

Decision 24-09-029 September 26, 2024

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the Port of Stockton authorizing construction of a new public at-grade railroad crossing on McCoy Avenue with a new track owned by the Port, operated on by CCTC, and for the benefit of a Port tenant in the City Stockton in San Joaquin County in the State of California.

Application 23-12-015

**DECISION AUTHORIZING THE PORT OF STOCKTON TO  
CONSTRUCT A NEW PUBLIC AT-GRADE RAILROAD CROSSING IN  
STOCKTON, CALIFORNIA**

**Summary**

This decision grants the Port of Stockton authorization to construct one at-grade railroad crossing over McCloy Avenue in the Port of Stockton in San Joaquin County. No parties opposed this application. The authority granted in this decision is valid for a period of thirty-six months from the date this decision is issued.

The proceeding is closed.

**1. Background**

On December 22, 2023, the Port of Stockton (Port) filed Application (A.) 23-12-015 requesting authorization from the Commission to construct a new

at-grade railroad crossing on McCloy Avenue (Proposed Crossing) within the Port complex in San Joaquin County, California.

On February 1, 2024, the Commission's Rail Safety Division (RSD) filed its response. On February 15, 2024, the assigned Administrative Law Judge (ALJ) issued a ruling setting this matter for a prehearing conference (PHC) on March 8, 2024 and directing the parties to file by March 6, 2024 a joint prehearing conference statement clarifying certain information in the application regarding the environmental and social justice impacts of the Proposed Crossing. On March 6, 2024, the Port and the Commission's RSD filed a joint case management statement that responded to the ruling and provided supplemental information as ordered. The PHC was held on March 8, 2024.

On June 6, 2024, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) outlining the scope and schedule for this proceeding. The Scoping Memo confirmed that hearings would not be necessary because there are no material factual issues in dispute. The proceeding was deemed submitted upon the issuance of the Scoping Memo.

## **2. Jurisdiction**

The Commission has jurisdiction over railroad crossings pursuant to California Public Utilities (Pub. Util.) Code §§ 1201 and 1202.<sup>1</sup> Commission General Order (GO) 26-D prescribes the minimum clearance requirements for all construction of tracks or structures adjacent to tracks. GO 72-B prescribes standard types of pavement construction at railroad grade crossings. GO 75-D provides regulations for warning devices for at-grade rail crossings. GO 143-B

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<sup>1</sup> All statutory reference as to the California Public Utilities Code unless otherwise indicated.

sets forth the applicable safety rules and regulations governing light-rail transit systems.

Several of the Commission's Rules of Practice and Procedure (Rules) also govern various types of rail-crossing related applications as follows:

- Rule 3.11 requires an application to construct crossings or intersections of a light-rail transit system and a public road, street, highway or railroad pursuant to GO 143-B, Section 9.08, shall comply with the appropriate requirements of Rules 3.7 through 3.10.
- Rules 3.7, 3.9 and 3.10 provide rules for constructing a public road across a railroad, a railroad across a public road, and a railroad across railroad, respectively.
- Rule 3.8 governs any proposals to alter or relocate an existing railroad crossing.

### **3. Issues Before the Commission**

The issues to be determined are as follows:

1. Whether the application complies with applicable Commission requirements including Rules 3.7 and 3.9 of the Commission's Rules of Practice and Procedure.
2. Whether the application, including the Proposed Crossing, complies with the California Environmental Quality Act (CEQA).
3. Whether the application aligns with or impacts the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.
4. Whether the Commission should grant the Port of Stockton a period of thirty-six months to complete the proposed project.

### **4. Commission Requirements**

RSD staff reviewed the application and conducted a site visit of the proposed crossing locations on December 7, 2023. In its response, filed on February 1, 2024, RSD concluded that the application complies with all the

requirements of the Commission's Rules as well as requirements of the Commission's General Orders 26-D, 72-B, and 75-D.<sup>2</sup>

Consistent with RSD's determination, the Commission finds that the Port's application complies with the applicable Commission requirements.

## **5. Environmental Review and CEQA Compliance**

The California Environmental Quality Act of 1970, Public Resources (Pub. Res.) Code §§ 21000, et seq. (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.

The Port of Stockton (Port) Project, and the Proposed Crossing within it, are subject to CEQA. The Proposed Crossing constitutes a project for purposes of CEQA review.<sup>3</sup> As noted above, the Commission has the authority to approve a project pursuant to Pub. Util. Code § 1202, and to issue a discretionary decision concerning the Proposed Crossing.

Under CEQA, the Lead Agency is either the public agency that has principal responsibility for carrying out or approving a project.<sup>4</sup> Here, the Stockton Port District is the Lead Agency for the Port 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.<sup>5</sup> As a Responsible Agency, the Commission is responsible

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<sup>2</sup> RSD Response at 2.

<sup>3</sup> Pub. Resources Code § 21000 et seq.

<sup>4</sup> CEQA Guidelines (Cal. Code Regs. Tit. 14, Div. 6, Ch.3) Section 15367.

<sup>5</sup> CEQA Guidelines, 14 CCR §§ 15050(b) and 15096.

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. Here, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of the Proposed Crossing.

As a Responsible Agency under the CEQA Guidelines (Guidelines), the Commission's obligations and responsibilities are more limited than those of the lead agency for the Project. (See Cal. Code Regs., Tit. 14, Div. 6, Ch. 3 (Guidelines), §§ 15050, 15051, 15096.) However, the Guidelines do lay out in specific detail what is required of a responsible agency in terms of CEQA compliance. Guidelines § 15096, entitled "Process for a Responsible Agency," states: "A Responsible Agency complies with CEQA by considering the [Environmental Impact Report] EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved." (Guidelines, § 15096(a).) Section 15096 describes the "special duties a public agency will have when acting as a Responsible Agency" under CEQA. (Guidelines, § 15096(a).) Section 15096(h) states: "The [\*27] Responsible Agency shall make the findings required by § 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary." (Guidelines, § 15096(h).) Section 15091, entitled "Findings," states:

No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

As noted above, § 15096(h) also requires findings to be made pursuant to § 15093 "if necessary." (Guidelines, § 15096(h).) Section 15093 dictates the

findings that are required when a Statement of Overriding Considerations has been adopted by a decision-making agency. The Port of Stockton did, in fact, adopt a Statement of Overriding Considerations as part of the certification of its FEIR. It should be emphasized that the Commission, as a Responsible Agency and not Lead Agency on the Project, is required to consider the possible significant environmental effects of, and make specific findings with record support related to, only that portion of the overall project that is within the Commission's jurisdiction and expertise i.e., the Proposed Crossing.

"A responsible agency . . . considers significant impacts, mitigation measures, and alternatives pertaining only to activities that it is responsible for approving or carrying out." (Kostka et al, Practice Under the California Environmental Quality Act (2nd ed., January 2011 update), vol. 1, 849 (citations omitted).) The treatise further provides: "It necessarily follows that a responsible agency should be required to make findings and adopt overriding considerations for significant environmental impacts that will result from only the parts of the project the responsible agency approves and that are subject to its jurisdiction." [\*31] (Ibid.) In other words, the Commission is not in any way required to address all of the possible impacts of the entire Project. The Commission is, however, required to address those impacts that relate to its jurisdiction over the Proposed Crossing.

In summary, the Commission is required under CEQA to support its approval of the crossing with specific findings related to significant environmental impacts of the Proposed Crossing, and these findings must be supported by substantial record evidence. (Guidelines, §§ 15091,15093,15096.)

The Port of Stockton prepared and certified a Final Environmental Impact Report (FEIR) for the Port Project. The FEIR includes analysis required by CEQA,

the Endangered Species Act, the Clean Water Act (CWA), the Migratory Bird Treaty Act (MBTA), and other regulations.

The Commission must consider the environmental impacts identified in the FEIR as it relates to the Proposed Crossing component of the Project. The Commission has the authority to mitigate or avoid only the direct and indirect environmental effects of the Proposed Crossing and must approve any mitigation measures within the Commission's jurisdiction that can avoid or mitigate to less than significant the environmental effects of the Proposed Crossing, unless the changes or alterations are infeasible for specific economic, legal, social, technical and other considerations. The Commission must balance any unavoidable impacts against specific economic, legal, social, technical or other benefits.

The crossing existing at McCloy Avenue is a two-lane roadway with no defined sidewalk at the crossing and no bike lanes. There is no existing median. The existing roadway width at the crossing is approximately 20 feet. Although McCloy Avenue is privately owned by the Port, it provides unrestricted access to the public from State Route 4 and therefore the Proposed Crossing is classified as a public crossing. The Proposed Crossing will include improvements including devices installed at locations per the latest CPUC design guidelines.

The FEIR demonstrates a comprehensive review of the environmental impacts of the Port Project, of which the Proposed Crossing is a part. The FEIR includes an analysis of impacts on aesthetics, air quality, biological resources, cultural resources and tribal cultural resources, energy, greenhouse gas (GHG) emissions, hazards and hazardous materials, among other issue areas.

The FEIR identified and required mitigation for potential impacts from the Proposed Crossing for topic areas including aesthetics, air quality, biological

resources, cultural resources, energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, noise transportation, tribal cultural resources, and utilities. The required mitigation will reduce impacts to less than significant. Aesthetics impacts would be mitigated through preparation of a lighting plan for the proposed warehouse and related facilities prior to the start of construction. Air quality impacts resulting from construction would be mitigated by using updated equipment and complying with local air quality management district rules and permits. Biological impacts would be mitigated by development, monitoring, and reporting requirements under San Joaquin County's Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) or Port-approved plan. Cultural resource impacts would be mitigated through construction monitoring by a qualified archaeologist. The cultural resource monitor shall have the authority to stop work to assess and recover, when appropriate, any significant resources discovered during construction. Geology and soil impacts would be mitigated by maintaining and implementing erosion control measures during construction. Construction noise and vibration would be mitigated by complying with local noise ordinances, including limiting construction to daytime hours. Impacts on water quality would be mitigated through implementation of stormwater best management practices, in compliance with appropriate water quality permits.

The FEIR for the Port Project concluded that there would be significant and unavoidable impacts associated with GHG emissions and transportation, notwithstanding the required mitigation. GHG emissions would be mitigated by installing a 600 kilowatt solar system as part of warehouse construction. The warehouse operator would be required to use the solar system at its maximum capacity. In addition, within 6 months of the effective date of the new lease, an



energy audit of warehouse design and plans would be required. Transportation impacts would be mitigated by installing at least eight accessible parking spaces, two of which must be van accessible. However, residual GHG emissions and transportation impacts for the Port Project would remain significant even after implementation of these mitigation measures.

The Crossing would not contribute significantly to the significant and unavoidable GHG emissions and transportation impacts as well. It is important to note that McCloy Avenue, while situated on private property and not classified as a public road, does provide unrestricted access to the public, and the Port has agreed to have the Proposed Crossing be listed as “public.” Social benefits of the Ports Project include increased safety and security with updated design to include cantilevered flashing lights and gate-arms, which are essential for ensuring the safe passage of vehicles. These safety enhancements are intended to protect every individual who accesses the Proposed Crossing, whether they are regular users familiar with the area or occasional visitors.

While the project as a whole results in significant unavoidable impacts to the environment, the Proposed Crossing here does not substantially contribute to those significant environmental impacts.<sup>6</sup>

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

On April 7, 2022, the Commission adopted Version 2.0 of its Environmental and Social Justice (ESJ) Action Plan with nine goals to serve as a roadmap for implementing the Commission’s vision to advance equity in its

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<sup>6</sup> A23-12-015 Joint Pre-Hearing Conference Statement of Rail Safety Division and Applicant The Port of Stockton, at Appendix B, Table 1 at pages 3-16.

programs and policies for ESJ or disadvantaged communities.<sup>7</sup> The ESJ Action Plan includes goals related to health and safety, consumer protection, program benefits, and enforcement in sectors regulated by the Commission.

The Application and the Joint PHC Statement address the Proposed Crossing's alignment with the ESJ Action Plan. The Proposed Crossing would be located in census tract 6077003900, which has a CalEnviroScreen 4.0 score of 93, qualifying it as a Disadvantaged Community<sup>8</sup>, which is a subset of "ESJ Communities" as defined by the ESJ Action Plan. The Joint PHC Statement indicates that the warehouse project of which the Proposed Crossing is a part will provide local construction and operational job opportunities, and the construction process will make efforts to reduce the project's impact on local air quality.<sup>9</sup> As noted in Section 4, this Application complies with the relevant CPUC Rules and Requirements, including the most up-to-date safety requirements. These components support Goals 1, 2, 6 and 7 of the ESJ Action Plan.<sup>10</sup> Goals 3, 4, 5, 8, and 9 are not meaningfully impacted by the Proposed Crossing.<sup>11</sup>

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<sup>7</sup> The ESJ Action Plan is available on the Commission's website at: <https://www.cpuc.ca.gov/news-and-updates/newsroom/environmental-and-social-justice-action-plan>.

<sup>8</sup> Joint PHC Statement, Appendix A at 9.

<sup>9</sup> Joint PHC Statement at 4.

<sup>10</sup> Goal 1 is to "Consistently integrate equity and access considerations throughout CPUC regulatory activities." Goal 2 is to "Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health." Goal 6 is to "Enhance enforcement to ensure safety and consumer protection for all, especially for ESJ communities." Goal 7 is to "Promote high road career paths and economic opportunity for residents of ESJ communities."

<sup>11</sup> Goal 3 is to "Strive to improve access to high-quality water, communications, and transportation services for ESJ communities." Goal 4 is to "Increase climate resiliency in ESJ communities." Goal 5 is to "Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit

*Footnote continued on next page.*

**7. Construction Period**

RSD recommends the Commission grant the Port thirty-six months to complete the Proposed Crossing. At the PHC, neither RSD nor the Port objected to evaluating a thirty-six month authorization period. The Commission finds the thirty-six month authorization period to be reasonable.

**8. 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.

There are no relevant public comments on the Docket Card.

**9. Waiver of Comment Period**

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

**10. Assignment of Proceeding**

Karen Douglas is the assigned Commissioner and Andrew Dugowson is the assigned Administrative Law Judge in this proceeding.

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from CPUC programs.” Goal 8 is to “Improve training and staff development related to environmental and social justice issues within the CPUC’s jurisdiction.” Goal 9 is to “Monitor the CPUC’s environmental and social justice efforts to evaluate how they are achieving their objectives.”

**Findings of Fact**

1. On December 22, 2023, the Port of Stockton submitted application for authorization to construct one at-grade -rail crossing over McCloy Avenue in the Port of Stockton in San Joaquin County.

2. The Application is not contested.

3. The Commission's Rail Safety Division has conducted a site visit of the Proposed Crossing, reviewed the Port of Stockton's Application and supporting documents, and filed a response in this proceeding noting its conclusion that the Application and the Proposed Crossing comply with the Commission's Rules and General Orders.

4. The Commission has reviewed and considered the Final Environmental Impact Report (FEIR) and concluded that it is adequate for the Commission's decision making purposes.

5. While the project, as a whole, results in significant unavoidable impacts to the environment, the Proposed Crossing does not substantially contribute to those significant environmental impacts.

6. The FEIR identified and required mitigation for potential impacts from the Proposed Crossing for topic areas including aesthetics, air quality, biological resources, cultural resources, energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, noise transportation, tribal cultural resources, and utilities. The required mitigation will reduce impacts to less than significant.

7. The Proposed Crossing will advance goals one, two, six and seven of the Commission's Environmental and Social Justice Action Plan and will not meaningfully impact the remaining goals.

8. A thirty-six (36) month authorization is appropriate for this Proposed Crossing.

### **Conclusions of Law**

1. The Port of Stockton's application to construct a new at-grade rail crossing across McCloy Avenue in the Port should be approved, conditioned on the provisions of the ordering paragraphs below.

2. The Proposed Crossing complies with the Commission's Rules 3.7, 3.8, 3.9, 3.11 and GOs 72-B, 75-D, and 143-B. The Proposed Crossing aligns with the Commission's Environmental and Social Justice Action plan.

3. The Port should be given authority to construct the Proposed Crossing for a period of thirty-six months from the date of adoption of this decision.

4. This proceeding should be closed.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The Port of Stockton is authorized to construct one at-grade rail crossing over McCloy Avenue in the Port of Stockton.

2. The at-grade rail crossing shall be identified as California Public Utilities Commission Crossing Number 123-2.19 and Department of Transportation Number 982671J.

3. The at-grade rail crossing shall have the configurations specified in Application 23-12-015 and its attachments.

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

5. The Port of Stockton shall notify the California Public Utilities Commission's Rail Crossing and Engineering Branch of the Rail Safety Division

at least thirty (30) days prior to the opening of the crossing. Notification shall be made by email to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within thirty (30) days after completion of the work authorized by this Decision, the Port of Stockton shall notify the California Public Utilities Commission's Rail Crossing 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 Crossing. 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 email to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. This authorization shall expire if not exercised within thirty-six (36) 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 requires.

8. A request for extension of the thirty-six (36) month authorization time-period must be submitted to the California Public Utilities Commission's Rail Crossing and Engineering Branch of the Rail Safety Division at least thirty (30) days before the expiration of that period.

9. Application 23-12-015 is closed.

This order is effective today.

Dated September 26, 2024, at San Francisco, California.

ALICE REYNOLDS  
President  
DARCIE L. HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS  
MATTHEW BAKER  
Commissioners