

Decision 22-09-018 September 15, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Coachella Valley Association of Governments to construct proposed pedestrian grade separation at UPRR-Los Angeles, Yuma Sub (MP 608.93) within the City of Indio, California.

Application 22-01-010

DECISION AUTHORIZING THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS TO CONSTRUCT A PEDESTRIAN GRADE-SEPARATED UNDERPASS CROSSING WITHIN THE CITY OF INDIO, RIVERSIDE COUNTY

Summary

This decision authorizes the Coachella Valley Association of Governments to construct a pedestrian grade separated rail crossing beneath the Union Pacific Railroad-Los Angeles tracks at Yuma Subdivision Milepost 608.93 within the City of Indio, Riverside County.

This proceeding is closed.

1. Background

On January 18, 2022, Coachella Valley Association of Governments (CVAG)¹ filed the present application seeking authorization to construct a pedestrian grade separated rail crossing beneath the Union Pacific Railroad-Los

¹ CVAG is the decision-making agency formed pursuant to an Implementation Agreement to manage and administer a regional transportation program in the Coachella Valley Region of California.

Angeles tracks at Yuma Subdivision Milepost (MP) 608.93 within the City of Indio, Riverside County (Proposed Crossing.)

Specifically, the applicant proposes to utilize the existing grade separation at the Indio Boulevard/Union Pacific Railroad (UPRR) Crossing. Existing ramps proceed down from the levee on both sides of bridges, allowing access to a paved area under the bridges.

The applicant also proposes to make several safety modifications to the grade separation as part of a broader CV Link Project.² CVAG is responsible for construction of the CV Link Project, and as part of that project, CVAG will construct the Proposed Crossing. The Proposed Crossing includes an overhead structure a minimum of three feet below the bottom of the bridge to protect users from debris falling from the bridges. The bottom of the overhead structure will allow for a 12-foot, six-inch overhead clearance within the crossing. Flood sensors will activate warning lights and gates when flood waters block the crossing. The gates and lights will also activate when maintenance requires closure of the crossing. CVAG has adopted safety protocols to ensure UPRR and public notification of any closure.

On February 23, 2022, the Commission's Rail Safety Division (RSD) filed a response to the application. RSD noted that, on April 30, 2019, RSD staff had conducted a diagnostic review of the Proposed Crossing and location with CVAG and UPRR and identified two safety concerns to CVAG. RSD further

² CV LINK Project consists of a proposed construction of 50-mile multimodal transportation corridor from the City of Palm Springs to the City of Coachella. Much of the corridor follows the Whitewater River Channel. CV Link intersects the Union Pacific Railroad-Los Angeles (UPRR), Yuma Subdivision, at Milepost (MP) 608.93 in the City of Indio, Riverside County. The railway crosses the Whitewater River Channel via two bridges at that location, identified as crossing UPRR60893. The Indio Boulevard Bridge crosses the channel at the same location.

noted in its response that CVAG had thereafter addressed and incorporated each of RSD's recommendations concerning the two safety concerns RSD previously identified into the instant application. In view of CVAG's incorporation of RSD's prior safety recommendations, RSD now recommended that the application be approved.

A Prehearing Conference (PHC) was held on March 9, 2022. Notice of the hearing was provided on February 28, 2022. On March 23, 2022, the assigned Commissioner issued a Scoping Memo and Ruling, determining additional hearings were not required. This matter was deemed submitted at that time.

2. Jurisdiction

The Commission has jurisdiction over railroad crossings pursuant to Public Utilities Code sections 1201 and 1202. Rule 3.7 of Commission's Rules of Practice and Procedure (Rules) governs applications to construct a public road, highway, or street across a railroad. General Order (GO)³ 26-D prescribes the minimum clearance requirements on railroads and structures adjacent to railroad tracks.

3. Issues Before the Commission

The issues presented by the application are:

1. Whether the Application complies with all Commission requirements, including those listed in Rule 3.7 and Commission GO 26-D, such that the Commission should authorize CVAG to construct the Proposed Crossing, as proposed;
2. Whether the Proposed Crossing is exempt from the California Environmental Quality Act (CEQA)

³ All references to GO are to the Commission's General Orders, available on the Commission's website.

requirement or CVAG complied with CEQA requirements;

3. Whether the Commission should grant CVAG a period of 36 months from the Application approval date to complete the Proposed Crossing; and
4. Whether the Application aligns with or impacts achievement of any of the nine goals of the Commission’s Environmental and Social Justice Action Plan.

4. Filing, Safety, Engineering, CEQA Requirements

Applications for the construction of a public road across a railway must comply with Commission Rule 3.7 and comply with the minimum clearance requirements established by GO-26-D.

4.1. Rule 3.7 Compliance

Rule 3.7 requires that applications to construct a public road, highway or street across railroad be made by the municipal, state or other governmental authority proposing construction. In the present application, applicant CVAG is a public agency entitled to submit the application.

The application includes all information required by Rule 3.7. Specifically, the application includes:

3.7(a) Rail milepost	The crossing is at Milepost 608.93
3.7(a) Either a legal description of the location of the proposed crossing or a location description using a coordinate system that has accuracy comparable to a legal description	Exhibit A of the application includes a surveyor’s description of the Proposed Crossing location and a United State Department of Transportation (DOT) Crossing Inventory Form identifying the location as Latitude 33.7356319 degrees and the longitude as -116.2449354.
3.7(b) Crossing identification numbers of the nearest existing public	The application identifies the nearest crossings as CPUC Crossing No. 001B-607.60-A/DOT No.

crossing on each side of the proposed crossing	760707B and CPUC Crossing No. 001B-609.70-A/DOT No. 760710J.
3.7(d), (e) ⁴ Accurate maps documenting (1) the location of listed features within specified distance of the crossing and (2) the relation of the proposed crossing to existing roads and railroads	The application includes maps that satisfy Rule 3.7(d) and (e) as exhibits B and B2.
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 Rule 3.7(f) as exhibit B2.

4.2. GO-26-D Compliance

GO-26-D requires a minimum overheard clearance of fifteen feet when a railroad crosses above a road, highway, or street. The surface of the proposed crossing passes more than fifteen feet below the bottom of the railroad bridges.

4.3. CEQA Compliance

The CV Link Project, including the Proposed Crossing, constitutes a project for purposes of CEQA review. CEQA applies to discretionary projects proposed by or subject to the approval of public agencies. CEQA has as its central purpose the goal of informing decision makers 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

⁴ Rule 3.7(c) applies to at-grade crossings. As the application is for a grade separated crossing it does not apply to the present application.

project, or has responsibility for approving the project. Here, CVAG is the lead agency for the CV Link Project, and the Commission is a 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.⁵ 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.⁶ Specifically, the Commission's authority under CEQA as the responsible agency is limited to mitigating or avoiding the direct or indirect environmental effects of the Proposed Crossing.

The environmental document prepared for the CV Link Project considered numerous categories of possible impacts, including air quality, biological resources, flood prevention, historical and cultural impacts, land use planning, and noise, amongst others. Where an impact was determined to exceed the acceptable level of significance, mitigation measures were adopted to eliminate or reduce the impact below the level of significance. CVAG concluded in adopting the Final Environmental Impact Report (FEIR) that, when considering implementation of all proposed mitigation measures, all impacts of the CV Link Project could be kept within the acceptable level of significance.

Relating specifically to the Proposed Crossing, the FEIR concluded that no significant impacts were directly associated with the construction of the Proposed Crossing. The FEIR did find that there were potentially significant impacts related to general construction activity, and the use of construction

⁵ *Id.*, §§ 15050(b) and 15096.

⁶ Title 14, CCR § 15096(g).

equipment during the construction of the overall CV Link Project, which includes the Proposed Crossing. The FEIR however describes and adopts mitigation measures to reduce those impacts to acceptable levels. The FEIR noted potentially significant impacts related to flooding and construction within a 100-year flood plan and approved mitigation measures to reduce those impacts to acceptable levels.

The Commission reviewed and considered the FEIR as it related to the Proposed Crossing. We find that the FEIR, as it relates to the Proposed Crossing, is adequate for our decision-making purposes. The Commission's Energy Division will file a Notice of Determination with the State CEQA Clearinghouse reporting our review of the FEIR as it relates to the Proposed Crossing.

4.4. Environmental and Social Justice Impact

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 April 2022, the Commission adopted a new 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.

Here, CV Link promotes goal three of the ESJ Action Plan which calls for improved access to, among other things, high-quality transportation services for ESJ communities. It does so by creating a new dedicated transportation corridor for pedestrians and cyclists, while reducing the impacts of carbon emissions. It also reduces conflict between pedestrians, bicyclists, and motor vehicles, providing a safer transportation option.

In sum, we find that CV Link Project, including the Proposed Crossing, aligns with and promotes goal three of the ESJ Action Plan.

5. 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.

6. Assignment of Proceeding

Commissioner Genevieve Shiroma is the assigned Commissioner and Jacob L. Rambo is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On January 18, 2022, CVAG filed the present application seeking authorization to construct a pedestrian grade separated rail crossing beneath the Union Pacific Railroad-Los Angeles tracks at Yuma Subdivision MP 608.93 within the City of Indio, Riverside County (Proposed Crossing).

2. CVAG, in its application, proposes to utilize the existing grade separation at the Indio Boulevard/Union Pacific Railroad (UPRR) Crossing.

3. RSD conducted a diagnostic review of the Proposed Crossing and its location and raised two safety concerns to CVAG.

4. RSD conducted a review of the Application and found that CVAG's Application satisfactorily addressed RSD's safety concerns regarding the Proposed Crossing.

5. The Proposed Crossing improves upon existing, grade-separated access ramps and pavement below UPRR crossing UPRR60893.

6. The Proposed Crossing is a component of the larger CV Link Project.

7. The Proposed Crossing and CV Link Project aligns with and promotes goal three of the Commission ESJ Action plan by providing safer transportation options for pedestrians and cyclists while reducing carbon emissions.

Conclusions of Law

1. CVAG should be authorized to construct the Proposed Crossing, including the proposed overhead structure and flood safety features, at UPRR-Los Angeles, Yuma Subdivision, Milepost 608.93, in Indio, California.
2. The Application and the Proposed Crossing comply with Rule 3.7 and the requirements of GO 26-D.3.
3. The Final Environmental Impact Report adopted by Coachella Valley Association of Governments, as required by CEQA, is adequate for our decision-making purposes.
4. Authorization of 36 months within which to complete the construction of the Proposed Crossing is reasonable.
5. The construction of the Proposed Crossing is consistent with the goals of the Commission's ESJ Action Plan.
6. Application 22-010-10 should be closed.

O R D E R

IT IS ORDERED that:

1. The Coachella Valley Association of Governments is authorized to construct a grade separated pedestrian-rail crossing as part of the CV Link Project, in the City of Indio, Riverside County at Union Pacific Railroad-Los Angeles, Yuma Subdivision Milepost 608.93.
2. The grade separated pedestrian-rail crossing shall have the configuration described and specified in the application and its attachments.
3. The grade separated pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 001B- 3 608.93-BD and United States Department of Transportation Number 760709P.

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

5. The Coachella Valley Association of Governments shall notify the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch at least 5 (five) business days prior to the opening of the crossing. Notification should be made by e-mail to rceb@cpuc.ca.gov.

6. Within 30 (thirty) days after completion of the work authorized by this decision, the Coachella Valley Association of Governments shall notify the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch 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 Coachella Valley Association of Governments 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. The copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

8. This authorization shall expire if not exercised within 3 (three) years 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 authorization must be submitted to the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 (thirty) days before the expiration of that period.

10. The Commission's Energy Division shall file a Notice of Determination with the State CEQA Clearinghouse certifying that the Commission reviewed the Final Environmental Impact Statement.

11. Application 22-01-010 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