

Decision 21-07-004 July 15, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DesertXpress Enterprises, LLC dba XpressWest to construct proposed highspeed tracks under the following public road crossings: Harvard Rd. (MP 123.53), ZZYZX Rd. (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37).

Application 20-07-006

DECISION AUTHORIZING DESERTXPRESS ENTERPRISES, LLC DBA XPRESSWEST TO CONSTRUCT FOUR GRADE-SEPARATED PROPOSED HIGHSPEED TRACKS UNDER THE FOLLOWING PUBLIC ROAD CROSSINGS: HARVARD RD. (MP 123.53), ZZYZX RD. (MP 89.77), WEST BAKER (MP 84.13), AND ROUTE 127-15 SEPARATION (MP 83.37) IN SAN BERNARDINO COUNTY

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DECISION AUTHORIZING DESERTXPRESS ENTERPRISES, LLC DBA XPRESSWEST TO CONSTRUCT FOUR GRADE-SEPARATED PROPOSED HIGHSPEED TRACKS UNDER THE FOLLOWING PUBLIC ROAD CROSSINGS: HARVARD RD. (MP 123.53), ZZYZX RD. (MP 89.77), WEST BAKER (MP 84.13), AND ROUTE 127-15 SEPARATION (MP 83.37) IN SAN BERNARDINO COUNTY

Summary

Pursuant to Public Utilities Code §§1201 and 1202, this decision authorizes DesertXpress Enterprises, LLC dba XpressWest to construct, as part of the planned XpressWest high-speed passenger rail service between Apple Valley, California and Las Vegas, Nevada, four grade-separated highway-rail crossings under bridge structures on Harvard Road (Milepost (MP) 123.53), ZZYZX Road (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) located in San Bernardino County, California.

This proceeding is closed.

1. Background

DesertXpress Enterprises, LLC dba XpressWest (DesertXpress) filed the instant application on July 6, 2020 (Application), pursuant to Public Utilities (Pub. Util.) Code §§1201 to 1205, and in accordance with Rules 3.7 and 3.9 of the Commission's Rules.¹ Specifically, the Application seeks authority to construct four new grade-separated highway-rail crossings under four existing bridge structures on Harvard Road (Milepost (MP) 123.53), ZZYZX Road (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) in San Bernardino County, California (Proposed Crossings).

These Proposed Crossings are part of the larger project to construct electrified high-speed passenger rail tracks for service between Apple Valley,

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

California and Las Vegas, Nevada (Project), which includes construction of approximately 170 miles of track that will be fully grade-separated and operate primarily in the median of Interstate 15 (I-15).²

The Project is divided into seven (7) segments with Segments 1 through 4 in California. The Proposed Crossings will be part of Segment 3, from Yermo to Mountain Pass.

On February 26, 2020, at a field diagnostic meeting, Rail Safety Division (RSD) staff conducted diagnostic review of each of the four crossing locations at issue in this Application and additional crossings, which were the subject of other applications.³

On June 19, 2020, California Department of Transportation (CalTrans) and DesertXpress entered into a Right of Way Use Agreement authorizing construction of the segments of the Project being proposed for construction in California from the Apple Valley to California/Nevada Border (ROW Agreement).⁴

On August 10, 2020, RSD filed a response to the Application (RSD Response). No other party filed a response, and no party protested the Application.

On September 2, 2020, Administrative Law Judge Daphne Lee (ALJ) issued a Ruling Setting the Prehearing Conference (PHC) on September 30, 2020, and ordered the parties to meet, confer, and submit a Joint PHC Statement prior to the PHC. The parties timely filed a Joint PHC Statement. A telephonic PHC was

² Application at 3-4.

³ *Id.* See Applications 20-09-012, 20-09-015, 21-01-007 and 21-01-008.

⁴ Application at 4-5.

held to discuss the scope, schedule, need for hearing, and other matters relevant to the management of the proceeding.

During the PHC, CalTrans moved and was granted party status. The parties were directed to file comments explaining impacts of the Proposed Crossings on the environmental and social justice (ESJ) communities by October 7, 2020, and optional reply comments were due October 12, 2020. The ALJ also directed the Applicant to file a copy of the Final Environment Impact Statement (FEIS) by October 12, 2020.

On October 7, 2020, DesertXpress filed a comment providing a hyperlink to the Federal Rail Administration (FRA) website for the Record of Decision (ROD) relating to the FEIS for the Project and comments explaining the impacts on the ESJ communities from the construction of the Proposed Crossings. On October 12, 2020, CalTrans filed its reply comments concerning the environmental review process. On the same day, DesertXpress filed supplemental comments providing the hyperlink to the FRA website for the complete FEIS and the NEPA Reevaluation Summary and Conclusion (2020 Reevaluation).⁵ No other party commented on the impacts to the ESJ communities or the environmental review process.

On October 16, 2020, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo).

On November 16, 2020, DesertXpress filed the ROW Agreement associated with the Proposed Crossings in response to a ruling issued by the ALJ on November 4, 2020.

⁵ Exhibit DXE-A.

Upon the consideration of the environmental document for the underlying Project, of which the Proposed Crossings are a part, and determination that no further information or evidence is needed to adequately inform and evaluate the issues in this proceeding, the ALJ closed the record, and this matter was submitted on December 4, 2020.

On February 4, 2021, upon further review, the ALJ reopened the record and directed DesertXpress to file the FEIS and 2020 Reevaluation by February 10, 2021. DesertXpress filed the compact disks of the FEIS and 2020 Reevaluation on February 10, 2021. On March 19, 2021, DesertXpress filed the compact disks of the Draft Environmental Impact Statement (DEIS) and the Supplemental Draft Environmental Impact Statement (SDEIS) in response to a ruling issued by the ALJ on March 15, 2021.

On March 16, 2021, the ALJ further directed DesertXpress to file a detailed plan of the Proposed Crossings including the segments identified in the FEIS (March 16, 2021 Ruling). Upon DesertXpress' request, the ALJ held a status conference (STC) on March 30, 2021, to clarify the March 16, 2021 Ruling and extended the time to respond to April 5, 2021. During the STC, the ALJ noted that the routes, segments and locations of Proposed Crossings identified in the FEIS and the 2020 Reevaluation did not correspond with Attachment C of the Application. DesertXpress agreed to file a detail plan corresponding to the segments identified in the FEIS. On April 5, 2021, DesertXpress filed an updated detail plan for the Proposed Crossings that corresponded to the segments identified in the FEIS.

On May 5, 2021, ALJ marked, identified, and admitted into the record (1) the FEIS and the 2020 Reevaluation as DXE-A; (2) the ROW Agreement as

DXE-B, (3) the DEIS and the SDEIS as DXE-C, and (4) the Detail Plans of the Proposed Crossings as DXE -D, respectively.

This matter was submitted and the record closed on May 5, 2021.

2. Issues Before the Commission

The issues to be determined are:

1. Whether the Application meets all Commission requirements, including those in Rules 3.7 and 3.9 and General Orders (GOs) 26-D and 176, such that the Commission should grant DesertXpress' Application to construct the Proposed Crossings;
2. Whether the Applicant complied with the California Environmental Quality Act of 1970 (CEQA) or is exempted from CEQA compliance;
3. Whether the Commission should grant DesertXpress a period of sixty (60) months from the Application approval date to complete the construction of the Proposed Crossings; and
4. Whether the construction of the Proposed Crossings impacts ESJ communities and aligns with the Commission's ESJ Action Plan.

3. Filing, Safety and Engineering Requirements

Applications for the construction of a railroad across a public road, highway or street must meet the filing requirements of Rules 3.7 and 3.9 as well as the minimum clearance requirements under GOs 26-D and 176.

Here, the record reflects that the Applicant filed, as part of the Application and by subsequent filings, as ordered by the ALJ, the filings as required under Rules 3.7 and 3.9. The Proposed Crossings, as proposed in the Application, are summarized below:

PROPOSED CROSSINGS	DESCRIPTION
Harvard Road Crossing (Proposed California Public Utilities Commission (CPUC) No. 141-123.53-A)	The proposed crossing would be constructed under the existing Harvard Road bridge (N 2175759.08, E 6967765.90) (California Department of Transportation (Caltrans) Bridge No. 54-634), a 34-foot concrete box girder bridge crossing over I-15 at MP 123.53. DesertXpress proposes two tracks, with a minimum vertical clearance of 21.35 feet. The nearest proposed public crossing to the east is Alvord Mountain Road at MP 120.45 (CPUC No. 141-120.45-A) and to the west is Coyote Lake Road at MP 128.12 (CPUC No. 141-128.12-A).
ZZYZX Road Crossing (Proposed CPUC No. 141-89.77-A)	The proposed crossing would be constructed under the existing ZZYZX bridge structure (N 2262583.82, E 7117034.98) (Caltrans Bridge No. 54-398), a 34-foot-wide steel girder bridge crossing over I-15 at MP 89.77. DesertXpress proposes two tracks, with a minimum vertical clearance of 19 feet. The nearest proposed public crossing to the east is West Baker at MP 84.13 (CPUC No. 141-84.13-A) and to the west is Razor Road at MP 95.71 (CPUC No. 141-95.71-A).
West Baker crossing (Proposed CPUC No. 141-84.13-A)	The proposed crossing would be constructed under the existing West Baker bridge (N 2285102.87, E 7133716.15) (Caltrans Bridge No. 54-6095), a 34-foot-wide steel girder bridge crossing over Interstate 15 at MP 84.13. DesertXpress proposes two tracks, with a minimum vertical clearance of 19 feet. The nearest proposed public crossing to the east is Route 127 at MP 83.37 (CPUC No. 141-83.37-A) and to the west is ZZYZX Road at MP 89.77 (CPUC No. 141-89.77-A).
Route 127 crossing (Proposed CPUC No. 141-83.37-A)	The proposed crossing would be constructed under the existing Route 127 bridge (N 2287514.96, E 7136982.97) (Caltrans Bridge No. 54-610), a 34-foot-wide steel girder bridge crossing over Interstate 15 at MP 83.37. DesertXpress proposes two tracks, with a minimum vertical clearance of 19 feet. The nearest proposed public crossing to the east is East Baker at MP 81.48 (CPUC No. 141-81.48-A) and to the west is West Baker MP 84.13 (CPUC No. 141-84.13-A).

Based on the RSD's field diagnostic meeting, site visit and review of the Application and supporting materials, RSD concluded the Proposed Crossings comply with Commission's Rules and GOs 26-D and 176 and recommended

approval of the Application.⁶ Specifically, RSD determined that the Proposed Crossings comply with:

- (1) The horizontal clearance requirement under GO 26-D because the proposed horizontal clearances are 9 feet, meeting the requirement in GO, Section 3.2 that horizontal clearances be at least 8 feet 6 inches from rail tracks to structures or obstructions; and
- (2) The vertical clearance requirements under GOs 26-D and GO 176 as the proposed vertical clearances for each of the Proposed Crossings meet the appropriate requirements, as shown for each crossing in the table below:

Proposed Crossings	Track Speed	Req'd Vertical Clearance	Proposed Vertical Clearance	Applicable General Order
Harvard Rd	>150 MPH	21.35 feet	21.35 feet	GO 176
ZZYZX Road	<150 MPH	19 feet	19 feet	GO 26-D
West Baker	<150 MPH	19 feet	19 feet	GO 26-D
Route 127-15 Separation	<150 MPH	19 feet	19 feet	GO 26-D

Upon review, we agree with RSD. We, therefore, find that DesertXpress complied with the applicable filing requirements set forth in Rules 3.7 and 3.9, and the Proposed Crossings comply with GO 26-D and GO 176.

As for DesertXpress' request for a 60-month rather than the standard 36-month authorization to construct the Proposed Crossings, we find it reasonable in view of the complexities and intricate timing coordination required for the Project, of which the Proposed Crossings are a part.

We also adopt the recommended language proposed by RSD for the Commission's ordering paragraphs for this decision, to which DesertXpress did not object.

⁶ Response at 2 and 5.

4. Environmental Review

The Project, including the Proposed Crossings, constitutes a project under the National Environmental Policy Act (NEPA).⁷ As discussed below, FRA is the lead agency under NEPA for the purposes of identifying environmental impacts of the Project.

4.1. Compliance with National Environmental Policy Act

NEPA lead agency, FRA, in cooperation with the Bureau of Land Management (BLM), Surface Transportation Board (STB), Federal Highway Administration (FHWA), and the National Park Service (NPS), with the added participation of CalTrans and the Nevada Department of Transportation (NDOT), prepared the DEIS in March 2009, SDEIS in August 2010, and FEIS in March 2011. FRA issued a Record of Decision (ROD) for the Project on July 8, 2011.⁸

Almost eight years after the issuance of the ROD, in January 2019, DesertXpress made minor modifications to (1) the track alignment (between Apple Valley and Las Vegas and locating more of the tracks within the I-15 freeway median with portions following the north and east side of I-15 freeway), (2) station sites in Apple Valley and the Las Vegas area, and (3) other ancillary

⁷ Cal. Pub. Resources Code § 21000 et seq.; 42 U.S.C. 4371 *et seq.*

⁸ The ROD summarizes the environmental review process FRA conducted in accordance with NEPA, and FRA's Procedures for Considering Environmental Impacts. The ROD identifies the alternatives considered by FRA, addresses comments received during the NEPA process, and identifies the Selected Alternative. The ROD also includes a list of all measures to avoid and minimize environmental harm, including a monitoring and enforcement program to ensure adherence to these measures. Finally, the ROD presents the FRA decision, determinations, and findings regarding the Project, and identifies the factors that FRA considered in making its decision. 40 CFR §1505; 64 Fed. Reg. 28545, May 26, 1999.

facilities.⁹ Segment 3 rail alignment, which included the Proposed Crossings, was not modified after the issuance of the ROD, although the Maintenance of Way (MOW) Facility was relocated from Baker, California to the I-15 freeway median adjacent to the California Agricultural Inspection Station, approximately six miles south of the California/Nevada state line, in Segment 4.¹⁰

In view of the Project modifications, FRA reevaluated the FEIS in cooperation with BLM, STB, FHWA, and the US Army Corps of Engineers, with added participation from CalTrans and NDOT.¹¹ FRA completed the reevaluation of the FEIS and ROD in September 2020 and issued the 2020 Reevaluation, concluding that the modifications reduced overall environmental impact, as compared to the initial project proposal, and did not constitute changes with significant environmental impacts that were not previously evaluated in the FEIS issued in 2011.

4.1. Consideration of Environmental Impact

The Commission must consider the environmental impacts identified in the final environmental document as it relates to the Proposed Crossings, a portion of Segment 3 of the Project. The Commission has the authority to mitigate or avoid only the direct and indirect environmental effects of those parts of the Project and must approve any mitigation measures within the Commission's jurisdiction that avoid or mitigate the environmental effects due to the parts of the Proposed Crossings the Commission approves, unless the changes or alterations are infeasible for specific economic, legal, social, technical

⁹ 2020 Reevaluation at 3-4.

¹⁰ 2020 Reevaluation, Attachment at 5.

¹¹ 2020 Reevaluation, Summary and Conclusion, at 1.

and other considerations.¹² The Commission must balance any unavoidable impacts against specific economic, legal, social, technical or other benefits.

Segment 3 of the Project, which includes the Proposed Crossings, was evaluated in the DEIS as two possible rail alignments, Segment 3A, which runs primarily within the median of the I-15 freeway, and Segment 3B, which runs within a fenced area of the I-15 freeway, adjacent to automobile travel lanes. Both Segment alignments extend from Yermo to Mountain Pass. Portions of Segment 3A rail alignment will require widening of the I-15 freeway from the current freeway envelope to provide room for the rail, or alternatively, the rail alignment would either diverge from the median at certain points or traverse on a new aerial structure, resulting in construction which affects drainage and requires additional construction of bridges over waterways. Segment 3B rail alignment enables construction of DesertXpress tracks, drainage, parallel access road, and separation barrier within the existing I-15 right of way (ROW) and is the Preferred Alternative.

After the SDEIS was issued in August 2010, DesertXpress adopted a modified Segment 3B, which runs immediately adjacent to the I-15 freeway and shifts 50 to 400 feet of the rail alignment to avoid impacts to sensitive archeological resources,¹³ while allowing for possible future widening and improvement activities on I-15 for efficient use of existing resources.¹⁴ An approximately 10-mile portion of the modified Segment 3B rail alignment, near the I-15/Halloran Springs Road interchange, shifts to the south side of the I-15 freeway within the existing I-15 ROW, to avoid direct or constructive use of

¹² 14 Cal. Code Regs. §§ 15091(a)(2) and 15096(g).

¹³ FEIS, Chapter 2, at 2-27 and Chapter 3, at 3.15-34 and 3.15-35.

¹⁴ *Id.* at 2-47. See also 2020 Reevaluation, Summary of Modifications, at 5.

any archeological resource, and crosses under the I-15 freeway in an open cut back to the north side of the freeway.¹⁵

The modified Segment 3B includes temporary construction area and emergency cross-over features, which are highly compatible and consistent with the area's existing land uses, including general commercial, general industrial, diverse use, and public and quasi-public land management.¹⁶ Yet, due to the proximity of prime farmland and farmland of statewide importance,¹⁷ a pistachio nut orchard in the Newberry Springs area near the modified Segment 3B, construction activity will indirectly cause temporary increases in dust, which may affect those portions of the orchard closest to the proposed rail alignment, (a total of less than 1/1000th of an acre).¹⁸ The mitigation measures to use the best dust control management and practices would minimize or avoid the impacts.¹⁹

The initially proposed Segment 3B rail alignment was located within 1 mile of the Mojave National Preserve, a preserve managed by the National Park Service and within three census blocks of ESJ communities, causing

¹⁵ *Id.* at 2-27.

¹⁶ 2020 Reevaluation, Attachment B, Resources Impact Analysis Report at 9.

¹⁷ Farmland is usually divided into three classifications: prime farmland, unique farmland, and farmland of statewide or local importance. Classification standards differ from state to state; each state may set its own criteria for classification in each category. The California Department of Conservation classifies farmland using categories established by the United States Department of Agriculture (USDA), but based on California criteria: prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance.

Prime farmland is land with the best combination of physical and chemical features to sustain long-term production of agricultural crops. Farmland of statewide importance is similar to prime farmland but exhibits minor differences, such as greater slopes or a lesser ability of the soil to store moisture. *See* DEIS at 3.3-1-3.3-3.

¹⁸ FEIS at 3.3-3.

¹⁹ 2020 Reevaluation, Summary, at 6.

negative impacts from noise, dust, traffic, and visual resources on those communities.

The modified Segment 3B rail alignment reduces the impact to two rather than three census blocks of ESJ communities within a mile of the construction and rail alignment by running predominately along the north side of the I-15 freeway, within the existing freeway ROW from Fort Irwin Road to Mountain Pass, for about 85 miles.²⁰ ESJ issues will be addressed in greater detail in Section 5 of this decision.

In addition, the modified Segment 3B alignment incorporates grade-separated elevated structures for crossing roadways and at the I-15 interchanges, from the on-off ramps which significantly increases the safety of those crossings. In the Mountain Pass area, the modified Segment 3B rail alignment would connect with the Segment 4C rail alignment. The mitigation measures outlined in the mitigation plan will minimize impacts on water resources and from noise, dust, traffic, and visual resources to less than significant levels.²¹ These measures includes:

- Coordination with existing utility providers to avoid or minimize potential conflicts;
- Installation of signals and/or lanes to the intersection approaches;
- Use of aesthetically pleasing materials for the rail alignment that minimize reflectivity, architecture and earth tone colors to reflect the surrounding desert landscape;
- Use of signage that reflect the scale and character of the site and surroundings;

²⁰ Reevaluation, Attachment B, Resources Impact Analysis Report, at 9.

²¹ FEIS, Attachment B, Resources Impact Analysis Report, at 11-12.

- Contour grading;
- Manage construction site in orderly manner according to best construction practices;
- Use of visual screening of construction areas as appropriate to minimize light spillover;
- Apply best dust control management and practices,
- Install noise barriers and sound and vibration reducing materials;
- Relocate crossovers or special track work;
- Locate temporary construction areas at the locations of autotransformers 7 and 11 to avoid Telephone Wash, Kali Ditch, and other water resources; and
- Restrict construction times and locations.

The FEIS and the 2020 Reevaluation for the Project considered the potential environmental impacts and found that the majority of the significant environmental impacts associated with the construction and operation of the Project could be mitigated and minimized to be considered less than significant under CEQA. None of the significant impacts identified and described in the FEIS and the 2020 Reevaluation relate directly to the Proposed Crossings, which is only a portion of the Project.

The Commission has reviewed and considered the FEIS, including the 2020 Reevaluation, as it related to the Proposed Crossings and finds that the FEIS is adequate for our decision-making purposes in this proceeding.

4.3. California Environmental Quality Act Exemption Claim

DesertXpress cites to *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998) and *Friends of Eel River v. North Coast Railroad Authority*, 3 Cal. 5th 677, 714-717 (2017) and contends that the Application is exempted from CEQA requirements to prepare a separate CEQA document under the declaratory order

of the Surface Transportation Board (STB Order) pursuant to DesertXpress' Petition for Declaratory Order, dated June 25, 2007²², and case law.

In the STB Order, STB concluded that the Project is subject to its preemption authority because DesertXpress intends to carry passengers by rail in interstate transportation. STB also found that DesertXpress will be providing this transportation as a common carrier, offering service to the general public. Thus, STB found that the Project, which includes the Proposed Crossing, involves transportation by a rail carrier and STB has exclusive jurisdiction over the planned new track, facilities, and operations.²³ Accordingly, STB concluded that state permitting and land use requirements such as CEQA are preempted under its Federal preemption authority pursuant to 49 U.S.C. §10501(b), since the public will have opportunities to participate in the NEPA environmental review process.²⁴

CalTrans concluded that the FEIS and the 2020 Reevaluation sufficiently addressed all environmental impacts of the Project, which includes the Proposed Crossings. CalTrans adopted the FEIS, in view of the 2020 Reevaluation, and determined that no additional CEQA document or determination were required.²⁵

²² DesertXpress Enterprises, LLC-Petition for Declaratory Order, STB Finance Docket No. 34914 (STB served June 27, 2007) (STB Order).

²³ See *American Orient Express Railway Company v. STB*, No. 06-1077, slip op. at 4, 6 (D.C. Cir. Apr. 20, 2007), *aff'g* American Orient Express Railway Company, LLC – Petition for Declaratory Order, STB Finance Docket No. 34502 (STB served Dec. 27, 2005) (rail carrier may provide railroad transportation by transporting passengers over its own tracks).

²⁴ STB Order at 5.

²⁵ Comments of California Department of Transportation Re: Environmental Process, at 1-2.

As discussed in Section 4.2 of this decision, we also have carefully reviewed the FEIS and the 2020 Reevaluation with the emphasis on the Proposed Crossings and the required mitigations and mitigation monitoring program.

Based on the foregoing, we agree with CalTrans and similarly find that there is no need to prepare a separate CEQA document. We also find that the Proposed Crossings, including associated impacts and mitigations, were adequately reviewed in the FEIS and the 2020 Reevaluation; and the FEIS and the 2020 Reevaluation are sufficient for our decision-making purposes concerning the associated environmental impacts. Accordingly, we find it unnecessary to address the Applicant's CEQA exemption claim here.

5. Alignment with the Commission's Environmental and Social Justice Action Plan

In February 2019, the Commission adopted the ESJ Action Plan to serve as a roadmap for implementing the Commission's vision to advance equity in its programs and policies for ESJ or disadvantaged communities.

Here, the FEIS reviewed the Project's environmental and economic impacts to ESJ communities.²⁶ "Environmental justice communities" is defined in the FEIS to include low-income populations greater than 25 percent of the total population of the community, minority populations greater than 50 percent of the total population of the community, and low-income, or more, minority populations 10 percentage points higher than the city or county average.²⁷

The FEIS found the majority of the Project will be within or adjacent to an existing transportation corridor and will not bisect minority or low-income neighborhoods nor require the displacement of residences in those

²⁶ *Id.*

²⁷ See 2020 Reevaluation, Attachment B, Resources Impact Analysis Report, at 11.

neighborhoods.²⁸ However, the Project may cause negative gradual economic impact to 13 minority and poverty census blocks²⁹ of ESJ communities in the City of Barstow (City) and may have environmental impacts on noise, dust, traffic and visual resources to two census blocks of ESJ communities.³⁰

5.1. Economic Impact to the ESJ Communities from the Project

It is possible that the City and 13 census blocks of ESJ communities may experience some gradual reduction in economic activity, jobs, and income, when the Project is constructed and in operation. This potential gradual impact is premised on the following: (1) the City's economy is being largely driven by taxable sales from freeway-related traffic through it; and (2) an actual diversion of vehicle through-traffic that would result from the Project, leading to a loss in the City's economic base of funds over time.³¹

²⁸ ROD at 68.

²⁹ Environmental justice block groups are census blocks which meet at least one of the following criteria: 1) The low-income population is greater than 25 percent of the total population of the community, or minority population is greater than 50 percent of the total population of the community, or 2) The low-income or minority population is more than 10 percentage points higher than the City or County average. In order to identify environmental justice block groups near the alignment, census block groups within a two-mile radius of the alignment were examined to determine if they meet or exceed the above environmental justice thresholds. DEIS at 3.1-46.

³⁰ The DEIS was originally based on the 2000 U. S. census data. The analysis was replicated in the 2020 Reevaluation with 2017 and 2018 U. S. census data. Since the DEIS, DesertXpress modified the rail alignment for Segment 3B resulting in a reduction of impact from three to two census blocks of ESJ communities. 2020 Reevaluation, Attachment B at 11.

An average of 41.1 percent of the population in San Bernardino County is a minority race. Any census block groups containing minority groups that are more than 50 percent of the population would be considered environmental justice block groups in San Bernardino. Of the census blocks evaluated, 22 blocks in San Bernardino County meet this criterion and are eligible for environmental justice considerations. Most of the census blocks in San Bernardino with a high minority population are centered around Victorville. DEIS at 3.1-47.

³¹ *Id.* at 3.1-17. *See also* FEIS at 3.1-16 to 3.1-17

However, the Project is also expected to bring positive economic growth and value to the City and the region, including 13 census blocks of ESJ communities. Within San Bernardino County, the City would be the most central location for construction activities associated with the Project, particularly for the 113-mile stretch of the rail alignment between City and Primm. A significant share of the construction jobs and associated revenue created by the Project construction and operation in San Bernardino County would flow directly to the City and its immediate environs, resulting in about an additional 2,470 jobs in the City during the three- to four-year construction period with an annual average of 823 jobs per year with an eight percent increase in employment over the 2009 employment level of 10,463. These 2,470 jobs are anticipated to generate an average payroll (combination of salaries) of \$59.5 million over the course of the construction period.

While the construction jobs would be temporary during the construction phase, DesertXpress further anticipates creation of 1,000 permanent jobs for operation of the rail line in the region. The introduction of the temporary and permanent jobs and associated salaries offsets the potential and gradual negative economic impact on the City's ESJ communities.

As an enhanced mitigation measure, the FEIS recommended coordination between DesertXpress and the City's and San Bernardino County's economic development departments to avail City residents of job opportunities, during construction, operation and maintenance of the railway. DesertXpress further committed to identifying and jointly developing programs for job and technical skills training to support the Project in all phases of design, construction, testing,

commissioning, and operations.³² DesertXpress will work closely with the City to identify appropriate and beneficial construction and staging activities located within the City. Working with local land use planning authorities and transit providers, DesertXpress will implement transit oriented and master planned development at the selected station sites and surrounding areas and facilitate intermodal connections where practicable.³³

Additionally, the City residents, including the ESJ communities, will benefit from improved air quality through reduced traffic congestion and fossil fuel consumption after the completion of the Project. DesertXpress estimates an annual reduction of 100,000 metric tons of carbon emission by increase ridership and reduction in automobile travel.

5.2. Environmental Impacts to ESJ Communities and the Preferred Alternative / Modified Segment 3B Rail Alignment (Proposed Crossings Segment of the Project)

The modified Segment 3B of the Project, the Preferred Alternative, of which the Proposed Crossings are a part, will have certain environmental impacts on two census blocks of ESJ communities within one mile of the construction and rail alignment. As discussed in Section 4.2 of this decision, the initially proposed Segment 3 rail alignment proposed to have construction within one mile of the Mojave National Preserve, a preserve managed by the National Park Service and within three census blocks of ESJ communities causing negative impacts from noise, dust, traffic, and visual resources on those communities. However, the Preferred Alternative of the modified Segment 3B rail alignment will reduce impact to land use, including temporary construction

³² Reevaluation, Attachment I, Mitigation Measures, at 2.

³³ *Id.*

area and emergency cross-over, by running predominately along the north side of the I-15 freeway, within the existing freeway ROW from Fort Irwin Road to Mountain Pass, for about 85 miles, and impacting two rather than three census blocks of ESJ communities within a mile of the construction and rail alignment.³⁴

The grade-separated elevated structures for crossing roadways and at the I-15 interchanges from the on-off ramps, proposed in the modified Segment 3B rail alignment, significantly increase the safety of those crossings. The mitigation measures outlined in the mitigation plan further reduce impacts to the ESJ communities from noise, dust, traffic, and visual resources to less than significant.³⁵

Upon review of the FEIS and the 2020 Reevaluation and given the increased public safety benefit from grade-separated Proposed Crossings, as compared to at-grade crossings, we find the Proposed Crossings merit approval. Although there may be some potential and gradual negative economic and environmental impacts from the Project and, more specifically, the construction of the Proposed Crossings, the mitigating measures, set forth above, reduce the impact to the ESJ communities to less than significant levels.

The Project further meets the Commission's ESJ Action Plan goals to 1) improve local air quality and public health through reduced carbon emissions; 2) improve access to transportation services; and 3) promote economic and workforce development opportunities in the 13 ESJ census blocks affected by the Project. We note the identified negative economic impacts were not directly attributable to the construction of the Proposed Crossings. We find that

³⁴ Reevaluation, Attachment B, Resources Impact Analysis Report, at 9.

³⁵ FEIS, Attachment B, Resources Impact Analysis Report, at 11-12.

adoption of the modified Segment 3B rail alignment minimizes the impact on land use and ESJ communities from the construction of the Proposed Crossings, as concluded in the FEIS. On balance, the Commission find that the construction of Proposed Crossings would be consistent with the goals set forth in the Commission's ESJ Action Plan and adopts the mitigation measures, set forth in the mitigation plan, for adoption of modified Segment 3B rail alignment and to minimize the economic impact on the affected ESJ communities.

6. Conclusion

Upon review, the Commission finds that this uncontested Application complies with Rules 3.7 and 3.9 and the Proposed Crossings comply with GOs 26-D and 176. DesertXpress has satisfied the requirements under CEQA, and the Application aligns with the Commission's ESJ Action Plan. DesertXpress' request for a 60-month rather than the standard 36-month authorization to construct the Proposed Crossings is also reasonable in view of the complexities and intricate timing coordination required for the Project, of which the Proposed Crossings are a part. Finally, RSD's recommended language for the Commission's ordering paragraphs for this decision is reasonable.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, as provided in Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day public review and comment period for this decision is waived.

8. Assignment of Proceeding

Commissioner Genevieve Shiroma is the assigned Commissioner and Daphne Lee is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. DesertXpress filed the Application on July 6, 2020, pursuant to Pub. Util. Code §§1201 to 1205, and in accordance with Rules 3.7 and 3.9 of the Commission's Rules.

2. The Application seeks authority to construct four new grade-separated highway-rail crossings under four existing bridge structures on Harvard Road (Milepost (MP) 123.53), ZZYZX Road (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) in San Bernardino County, California (Proposed Crossings).

3. RSD conducted a site inspection of the locations for the Proposed Crossings on February 26, 2020, reviewed the Application and supporting materials, determined that the Application complies with the applicable Commission GOs and Rules, and recommended approval of the Proposed Crossings.

4. DesertXpress filed a copy of a ROW Agreement relating to the construction of the Proposed Crossings to satisfy Rule 3.9(a).

5. FRA, as the lead agency for the Project under NEPA, prepared the FEIS in March 2011 and issued a ROD for the Project on July 8, 2011.

6. The Project was modified after July 8, 2011, and in 2020, FRA reevaluated the FEIS in cooperation with BLM, STB, FHWA, and the US Army Corps of Engineers, with added participation from CalTrans and NDOT.

7. FRA released its report on the reevaluation of the FEIS and ROD in September 2020. In it, FRA concluded the modifications reduced overall environmental impact from the initial project proposal and did not constitute changes with significant environmental impacts that were not previously evaluated in the FEIS issued in 2011.

8. FEIS and the 2020 Reevaluation proposed the adoption of the modified Segment 3B alternative rail alignment to minimize impacts on the environment and ESJ communities from the Applicant's proposed route for Segment 3 by reducing noise, dust, and traffic impacts as well as impacts on the visual resources in the two ESJ communities.

9. CalTrans concluded that the FEIS and the 2020 Reevaluation sufficiently addressed environmental impacts of the Project, which includes the Proposed Crossings, adopted the FEIS, in view of the 2020 Reevaluation, and determined that no additional CEQA review and determination was required.

10. For the Project, which includes the Proposed Crossings, the Commission is a responsible agency under CEQA.

11. The Commission reviewed the FEIS and the 2020 Reevaluation with the emphasis on the Proposed Crossings and the required mitigations and mitigation monitoring program.

12. The Proposed Crossings, including associated impacts and mitigations, were adequately reviewed in the FEIS and the 2020 Reevaluation, and the FEIS and the 2020 Reevaluation are sufficient for our decision-making purposes concerning the associated environmental impacts.

13. Although there may be some potential and gradual negative economic impacts from the construction of the Project, those negative economic impacts are not directly attributable to the construction of the Proposed Crossings.

14. The mitigation measures for the Project, including temporary job development and measures to reduce impacts from noise, dust, traffic and visual resources, which are set forth in the mitigation plan, for the Preferred Alternative of the modified Segment 3B rail alignment, will reduce the impacts to the ESJ communities to less than significant level, while the construction of the Project

and the Proposed Crossings is expected to bring positive economic impacts to the City and the region's ESJ communities.

15. The Project meets the Commission's ESJ Action Plan goals to 1) improve local air quality and public health through reduced carbon emissions; 2) improve access to transportation services; and 3) promote economic and workforce development opportunities in the 13 ESJ census blocks affected by the Project.

Conclusions of Law

1. DesertXpress should be authorized to construct the Proposed Crossings, four grade-separated highway-rail crossings under existing Caltrans bridge structures on Harvard Road (MP 123.53), ZZYZX Road (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) in San Bernardino County, California.

2. The Application complies with Rules 3.7 and 3.9.

3. The Proposed Crossings comply with GO 26-D and 176.

4. The FEIS, as it relates to the Proposed Crossings, is adequate for Commission decision-making purposes.

5. It is unnecessary to address the Applicant's CEQA exemption claim.

6. The Commission should adopt all mitigation measures detailed in the FEIS and the 2020 Reevaluation.

7. The request for authority to complete construction of the Proposed Crossings within sixty months is reasonable and should be granted.

8. The Project, which includes the Proposed Crossings, is consistent with the Commissions' ESJ Action Plan's goals.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The applicant, DesertXpress Enterprises, LLC dba XpressWest is authorized to construct four grade-separated highway-rail crossings under existing bridge structures on Harvard Road (Milepost (MP) 123.53), ZZYZX Road (MP 89.77), West Baker (MP 84.13), and Route 127-15 Separation (MP 83.37) in San Bernardino County, California.

2. The four grade-separated highway-rail crossings shall be identified by the following California Public Utilities Commission Crossing Numbers (CPUC No.) and United States Department of Transportation Numbers (US DOT No.):

Crossing Name	CPUC No.	US DOT No.
Harvard Road	141-123.53-A4	978781M
ZZYZX Road	141-89.77-A	978782U
West Baker	141-84.13-A	978783B
Route 127/I-15	141-83.37-A	978784H

3. The four grade-separated highway-rail crossings shall have the configuration specified in the application and its attachments.

4. DesertXpress Enterprises, LLC dba XpressWest shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

5. DesertXpress Enterprises, LLC dba XpressWest shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least five business days prior to the opening of the crossings. Notification should be made by e-mail to rceb@cpuc.ca.gov.

6. Within 30 days after completion of the work authorized by this decision, DesertXpress Enterprises, LLC dba XpressWest shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division by submitting a completed California Public Utilities Commission Standard Form G (Report of Changes at Highway Grade Crossing and Separations), for the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission web site at www.cpuc.ca.gov/crossings. The completed report may be submitted via email to rceb@cpuc.ca.gov.

7. The DesertXpress Enterprises, LLC dba XpressWest shall notify the Federal Railroad Administration by submitting a Crossing Inventory Form (FRA F6180.71) acknowledging the establishment of the crossing. A copy shall be provided concurrently to the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

8. This authorization shall expire if not exercised within sixty months of the issuance of this decision unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. A request for extension of the five-year authorization must 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 that period.

10. Application 20-07-006 is closed.

This order is effective today.

Dated July 15, 2021, at San Francisco, California.

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE HOUCK

Commissioners