

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the East Bay Regional Park District for Approval to Construct a Public Pedestrian, Equestrian, and Bicycle At-Grade Crossing of the Niles Canyon Railway at MP 29.60, located within Alameda County-owned right of way, City of Fremont, County of Alameda, State of California.

Application 22-12-003

DECISION APPROVING APPLICATION**Summary**

This decision approves the *Application of the East Bay Regional Park District for Approval to Construct a Public Pedestrian, Equestrian, and Bicycle At-Grade Crossing of the Niles Canyon Railway at MP 29.60, located within Alameda County-owned right of way, City of Fremont, County of Alameda, State of California, Application 22-12-003*. East Bay Regional Park District (EBRPD) is authorized to construct one public pedestrian, equestrian, and bicycle crossing over one Niles Canyon Railway track near milepost 29.60 in the City of Fremont, Alameda County and to modify the Kilkare Road crossing along the same rail corridor. EBRPD is required to notify the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch at least 30 days prior to the opening of the crossings and take other actions.

Application 22-12-003 is closed.

1. Background

On December 2, 2022, the East Bay Regional Park District (EBRPD) filed an *Application of the East Bay Regional Park District for Approval to Construct a Public Pedestrian, Equestrian, and Bicycle At-Grade Crossing of the Niles Canyon Railway at MP 29.60, located within Alameda County-owned right of way, City of Fremont, County of Alameda, State of California*, Application (Application or (A.) 22-12-003. EBRPD seeks authority to construct a public pedestrian, equestrian, and bicycle at-grade crossing of the Niles Canyon Railway tracks located within an Alameda County-owned right of way at milepost 29.60. The at-grade crossing will serve a proposed Bay Area Ridge Trail as described in the EBRPD's 2013 Master Plan. EBRPD also proposes to modify the existing Kilkare Road at-grade crossing along the same rail corridor. Kilkare Road is located at milepost 35.60 and has a California Public Utilities Commission (Commission or CPUC) Crossing Number [No.] 091-35.60 and Federal Department of Transportation No. 749797D.

On January 22, 2023, the Commission's Rail Safety Division (RSD) filed a response to the Application. RSD's response states that RSD reviewed the Application and conducted two site visits of the proposed crossings in 2022. RSD asserts that the Application complies with applicable Commission's Rules of Practice and Procedure (Rules) and applicable requirements of Commission General Orders (GO) 26-D, 72-B, 75-B, 143-B and 164-E.¹ RSD states that it does not object to the Application, but it is missing a required Federal Department of Transportation number for the proposed pedestrian crossing. RSD states that

¹ RSD indicates it conducted on-site diagnostic reviews of the site with EBRPD, Alameda County and Niles Canyon Railway personnel present on September 28, 2019 and February 15, 2022.

this number must be procured and formally submitted to the Commission prior to a decision being issued.

A prehearing conference (PHC) was held on February 8, 2023 to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. An Assigned Commissioner's Scoping Memo and Ruling was issued March 14, 2023, which is also the proceeding submission date.

On February 16, 2023 EBRPD filed a Supplemental Filing providing the Department of Transportation number for the proposed pedestrian crossing, No. 981 180 G.

2. Jurisdiction

Public Utilities (Pub. Util) Code Sections 1201 through Section 1205 and Section 99152 set forth minimum requirements regarding railroad crossings and safety requirements for public crossings.

Commission GO 143- B Sections 9.06 and 9.08 address right-of-way standards regarding crossings of public streets and railroads. Commission GO 164-E, Section 10.2 addresses requirements for at-grade rail crossings. Commission GO 26-D addresses clearances on railroads with reference to side and overhead structures. GO 72-B addresses standards for pavement construction at railroad crossings and GO 75-B addresses standards for warning devices for at-grade rail crossings.

Commission Rules 3.7 and 3.11 address requirements for applications to construct a public road across a railroad and light-rail transit system crossings.

3. Issues Before the Commission

The issues to be determined are:

1. Does the Application meet all the Commission's requirements - including Rule 3.7 - such that the

- Commission should grant EBRPD's Application to the crossing?
2. Has the applicant complied with the California Environmental Quality Act (CEQA)?
 3. Should the Commission grant the applicant a period of thirty-six months from the Application approval date to complete the proposed crossings?

4. Application Overview

4.1. Proposed Niles Canyon Railway At-Grade Crossing

The Application indicates that the Niles Canyon Railway is operated by the Pacific Locomotive Association, a nonprofit entity that leases the rail corridor from Alameda County. The Pacific Locomotive Association operates the Niles Canyon Railway as a museum illustrating railroad operations during the period of 1910 to 1960. The Pacific Locomotive Association operates about 150 train trips annually, serving about 54,000 riders annually. The Pacific Locomotive Association operates both historic diesel and steam locomotives along the corridor at a typical speed of 20 mph and maximum allowable speed of 30 mph.

The Application indicates the proposed new at-grade crossing will provide unobstructed view for pedestrians of oncoming trains. To meet minimum sight distance requirements, pedestrians must have a clear view of 530 feet to see a train approaching at 30 miles per hour and must be provided at least 12 seconds to cross. The Application states that field review indicates approximately 530 feet of sight distance, which provides the requisite 12 seconds for crossing with an unobstructed view.

The Application states that the new crossing will be protected with two Commission Standard No. 8 flashing lights signal assemblies, one for each approach, and two 48-inch high, self-closing swing gates that open away from

the tracks on both approaches. The crossing is designed to require bicyclists and equestrians to dismount before entering the crossing.

The Application states that it will take about eight weeks to construct the at-grade crossing, which will cost about \$1 million.

The Application states that EBRPD undertook 11 public meetings to discuss the proposed crossing. The Application states that at all meetings, the public favored an at-grade crossing, that Alameda County, the owner of the right of way, supports the proposed at-grade crossing, and that the railroad operator, the Pacific Locomotive Association, also favors the proposed at-grade crossing.

4.2. Consideration of Other Rail Crossing Options

The Application indicates that EBRPD sought local stakeholder feedback on three other rail crossing options in addition to the proposed at-grade crossing. These other options were: 1) using an existing sidewalk to cross under the rail tracks; 2) an undercrossing of the tracks; and 3) an overcrossing of the tracks.

Although stakeholders expressed interest, EBRPD states that it found option 1 to be infeasible due to the narrow width of the existing sidewalk (five feet).

EBRPD indicates that option 2, an undercrossing, would cost \$1.5 million to \$2.2 million, would impact the adjacent Vallejo Mill Historical Park, and would take three months to complete. Pedestrians would also be required to walk underground for a large stretch of the crossing. Stakeholders and the City of Fremont did not support this option.

EBRPD indicates that option 3, an overcrossing, would cost about \$5 million and take four months to construct. This option would be likely to

have visual and cultural impacts under CEQA. This option was not favored by equestrians, the Application states.

4.3. Proposed Improvements to Kilkare Road At-Grade Crossing

The Application indicates that RSD Staff encouraged EBRPD to enhance the safety of other at-grade crossings of the Niles Canyon Railway as part of its application submittal. A February 15, 2022, field visit between RSD, EBRPD, Alameda County, and Niles Canyon Railway personnel evaluated options. As a result of this work, the Application proposes improvements to an existing Kilkare Road crossing at milepost 35.60, including improved signage and striping, and Americans with Disabilities Act detectable warning devices. The Application states that EBRPD will remove outdated railroad warning device protectors and other obstacles to pedestrian pathways at the existing Kilkare crossing.

5. Assessment of Application

The following review finds that the Application meets the requirements of statute, applicable Commission GOs, and Rules 3.11 and 3.7, as well as the checklist requirements of the Rail Crossings and Engineering Branch and should be approved.

5.1. Compliance with Commission Rules 3.11 and 3.7

We find that the Application complies with Commission Rules 3.11 and 3.7. Rule 3.11 is the applicable rule for applications to construct crossings of a light-rail transit system. Rule 3.11 requires applicants to comply with the appropriate requirements of Rules 3.7 through 3.10, which for this this Application are found in Rule 3.7.

Regarding Rule 3.7, RSD's response states that the Application complies with applicable requirements, as follows:

- a. Milepost and Legal Location: The milepost and geographic coordinate information (longitude & latitude) for the crossings is included on page 5 of the Application and Exhibit B to the Application, respectively.
- b. Crossing identification numbers of the nearest existing public crossings are included on page 5 of the Application.
- c. The Application on page 2-8 includes an explanation that sufficiently demonstrates (1) the public need to be served by construction of the grade crossing; and (2) a statement showing why a separation of grades is not practicable. The Application on page 4 includes statements (3) showing the signs, signals and crossing warning devices recommended at the proposed crossings.
- d. Maps in compliance with Rule 3.7(d) are included for each crossing location as Exhibits B-H of the Application.
- e. A map in compliance with Rule 3.7(e) is included as Exhibit A of the Application.
- f. Profiles in compliance with Rule 3.7(f) are included in Exhibits D of the Application.

5.2. Statute and Commission General Orders

We find that the Application complies with relevant statute and Commission GOs.

EBRPD referenced applicable Pub. Util. Code Sections in its Application, namely Pub. Util Code Sections 1201 – 1205 and Section 99152. RSD's response states that the Application conforms to these Pub. Util. Codes.

RSD indicates that the Application was submitted in compliance with Commission GO 143-B, Section 9.08, which sets forth minimum requirements for applications for railway crossings. RSD indicates that the Application complies with GO 143-B Section 9.06 and GO 26-D by indicating minimum side clearances

to obstructions for light rail tracks. RSD indicates that EBRPD complied with GO 164-E Section 10.2 by consulting with RSD Staff prior to initiating preliminary engineering of the new crossing. RSD indicates the Application complies with GO 72-B by addressing pavement construction requirements. RSD indicates that the proposed warning devices comply with GO 75-B.

RSD recommends the Commission require EBRPD to comply with the California Manual on Uniform Traffic Control Devices during project implementation.

6. CEQA Compliance

EBRPD's Application indicates that the Niles Canyon Railway at-grade crossing was the subject of environmental review and that an Initial Study Mitigated Negative Declaration (MND) was adopted by the EBRPD Board of Directors in November 2018. A Notice of Determination was filed with Alameda County and the MND was certified in November 2018 with a state clearinghouse number of 2018092055.

Issuance of a MND by a CEQA lead agency indicates that an Initial Study has identified potentially significant effects on the environment, but: (1) revisions in project plans have been made that would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.² Thus the Niles Canyon Railway project complies with CEQA requirements. The preparation of an Environmental Impact Report or further review of the project pursuant to CEQA is not required.

² Public Resource Code § 21064.5; CEQA Guidelines § 15070(b)(2).

7. Period to Complete Proposed Crossings

The Application states that it will take about eight weeks to construct the Niles Canyon Railway at-grade crossing and to make improvements at Kilcare Road crossing. The Application requests that the Commission allow two years from approval of the project for completion. RSD's response recommends the Commission grant the applicant a period of thirty-six months from the Application approval date to complete the proposed crossings.

We find it reasonable to authorize a period of thirty-six months from approval of the Application for EBRPD to complete the proposed crossing. This will provide additional time compared to the requested time period, providing some leeway for unforeseen delays. This authorization shall expire if not exercised within three years of the issuance of this decision or if the conditions included in this decision are not satisfied. This authorization may be revoked or modified if public convenience, necessity, or safety so require. EBRPD may request a time extension from the RSD at least 30 days prior to the expiration date and shall send a copy of the extension request to all interested parties.

EBRPD must notify RSD at least 30 days prior to the opening of the crossings by email to rceb@cpuc.ca.gov. Within 30 days after completion of the work authorized by this decision, EBRPD must notify RSD by submitting a completed Commission Standard Form G (Report of Changes at Highway Grade Crossing and Separations) indicating completion of the authorized work. Form G requirements and forms can be obtained at www.cpuc.ca.gov/crossings. The completed report must be submitted via email to rceb@cpuc.ca.gov.

8. Environmental and Social Justice Statement

The Application contains an Environmental and Social Justice Statement (Statement; Exhibit J), which states that the crossings described in the

Application are consistent with the Commission's Environmental and Social Justice Action Plan (ESJ Action Plan). The Statement indicates that over 10,000 people had the opportunity to travel through Niles Canyon on foot or bike during promotional events in between 2015 - 2022 and learn about the proposed at-grade crossing. The Statement indicates that the new planned Bay Area Ridge Trail will provide additional connectivity to open space from regional trails and all members of the community may use the Niles Canyon trail accessed via the at-grade crossing for outdoor recreation.

9. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No public comments were submitted.

10. 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.

11. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Cathleen A. Fogel is the assigned ALJ in this proceeding.

Findings of Fact

1. The Niles Canyon Railway at-grade crossing will serve a proposed Bay Area Ridge Trail as described in the EBRPD's 2013 Master Plan.

2. The maximum speed allowable speed along the Niles Canyon Railway is 30 miles per hour.

3. The Niles Canyon Railway at-grade crossing allows for 530 feet of unobstructed view to see a train approaching at 30 miles per hour and provides pedestrians and equestrians approximately 12 seconds to cross.

4. The Niles Canyon Railway at-grade crossing will be protected with two Commission Standard No 8 flashing lights signal assemblies, one for each approach, and two 48-inch high, self-closing swing gates that open away from the tracks on both approaches.

5. The Niles Canyon Railway at-grade crossing is designed require bicyclists and equestrians to dismount before entering the crossing.

6. EBRPD undertook 11 public meetings to discuss the proposed crossing, and at all meetings the public favored an at-grade crossing.

7. Alameda County, the owner of the right of way, supports the proposed at-grade crossing. The railroad operator, the Pacific Locomotive Association, supports an at-grade crossing.

8. The Kilkare Road crossing will be improved as part of an approved Application, including the addition of improved signage and striping as well as Americans with Disabilities Act detectable warning devices.

9. Milepost and geographic coordinate information, crossing identification numbers, maps for each crossing location, profiles of the location, and diagrams and statements showing the signs, signals and crossing warning devices to be installed are included in the Application.

10. The Application explains the public need to be served by construction of the Niles Canyon Railway at-grade crossing and shows why a separation of grades is not practicable.

11. The Application was submitted with reference to Pub. Util. Code Sections 1201 - 1205 and Section 99152.
12. The Application indicates minimum side clearances to obstructions.
13. EBRPD consulted with RSD Staff prior to initiating preliminary engineering of the Niles Canyon Railway at-grade crossing.
14. The Niles Canyon Railway at-grade crossing was the subject of environmental review.
15. An Initial Study MND was adopted by the EBRPD Board of Directors, filed with Alameda County, and certified in November 2018 with a state clearinghouse number of 2018092055.
16. The applicant states that it will take about eight weeks to construct the Niles Canyon Railway at-grade crossing and to make improvements at Kilcare Road crossing.
17. Granting a period of thirty-six months from approval of the Application to complete the proposed crossing is reasonable as this will provide additional leeway for unforeseen delays from the two-year period requested by the applicant.

Conclusions of Law

1. The Application complies with Commission Rules 3.11 and 3.7.
2. The Application complies with Pub. Util. Code Sections 1201 - 1205 and Pub. Util. Code Section 99152.
3. The Application complies with relevant Commission GOs including GO 143-B, Sections 9.06 and 9.08, GO 164-E Section 10.2, GO 26-D, GO 72-B and GO 75-B.

4. The Niles Canyon Railway project complies with CEQA requirements and preparation of an Environmental Impact Report or further review of the project pursuant to CEQA is not required.

5. The Commission should grant the applicant a period of thirty-six months from approval of the Application to complete the proposed crossing.

O R D E R

IT IS ORDERED that:

1. The East Bay Regional Park District is authorized to construct one public pedestrian, equestrian, and bicycle crossing over one Niles Canyon Railway track near milepost 29.60 in the City of Fremont, Alameda County.

2. The proposed pedestrian crossing shall have the configuration described and specified in Application 22-12-003 and its attachments. The crossing shall be identified by California Public Utilities Commission Crossing Number 091-29.60-D.

3. The East Bay Regional Park District is authorized to make improvements to the Kilkare Road crossing located on mile post 35.60 of the Niles Canyon Railway.

4. The Kilkare Road crossing shall have the configuration described and specified in Application 22-12-003 and its attachments.

5. The East Bay Regional Park District shall comply with all applicable rules when implementing the authorized improvements, including California Public Utilities Commission General Orders, the California Manual on Uniform Traffic Control Devices, and the Americans with Disabilities Act.

6. The East Bay Regional Park District shall notify the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering

Branch at least 30 days prior to the opening of the crossings. Notification should be made by e-mail to rceb@cpuc.ca.gov.

7. Within 30 days after completion of the work authorized by this decision, the East Bay Regional Park District shall notify the California Public Utilities Commission's (Commission) Rail Safety Division, Rail Crossings and Engineering Branch by submitting a completed 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 Commission's web site at www.cpuc.ca.gov/crossings. The completed report must be submitted via email to rceb@cpuc.ca.gov.

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

9. The East Bay Regional Park District (EBRPD) may request a time extension from the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch at least 30 days prior to the expiration date. EBRPD shall send a copy of the extension request to all interested parties.

10. Application 22-12-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.