

Decision 22-09-017 September 15, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Humboldt to construct new temporary crossing improvements at MP 285.65 and MP 287.05 in Humboldt County, California.

Application 21-10-014

DECISION AUTHORIZING THE COUNTY OF HUMBOLDT TO CONSTRUCT TWO TEMPORARY AT-GRADE PEDESTRIAN-RAIL CROSSINGS OVER ONE NORTH COAST RAILROAD AUTHORITY TRACK

Summary

This decision grants the County of Humboldt authorization to construct two new temporary at-grade pedestrian-rail crossings over the North Coast Railroad Authority track located near Mileposts 285.65 and 287.05 in the Cities of Eureka and Arcata in the County of Humboldt. The at-grade pedestrian-rail crossings will be identified as California Public Utilities Commission Crossing Numbers 104-285.65-D and 104-287.05-D.

This proceeding is closed.

1. Background

On October 28, 2021, the County of Humboldt (County) filed Application (A.) 21-10-014 (Application). In the Application, the County seeks authority to construct two new temporary at-grade pedestrian-rail crossings over one track of the North Coast Railroad Authority (NCRA) at Mileposts 285.65 and 287.05 in the County of Humboldt (Proposed Crossings).

According to the County, the Proposed Crossings are needed to accommodate non-motorized access between the cities of Eureka and Arcata and to provide improved public access to Arcata Bay around the California Redwood Company (CRC) Mill Site. The grade separated crossings are not practical at these locations. Namely, there are space constraints which limit ability to comply with accessibility design requirements, and the costs associated with potential upgrading or widening of the existing bridge at one of the locations would be cost prohibitive.¹

Notice of the Application was published in the Commission's Daily Calendar on November 17, 2021.

On December 24, 2021, the Rail Safety Division (RSD) of the California Public Utilities Commission (Commission) filed a Response to the Application (Response). No other response or protest has been filed.

On February 8, 2022, the assigned Administrative Law Judge (ALJ) held a prehearing conference to determine the parties and discuss the scope, the schedule, and other procedural matters.

The assigned Commissioner issued a scoping memo and ruling on March 10, 2022, (Scoping Memo).

¹ Application at 5-6.

2. Jurisdiction

The Commission has jurisdiction over railroad crossings pursuant to Chapter 6 of the Public Utilities (Pub. Util.) Code, including but not limited to Pub. Util. Code § 1202, which confers exclusive power upon the Commission to authorize an application to construct, alter, relocate or abolish a railroad crossing.

3. Issues Before the Commission

The issues to be determined are:

1. Whether the Application complies with the Commission's Rule 3.7 and General Orders (GOs) 26-D, 72-B, and 75-D such that the Commission should authorize the County to construct the Proposed Crossings;
2. Whether the Application has complied with applicable safety and regulatory requirements;
3. With respect to the Proposed Crossings, whether the County complied with the California Environmental Quality Act (CEQA) or is otherwise exempted from the requirements of CEQA;
4. Whether the Commission should grant the County a period of thirty-six (36) months from the Application approval date to complete the Proposed Crossings; and
5. Whether the construction of the Proposed Crossings aligns with or impacts the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

4. Discussion

4.1. The Proposed Crossings

This Application proposes two new temporary at-grade pedestrian-rail crossing improvements across one track of the NCRA at Mileposts 286.65 and 287.05 in the cities of Eureka and Arcata in the County of Humboldt (the Proposed Crossings). The first proposed crossing location is along the Eureka

Slough Bridge.² The second proposed crossing location is along the CRC South Bridge.³

According to the County, grade separations are not practical at these locations.⁴ A separation of grades for the proposed Eureka Slough Bridge crossing is not practicable as it would be cost prohibitive, requiring either a separate trail bridge or widening of the existing bridge.⁵ A separation of grades at the proposed CRC south location is also not practicable due to accessibility design requirements and space constraints.⁶

The Proposed Crossings are needed to accommodate non-motorized access between the cities of Eureka and Arcata and to provide improved public access to Arcata Bay around the CRC Mill Site.⁷

The Proposed Crossings are part of a broader bike trail project to develop a Class I bikeway within the U.S. Highway 101 and railroad transportation corridors along the east shoreline of Humboldt Bay in northwest California (Trail Expansion Project). The Trail Expansion Project would expand the existing Humboldt Bay Trail by 4.25 miles and complete the trail connection between the cities of Eureka and Arcata.

Once completed, the expanded Humboldt Bay Trail will connect communities with multi-modal transportation facilities and connect people to the

² Crossing Location 1 is Department of Transportation Crossing no. 979 863X.

³ Crossing Location 2 is Department of Transportation Crossing no. 979 542R.

⁴ Application at 1.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *Id.* at 1.

bay by enabling people of all ages and abilities to access and experience the bay's resources directly.⁸

In addition to serving the region's transportation needs and enhancing coastal access, the expanded Humboldt Bay Trail will achieve a critical link in the California Coastal Trail and advance the mandate of California Senate Bills 1029 and 69 for utilizing the NCRA property and right-of-way to create the Great Redwood Trail.⁹

The Proposed Crossings will also be constructed to meet Americans with Disabilities Act (ADA) requirements for multi-use trail. The temporary crossing grades will be elevated to top of track per CPUC regulations and railroad standards. The pad will provide access for wheelchairs, pedestrians, and bicycles with a ten (10) foot minimum width.¹⁰ A slope shall be constructed to ADA standards and crossing will be bound with detectable warning surfaces. Pavement markings and signage will be in accordance with the California Manual on Uniform Traffic Control Devices (CA MUTCD) and will include railroad crossing symbol pavement markings, railroad crossing advanced signs, skewed railroad crossing sign and grade crossing and yield signs.¹¹

4.2. Compliance with Rules, General Orders and Safety Requirements

Applications for the construction of a public road, highway, or street across a railroad must comply the Commission's rules, statutes and GOs. Rules 3.7 to 3.11 of the Commission's Rules of Practice and Procedure (Rules) govern

⁸ *Id.* at 4.

⁹ *Id.* at 4.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 6.

applications to construct crossings involving railroads and public roads. The Commission's GOs also govern clearances on railroads (GO 26-D), construction standards (GO 72-B), warning devices (GO 75-D), and safety appliances and procedures for all public transit guideways (Pub. Util Code § 99152).

Specifically, Rule 3.7(c) requires the Application for the proposed temporary at-grade pedestrian-rail crossing improvements be accompanied with the statements showing:

1. the public need;
2. why a separation of grades is not practicable; and
3. the signs, signals or other crossing warning devised which the applicant recommends be provided at the proposed crossing.

Rule 3.7 (d) requires a map showing the accurate locations of all streets, roads, property lines, tracks, building structures or other obstructions to view.

Rule 3.7 (e) requires a map showing the relation of the proposed crossing to existing roads and railroads in the general vicinity.

Rule 3.7 (f) requires a profile showing the ground line and grade line and rate of grades of approach on all highways and railroads affected by the proposed crossing.

In reviewing the Application, the RSD staff of the Commission conducted a site visit of the Proposed Crossings' locations and participated in a diagnostic review with County staff on June 3, 2021.¹² RSD determined that the Application and the Proposed Crossings comply with the applicable Rules, Pub. Util. Code, §§ 1201, *et seq.* and 99152, and GOs 26-D, 72-B, and 75-D.¹³ Based thereon, RSD

¹² Response of RSD, at 2.

¹³ *Id.* at 2.

recommends the two Proposed Crossings be approved and identified with the following crossing type designations and California Public Utilities Commission (CPUC) identification numbers:

Crossing Name	CPUC Numbers	Grade
Eureka Slough Bridge	No. 104-285.65-D	At-grade
CRC Mill Site	No. 104-287.05-D	At-grade

Upon review of the record of this proceeding, we agree with RSD's assessments and recommendations as discussed below.

Here, the Application identified the rail mileposts and legal descriptions of the location of the Proposed Crossings in compliance with Rule 3.7(a) as required¹⁴. The Application identified numbers of the nearest existing public crossing on each side of the Proposed Crossings in compliance with Rule 3.7(b) as required.¹⁵ The Application was accompanied by a statement showing the public need to be served by the Proposed Crossings, a statement showing why a separation of grades would not be practicable and a statement showing the signs, signals, or other crossing warning devices which applicant recommends be provided at the Proposed Crossings in compliance with Rule 3.7(c) as required.¹⁶

The Application was also accompanied by a map of suitable scale showing accurate locations of all streets, roads, property lines, tracks, buildings, structures, or other obstructions to view in compliance with Rule 3.7(d) as required.¹⁷ Finally, the Application included a map of suitable scale in

¹⁴ *Id.* at A-1 and Application at 1 and 4.

¹⁵ *Id.* at A-2.

¹⁶ *Id.* at A-2, Application at 4-5, and *See* Applicant's Exhibit C.

¹⁷ *Id.* at A-2, and *See* Applicant's Exhibit C.

compliance with Rule 3.7(e)¹⁸ and a profile showing the ground line and grade line and rate of grades of approach on all highways and railroads affected by the crossing in compliance with Rule 3.7(f) as required.¹⁹

We further find that the design of the Proposed Crossings complies with the applicable GOs. Specifically, the proposed surfaces along the track at the two temporary at-grade pedestrian-rail crossings (asphalt and concrete) comply with the requirements of GO 72-B; the clearance for the Proposed Crossings, as confirmed by RSD's site inspection and review of the proposed design, comply with GO 26-D on railroad clearances; and the warning devices (railroad crossing symbol pavement markings, railroad crossing advanced signs, skewed railroad crossing signs and grade crossing and yield signs) on both sides of the two temporary proposed at-grade pedestrian-rail crossings comply with GO 75-D and the Manual on Uniform Control Devices.

Based on the foregoing, the Commission finds that the Application does not pose any significant safety issues, is consistent with the Safety Policy Statement,²⁰ and complies with the Commission's Rules, GOs, and the Public Utilities Code.

5. Environmental Review and CEQA Compliance

The Trail Expansion Project, which includes the Proposed Crossings, constitutes a "project" for purposes of environmental review under the California Environmental Quality Act of 1970 (CEQA), as amended, Public

¹⁸ *Id.* at A-2, and *See* Applicant's Exhibit A.

¹⁹ *Id.* at A-2, and *See* Applicant's Exhibit C.

²⁰ The Commission adopted the Safety Policy Statement and declared its ultimate safety goal as "zero accidents and injuries across all utilities and businesses we regulate, and within our own workplace." July 10, 2014.

Resources Code Section 21000, *et seq.*²¹ CEQA applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities.

Under CEQA, the lead agency is either the public agency that carries out the project,²² or the one with the greatest responsibility for supervising or approving the project as a whole.²³

Here, the Humboldt County Board of Supervisors is the lead agency for the Trail Expansion Project. The Commission is a responsible agency since the Trail Expansion Project includes the two Proposed Crossings, the Commission has the authority to approve those components of the broader project pursuant to Pub. Util. Code § 1202, and to issue a discretionary decision concerning the Proposed Crossings. In doing so, the Commission must consider the environmental effects identified in the portion of the project that is before the Commission for approval prior to acting upon or approving the same.

As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving a project.²⁴ As a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.²⁵ The

²¹ On July 16, 2018, the Board of Supervisors approved a Categorical Exclusion (CE) under the National Environmental Policy Act. Application at 2.

²² CEQA Guidelines, Title 14, California Code of Regulations, §15051(a).

²³ *Ibid.*, § 15051(b).

²⁴ *Ibid.*, §§ 15050(b) and 15096.

²⁵ *Id.*, § 15096(g).

Commission is also subject to certain reporting requirements when it approves or rejects a permit under CEQA.²⁶

On July 31, 2018, the Humboldt County Board of Supervisors (Board of Supervisors) approved a Mitigated Negative Declaration (MND) for the trail Expansion Project and filed a Notice of Determination (NOD) in compliance with the CEQA.²⁷ The MND and NOD were admitted into evidence in this proceeding.²⁸

MND identified potentially significant environmental impacts and associated mitigation measures related to the Trail Expansion Project including potential impacts associated with Biological Resources, Cultural Resources, and Hazards and Hazardous Materials. Impacts to other resource categories (Aesthetics, Agriculture and Forest Resources, Air Quality, Geology and Soils, Greenhouse Gas Emissions, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation/Traffic, Tribal Cultural Resources, and Utilities and

²⁶ See Pub. Res. Code § 12208. If a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Pub. Res. Code §21065(c).

²⁷ Application at 2.

²⁸ By Administrative Law Judge's Ruling dated August 19, 2022 marked, identified and admitted the MND as Exhibit A, and NOD and Exhibit B.

Service Systems) were considered, with determinations of no impact or less than significant impacts.²⁹

The MND found that, with the mitigation measures and mitigation measure reporting or monitoring plan required as conditions of the Humboldt County's approval of the Trail Expansion Project, there will be no significant environmental impacts.³⁰

Impacts identified under CEQA relating to the construction and implementation of the Proposed Crossings are within the scope of the Commission's jurisdiction. While there may be some temporary environmental impacts to Air Quality, Greenhouse Gas Emissions, Noise and Vibration, Land Use Planning, and Transportation and Traffic associated with construction of the Proposed Crossings, each of these areas of impacts was determined to be less than significant in the MND.

The Commission reviewed and considered the County's MND and NOD, as they relate to the two temporary at-grade pedestrian-rail crossings and find them adequate for our decision-making purposes.

²⁹ MND at 3-1 to 3-83.

³⁰ The County Board of Supervisors also determined that no environmental documentation was required under the National Environmental Policy Act (NEPA), pursuant to a federal regulation that excludes the construction of bicycle and pedestrian lanes, paths, and facilities, from review. On July 13, 2018, the California Department of Transportation granted a Categorical Exemption/Categorical Exclusion Determination for the project. It states that, "the State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare and EA or EIS under the National Environmental Policy Act."

6. Alignment with Commission's Environmental and Social Justice Goals

The Commission has a responsibility to serve Californians in a way that helps address inequities for some populations facing higher barriers in accessing safe and affordable utility and transport services. In February 2019, the Commission adopted an Environmental and Social Justice (ESJ) Action Plan with nine goals to serve as a roadmap to expand public inclusion in Commission decision-making and improve services to targeted communities across California.³¹

The Trail Expansion Project will be within and will affect the diverse residents of cities of Eureka and Arcata in the County of Humboldt.³²

The record of this proceeding does not identify any significant negative impacts to ESJ communities resulting from the construction of the Proposed Crossings. The Proposed Crossings bring communities together and creates coastal access to those currently on the other side of the railroad track. There is no evidence that communities will be divided or otherwise adversely affected.

There will likely be some positive economic impact on the communities as three will be construction jobs and the two new temporary at-grade pedestrian rail crossing improvements will enhance flow and public access between Arcata Bay around the CRC Mill Site.

³¹ The Environmental and Social Justice Action plan is available on the Commission's website at http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/EnergyPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan_%202019-02-21.docx.pdf.

³² California Office of Environmental Health Hazard Assessment, Census Tract 6037277400. *Oehha.ca.gov*, CalEnviroScreen Tool 3.0, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

The County also offered a detailed explanation on how the Proposed Crossings solve a public need in the cities of Eureka and Arcata in the County of Humboldt as it relates to access to the Humboldt Bay Trail for people of all ages and abilities.³³ That will certainly benefit health and wellness for those in the nearby ESJ communities.

Therefore, we find that no significant negative environmental impact will be disproportionately borne by ESJ communities and find the construction of the Proposed Crossings aligns with the Commission's ESJ Action Plan.

7. Conclusion

Upon review, the Commission finds that this uncontested Application for authorization of the Proposed Crossings complies with the applicable Rules, statutes and GOs. The Commission further finds that the Application and the Proposed Crossings comply with the requirements under CEQA and aligns with the goals set forth in the Commission's ESJ Action Plan. Finally, the Commission adopts RSD's recommended language for the Commission's Ordering Paragraphs for this decision, which the Commission finds reasonable.

8. 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 Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

9. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Margery L. Melvin is the assigned Administrative Law Judge in this proceeding.

³³ Application at 4.

Findings of Fact

1. On October 28, 2021, the County filed A.21-10-014 for approval to construct the Proposed Crossings in the County of Humboldt.
2. The County seeks authority to construct two new temporary at-grade pedestrian-rail crossings over one track of the North Coast Railroad Authority (NCRA) at Mileposts 285.65 and 287.05 in the County of Humboldt (Proposed Crossings).
3. RSD, after conducting a site inspection of the locations of the Proposed Crossings, reviewed the Application and supporting materials, found that the Application and the Proposed Crossings comply with the applicable Commission statute, GOs and Rules, and recommends approval of the Application.
4. This Application is uncontested.
5. There is a public need for the Proposed Crossings to accommodate non-motorized access between the cities of Eureka and Arcata and to provide improved public access to Arcata Bay around the CRC Mill Site.
6. Grade-separated crossings are cost prohibitive and otherwise not feasible at the Proposed Crossings' locations.
7. The Humboldt County is the lead agency for the Trail Expansion Project, which includes the Proposed Crossings, under CEQA.
8. The Humboldt County Board of Supervisors approved the Trail Expansion Project with conditions that required implementation of certain mitigation measures and a mitigation measure monitoring and reporting program.
9. On July 31, 2018, the Humboldt County Board of Supervisors approved the MND, filed the NOD and determined that, with the mitigation measures and mitigation measure reporting or monitoring plan required as conditions of the

Humboldt County's approval of the Trail Expansion Project, there will be no significant environmental impacts.

10. The Commission is the responsible agency for the Trail Expansion Project, which includes the Proposed Crossings and has reviewed and considered the entire Application, including the County's environmental documents and findings, and the Response by the RSD.

11. None of the environmental documents identified any significant impacts associated with the Proposed Crossings.

12. The Application complies with GOs 26-D, 72-B and 75-D, Rule 3.7 and the Commission Rules of Practice, and Procedure, and Public Utilities Code Sections 1201-1205.

13. The exhibits submitted by the County comply with the Rule 3.7 of the Commission's Rules.

14. The safety design and appliances comply with GO 72-B and GO 75-D, and Pub. Util. Code §99152.

15. While there may be some temporary environmental impacts to Air Quality, Greenhouse Gas Emissions, Noise and Vibration, Land Use Planning, and Transportation and Traffic associated with construction of the Proposed Crossings, each of these areas of impacts was determined to be less than significant in the MND.

16. The County's Proposed Crossings aligns with the Commission's environmental and social justice goals.

17. The Proposed Crossings will provide improved public access to Arcata Bay around the CRC Mill Site and improved public access on the Humboldt Bay Trail.

Conclusions of Law

1. The County of Humboldt should be authorized to construct two temporary at-grade pedestrian-rail crossings over one North Coast Railroad Authority track located near mileposts 285.65 and 287.05 in the County of Humboldt, as described in Application 21-10-014.
2. The Application and the Proposed Crossings comply with the applicable Rules, statutes and GOs.
3. RSD's recommended language for the Commission's Ordering Paragraphs for this decision are reasonable and should be adopted.
4. The MND and NOD prepared by the lead agency for the Trail Expansion Project, as required by CEQA, are adequate for our decision-making purposes.
5. Authorization of 36 months within which to complete the construction of the Proposed Crossings is reasonable.
6. The construction of the Proposed Crossings is consistent with the goals of the Commission's ESJ Action Plan.
7. The application is uncontested.
8. Evidentiary hearing is not necessary
9. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The County of Humboldt is authorized to construct two temporary at-grade pedestrian-rail crossings over one North Coast Railroad Authority track located near mileposts 285.65 and 287.05 in the County of Humboldt, as described in Application 21-10-014.
2. The crossings shall have the configurations and safety features described and specified in Application 21-10-014 and its attachments.

3. The crossings shall be identified by the following California Public Utilities Commission Crossing Numbers:

Crossing Name	CPUC Numbers	Grade
Eureka Slough Bridge	No. 104-285.65-D	At-grade
CRC Mill Site	No. 104-287.05-D	At-grade

4. The County of Humboldt shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

5. The County of Humboldt shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least thirty days prior to the opening of the crossings. Notification shall be made by e-mail to rceb@cpuc.ca.gov.

6. Within thirty days after completion of the work authorized by this Decision, the County of Humboldt shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division that the authorized work is complete by submitting a California Public Utilities Commission Standard Form G, Report of Completed Changes at Rail Crossings. Form G requirements and forms can be obtained from the California Public Utilities Commission web site at <http://www.cpuc.ca.gov/Crossings>. The Form G report must be submitted via e-mail to rceb@cpuc.ca.gov.

7. This authorization shall expire if not exercised within thirty-six months unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

8. A request for extension of the thirty-six month authorization period must be submitted to the California Public Utilities Commission's Rail Safety Division,

Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

9. This temporary crossing authorization shall expire at such time as the North Coast Railroad Authority, or its leaser or other designee resumes rail service at this location. Before rail service resumes, the rail service operator shall close these two temporary at-grade pedestrian rail crossings.

10. If the County elects to keep these two temporary at-grade pedestrian-rail crossings open, in the event of commencement of rail service, it must request by formal application, prior to the commencement of rail service, approval from the California Public Utilities Commission. The County of Humboldt application must take into consideration the specifics of pending rail service at the location of these two temporary at-grade pedestrian-rail crossings.

11. The Commission's Energy Division shall file a Notice of Determination with the State Clearinghouse in compliance with the California Environmental Quality Act under Pub. Res. Code §21108.

12. Application 21-10-014 is closed.

This order is effective today

Dated September 15, 2022, at Clovis, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
Commissioners