14 of the California Code of Regulations (14 Cal. Code Regs.)),
§§ 15050 and 1505.
are infeasible for specific economic, legal, social, technical and other considerations.\(^9\) The Commission must balance any unavoidable impacts against specific economic, legal, social, technical or other benefits. Finally, the Commission must file a Notice of Determination with the CEQA Clearinghouse certifying that the Commission has considered the environmental document.\(^10\)

The Final EIR/EIS for the Fresno-Bakersfield CHSTS Project considered the potential environmental impacts and found that many of the significant environmental impacts associated with the construction and operation of Fresno-Bakersfield CHSTS Project could be mitigated and minimized to be considered less than significant under CEQA.\(^11\) None of the significant impacts identified and described in the Final EIR/EIS relate to the Proposed Project.

The Final EIR/EIS found that the Fresno-Bakersfield CHSTS Project, which includes the crossing proposed in A.20-08-016, “provides the environmentally superior alternative by best meeting environmental regulatory requirements and best minimizing impacts on the natural environment, farmland, and communities.”\(^12\) While not constructing the project may have the least immediate environmental impacts, the Fresno-Bakersfield CHSTS Project will provide otherwise unachievable benefits, such as reducing personal vehicle miles traveled, which is expected to result in improved regional air quality.\(^13\)

\(^9\) 14 Cal. Code Regs. §§ 15091(a)(2) and 15096(g).
\(^10\) 14 Cal. Code Regs. §§ 15096(h) and 15096(i).
\(^12\) Final EIR/EIS at 7-16.
\(^13\) Id.
The Commission has reviewed and considered the Final EIR/EIS as it related to the Proposed Project and finds that the Final EIR/EIS is adequate for our decision-making purposes in this proceeding.

Upon issuance of this decision, and in compliance with 14 Cal. Code Regs. §§ 15096(h) and 15096(i), the Commission’s Energy Division will file a Notice of Determination with the CEQA Clearinghouse certifying that the Commission considered the environmental documents related to the proposed grade-separated highway rail crossings, the Proposed Project.

6. Alignment with the Commission’s Environmental and Social Justice Action Plan

In February 2019, the Commission adopted its Environmental and Social Justice (ESJ) Action Plan as a comprehensive strategy and framework for addressing ESJ issues in each proceeding.\(^{14}\)

The Final EIR/EIS identifies several impacts that were considered when choosing the route for the Fresno-Bakersfield CHSTS Project, especially in the rural areas that will be affected by the crossing proposed in A.20-08-016. CHSRA and FRA worked with local, state, and federal officials and stakeholders to identify a route intended to follow existing railway corridors, to minimize relocation impacts and better align with current and planned land uses along the project corridor.\(^{15}\)

The route, including the underpass crossing proposed in A.20-08-016, was also designed to ensure agricultural producers in the San Joaquin Valley still


\(^{15}\) Final EIR/EIS at 2-24.
have access to railroad service necessary to efficiently move their goods to market.\(^\text{16}\)

Here, CHSRA has coordinated with tribal communities and stakeholders in the regions impacted by the project,\(^\text{17}\) and access to a high-speed rail option through the San Joaquin Valley would not only provide cleaner transportation options to residents, but could improve ambient air quality by reducing the number of personal vehicle trips through the region.

Upon review of the Application and the record of this proceeding, including the Final EIR/EIS, we find that the underpass grade-separated crossing proposed in this Application aligns with the Commission’s ESJ Action Plan. CHSRA is encouraged to hire local contractors and conduct public outreach about temporary street closures in multiple languages when constructing the Proposed Project.

7. **Request for Thirty-Six Months to Construct**

CHSRA requests authority to complete the Proposed Project within thirty-six months, or three years.\(^\text{18}\) The Commission finds CHSRA’s request reasonable. Accordingly, the Commission approves CHSRA’s request to construct the proposed underpass grade-separated highway-rail crossing within thirty-six months of the date of issuance of a Decision in this proceeding.

8. **Conclusion**

Application 20-08-016 complies with the applicable Commission Rules and GOs for seeking authority to construct a railroad crossing above a public road. Accordingly, we authorize CHSRA to construct the proposed grade-separated

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\(^{16}\) Final EIR/EIS at 2-29 and 2-30.

\(^{17}\) Final EIR/EIS at 7-5.

\(^{18}\) A.20-08-016 at 8.
crossing, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

9. **Waiver of Comment Period**

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

10. **Assignment of Proceeding**

    Genevieve Shiroma is the assigned Commissioner and Carolyn Sisto is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. On August 21, 2020, CHSRA filed A.20-08-016 seeking authorization to construct one new underpass grade-separated crossing under two proposed high-speed rail tracks at Whitley Avenue in an unincorporated area of Kings County (the Proposed Project.)

2. The Proposed Project is a portion of a larger CHSTS Project which will, upon completion, connect Sacramento to San Diego via San Francisco, Fresno, and Los Angeles.

3. The Commission’s RSD has conducted a site visit of the Proposed Project site, reviewed the instant Application and supporting documents, and filed a response in this proceeding noting its findings that the Application and the Proposed Project comply with the Commission’s Rules 3.7 and 3.9 and GO 26-D.

4. CHSRA and FRA prepared the Final EIR/EIS for the Fresno-Bakersfield CHSTS Project, considered the potential environmental impacts and found that many of the significant environmental impacts associated with the construction
and operation of the Fresno-Bakersfield CHSTS Project could be mitigated and minimized to be considered less than significant under CEQA.

5. None of the significant impacts identified and described in the Final EIR/EIS relate to the Proposed Project.

6. The Commission has reviewed and considered the Final EIR/EIS as it related to the Proposed Project.

7. The Final EIR/EIS provides evidence that ESJ impacts were considered and CHSRA and FRA endeavored to minimize adverse impacts on ESJ communities and provided opportunity for public comment during development of the Fresno-Bakersfield CHSTS Project.

8. There is increased public safety benefit associated with the proposed grade-separated crossing in comparison to at-grade crossings.

Conclusions of Law

1. CHSRA should be authorized to construct one new underpass grade-separated crossing under two proposed high-speed rail tracks at Whitley Avenue located in an unincorporated area of Kings County, California.

2. The proposed grade-separated crossing complies with the requirements of Rules 3.7 and 3.9, and the requirements of GO 26-D.

3. The Final EIR/EIS, as it relates to the proposed highway-rail crossing in A.20-08-016, is adequate for Commission decision-making processes.

4. The proposed highway-rail crossing in A.20-08-016 is consistent with the Commission’s ESJ Action Plan.

5. Upon issuance of this decision and in compliance with 14 Cal. Code Regs. §§ 15096(h) and 15096(i), the Commission’s Energy Division should file a Notice of Determination with the CEQA clearinghouse certifying that the Commission
considered the environmental documents related to the proposed railroad crossings.

6. CHSRA’s request for authority to complete the proposed underpass grade-separated highway-rail crossing within thirty-six months, or three years, is reasonable and should be granted.

7. The approval and construction authorization granted in this decision should expire if not exercised within thirty-six months of the issuance of this Decision, unless CHSRA seeks an extension of time or if the conditions adopted in the Ordering Paragraphs are not satisfied.

8. The proceeding should be closed.

ORDER

IT IS ORDERED that:

1. The California High-Speed Rail Authority is authorized to construct one new grade-separated crossing under two proposed high-speed rail tracks at Whitley Avenue, also identified as State Road 137, in unincorporated areas of Kings County, California.

2. The grade-separated highway-rail crossing at Whitley Avenue shall be identified as California Public Utilities Commission Number 135S-241.16-B and United States Department of Transportation Number 973203 R.

3. The grade-separated underpass highway-rail crossing authorized by this decision shall have the configurations specified in Application 20-08-016 and its attachments.

4. The California High-Speed Rail Authority shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.
5. The California High-Speed Rail Authority shall notify the California Public Utilities Commission’s Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days prior to the opening of the crossing. Notification shall be made by email to rceb@cpuc.ca.gov.

6. Within 30 days after completion of the work authorized in this Decision, the California High-Speed Rail Authority shall notify the California Public Utilities Commission’s Rail Crossings and Engineering Branch of the Rail Safety Division that the authorized work is completed by submitting a CPUC Standard Form G, Report of Completed Changes at Rail Crossings via email to rceb@cpuc.ca.gov. Form G requirements and forms can be obtained at http://www.cpuc.ca.gov/Crossings.

7. Within 30 days after completion of the work under this Decision, the California High-Speed Rail Authority shall notify the Federal Railroad Administration (FRA) of the existence of the public, grade-separated, highway-rail crossing by submitting the United States Department of Transportation’s Crossing Inventory Form, FRA F6180.71. Concurrently, the CHSRA shall provide a copy of the inventory form FRA F6180.71 to the California Public Utilities Commission’s Rail Crossings and Engineering Branch of the Rail Safety Division electronically at rceb@cpuc.ca.gov.

8. The California High-Speed Rail Authority has 36 months from the date of this Decision’s issuance to complete the project authorized herein.

9. Any request for extension of the 36-month authorized construction period shall be submitted to the California Public Utilities Commission’s Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days before the expiration of the authorized 36-month period.

10. Application 20-08-016 is closed.
This order is effective today.
Dated January 14, 2021, at San Francisco, California.

MARYBEL BATJER  
President  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners