

Decision \_\_\_\_\_

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

Application of San Bernardino County to construct a new public bikeway and multi-use trail crossing in the City of San Bernardino on Southern California Regional Rail Authority (SCRRA/Metrolink) San Gabriel Subdivision at MP 60.21 (Proposed DOT #977311B and CPUC Crossing No. 101SG-60.22-BD).

Application 24-02-010

**DECISION AUTHORIZING SAN BERNARDINO COUNTY TO CONSTRUCT A NEW PUBLIC BIKEWAY AND MULTI-USE TRAIL CROSSING ON THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY SAN GABRIEL SUBDIVISION AT MILEPOST 60.21**

**Summary**

This decision approves San Bernardino County’s application to construct a new public bikeway and multi-use trail rail crossing below the Southern California Regional Rail Authority San Gabriel Subdivision at Milepost 60.22, proposed California Public Utilities Commission Crossing Number 101SG-60.22-BD and proposed United States Department of Transportation Crossing Number 977311B. The work must be completed within three years from the issuance date of this decision.

Application 24-02-010 is closed.

## **1. Factual and Procedural Background**

On February 29, 2024, San Bernardino County (County) filed an application to construct a new public bikeway and multi-use trail crossing in the City of San Bernardino on the Southern California Regional Rail Authority (SCRRA) San Gabriel Subdivision at Milepost 60.22 (Proposed California Public Utilities Commission Crossing Number 101SG-60.22-BD and Proposed United States Department of Transportation Crossing Number 977311B) (Application).

On April 5, 2024, the California Public Utilities Commission's (Commission) Rail Safety Division (RSD) filed a response to the Application.

On April 26, 2024, the Commission held a prehearing conference virtually on the Webex platform.

On June 26, 2024, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Ruling).

On July 17, 2024, the County filed its response to the request for additional information in the Scoping Ruling.

## **2. Submission Date**

This matter was deemed submitted upon the County's filing of its response for additional information in the Scoping Ruling on July 17, 2024.

## **3. Jurisdiction**

The Commission has jurisdiction over railroad crossings pursuant to Public Utilities (Pub. Util.) Code Sections 1201-1202. Rule 3.7 and Rule 3.9 of the Commission's Rules of Practice and Procedure (Rules) govern applications to construct a railroad across a public road.

## **4. Issues Before the Commission**

The Scoping Ruling identified the following issues to be determined:

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

- Commission should grant the County's application to construct a grade separated rail crossing?
2. Has the County complied with the California Environmental Quality Act?
  3. Should the Commission grant the County a period of three years from the application approval date to complete the project?
  4. Are there any impacts on environmental and social justice communities, including the extent to which approval of this application impacts achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

## **5. Discussion and Determination of Scoping Issues**

This section will discuss and analyze the issues outlined in Section 4 of this decision.

### **5.1. Scoping Issue 1: Does the Application Meet All the Commission's Requirements – Including Rule 3.7 – Such that the Commission Should Grant the County's Application to Construct a Grade Separated Rail Crossing?**

#### **5.1.1. Background**

The proposed crossing is located within the City of San Bernardino in San Bernardino County. The proposed construction of a new public grade separated undercrossing would provide safe public access for pedestrians and cyclists using the Santa Ana River Trail (SART) on either side of the railroad. The Redland Passenger Rail Project initially built the area under the railroad crossing, with the intent for this project to finalize construction and formalize with the Commission. The San Gabriel Subdivision is owned by the San Bernardino County Transportation Authority (SBCTA) and maintained and operated by SCRRA.

The proposed underpass at Bridge 60.19 is a portion of the SART Project Phase III. The SART Project is part of a trail system proposed to extend from the

San Bernardino County National Forest to the Pacific Ocean. The County is responsible for the completion of 21.5 miles of SART within the County, which will be divided into four phases. The county completed construction of Phases I and II, and at the time the Application was submitted, almost all of Phase III had been completed. Until the section of trail underneath the San Gabriel Subdivision is completed, users of the SART need to detour along surface streets to connect to the other completed sections. Most of the streets on the detour route do not have dedicated bike lanes.

Additional crossing improvements include minor fencing along the edge of the pathway, minor grading to meet existing ground on the west-side of the railroad, and construction of the concrete bike path on top of previously graded surfacing. Once the trail is constructed, San Bernardino Regional Parks will own and maintain the new trail.<sup>1</sup>

#### **5.1.2. Analysis of Compliance with the Commission's Rules, General Orders, and Safety Requirements**

On February 15, 2023, the County, SCRRA, and RSD participated in a diagnostic review of the crossing to examine the proposed design and proposed clearances. RSD notes in their response to the Application that Commission General Order (GO) 26-D does not prescribe a minimum vertical clearance and width for pedestrian path and trail underpass grade separated rail crossings.<sup>2</sup> The County is proposing 10-foot vertical and 14-foot-wide clearances,<sup>3</sup> which RSD recommends for this type of undercrossing.<sup>4</sup>

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<sup>1</sup> Application 24-02-010 at 1-4.

<sup>2</sup> Response of the Rail Safety Division at 2.

<sup>3</sup> Application 24-02-010 at Exhibit B.

<sup>4</sup> Response of the Rail Safety Division at 2.

Applications for the construction of a railroad across a public road must meet the requirements of Rule 3.7. The County has complied with Rule 3.7(a) by providing the geographic coordinate information and milepost.<sup>5</sup> The County has complied with Rule 3.7(b) by providing the crossing identification numbers of the affected crossing.<sup>6</sup> The County has complied with Rule 3.7(d-f) by providing the required maps and profiles in the Application and exhibits.

The County also complied with the Rule 3.7 requirement to serve applications on affected railroad corporations. The County and SBCTA entered into a license agreement that permits the County to use approximately 4,000 square feet of property under the rail bridge for construction of a ten-foot-wide paved bikeway with two-foot shoulders.

In its response to the Application, RSD stated they found no safety issues with the proposed crossing and that the crossing complies with all the applicable requirements of the Commission's Rules and GOs. RSD recommended that the Commission approve the application and provided proposed Ordering Paragraphs for this decision.<sup>7</sup>

### **5.1.3. Determination**

We agree that the Application meets all the Commission's requirements, and we grant the County the authority to construct the grade separated crossing.

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<sup>5</sup> Application 24-02-010 at 5.

<sup>6</sup> *Id.*

<sup>7</sup> Response of the Rail Safety Division at 2-4.

## **5.2. Scoping Issue 2: Has the County Complied with the California Environmental Quality Act?**

### **5.2.1. Commission's Role as a Responsible Agency Under CEQA**

The California Environmental Quality Act (CEQA) of 1970, as amended under Public Resources Code §21000, et seq., 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 County project, and the proposed crossings within it, are subject to CEQA. 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 crossings.

The lead agency is either the public agency that carries out the project,<sup>8</sup> or the one with the greatest responsibility for supervising or approving the project as a whole.<sup>9</sup> Here, the County is the lead agency for the 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>10</sup> 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.<sup>11</sup> Here, the Commission is

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<sup>8</sup> Title 14, California Code of Regulations (CCR) §15051(a).

<sup>9</sup> *Id.*, §15051(b).

<sup>10</sup> *Id.*, §§15050(b) and 15096.

<sup>11</sup> Title 14, CCR §15096(g).

responsible for mitigating or avoiding only the direct or indirect environmental effects of the proposed crossing.

The Commission must consider the environmental impacts identified in the Initial Study/Mitigated Negative Declaration (IS/MND) as it relates to the proposed crossing of the project. The Commission has the authority to mitigate or avoid only the direct and indirect environmental effects on those parts of the project and must approve any mitigation measures, unless the changes or alterations are infeasible for specific economic, legal, social, technical, and other considerations.<sup>12</sup> The Commission must balance any unavoidable impacts against specific economic, legal, social, technical, or other benefits.

#### **5.2.2. Project Benefits and Impacts as it Relates to CEQA**

As noted in Section 5.1, the project would provide safe public access for bicyclists and pedestrians to the completed phases of the SART. The new access will help bicyclists and pedestrians avoid using surface streets that do not provide adequate facilities for all travel modes. The project also includes enhancements to ensure traveler safety as users of the trail cross under the railroad tracks.

#### **5.2.3. Planning and Environmental Review Analysis**

The project's planning and environmental review process included Caltrans oversight, the preparation of cultural and biological technical studies, and Section 7 consultation with the U.S. Fish and Wildlife Service. Caltrans determined the project was consistent with a National Environmental Policy Act Categorical Exclusion. The County's Environmental Management Division prepared an IS and determined that the project would not have a significant

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<sup>12</sup> Title 14, CCR §§15091(a)(3) and 15096(g).

effect on the environment with implementation of mitigation. Therefore, the County published a draft MND in accordance with CEQA (State Clearinghouse Number 2014051019) and made the document available for public comment on May 5, 2014, on the County's website. The County also published notices of the MND in local newspapers. The County Board of Supervisors adopted the MND on December 16, 2014.

The IS/MND demonstrates a comprehensive review of the environmental impacts of the County's project, of which the proposed crossing is a part. The IS/MND includes an analysis of impacts on Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Recreation, and Transportation/Traffic, among other issue areas.

Impacts related to the proposed crossing including impacts on air quality, biological resources, cultural resources, and hydrology and water quality, utilities/service systems, and recreation are subject to mitigation to avoid, minimize or compensate for the impacts. Air quality impacts resulting from construction would be mitigated through a required a Dust Control Plan. Biological impacts would be mitigated by implementing mitigation measures MM-BIO-1- through MM-BIO-7 that would ensure that impacts on San Bernardino Kangaroo Rat and other sensitive species are avoided. Cultural resource impacts would be mitigated through construction monitoring by a qualified archaeologist. Hydrology and water quality impacts and impacts on utilities and service systems would be mitigated by implementing a Storm Water Pollution Prevention Plan and Water Quality Management Plan to mitigate.

Implementation of all mitigation measures would ensure less than significant impacts on recreation associated with use of the trail.

#### **5.2.4. Determination**

We reviewed the IS/MND and find it adequate for our decision-making purposes. Upon issuance of this decision and in compliance with 14 Cal. Code Regs. §§15096(h)-(i), the Commission's Energy Division will file a Notice of Determination with the CEQA Clearinghouse certifying that the Commission considered the environmental documents related to the proposed crossing.

### **5.3. Scoping Issue 3: Should the Commission Grant the County a Period of Three Years from the Application Approval Date to Complete the Project?**

#### **5.3.1. Background**

In its Application, the County requested six-months from the issuance of the decision to complete construction.<sup>13</sup> RSD recommends an authorization period of 36-months, which is typical for similar applications.<sup>14</sup>

#### **5.3.2. Determination**

We find the recommendation put forth by RSD to be reasonable as the County may encounter unforeseen issues that could delay construction. Giving the County three years to complete construction may avoid them needing to ask the Commission for a time extension. The County shall complete construction of the project within three years from the issuance date of this decision.

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<sup>13</sup> Application 24-02-010 at 7.

<sup>14</sup> Response of the Rail Safety Division at 2.

**5.4. Scoping Issue 4: Are There Any Impacts on Environmental and Social Justice Communities, Including the Extent to which Approval of This Application Impacts Achievement of Any of the Nine Goals of the Commission’s Environmental and Social Justice Action Plan?**

**5.4.1. Analysis of Alignment with the Commission’s Environmental and Social Justice Action Plan**

In February 2019, the Commission adopted an 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 programs and policies for ESJ or disadvantaged communities. The ESJ Action Plan includes goals related to health and safety, consumer protection, program benefits, and enforcement in sectors regulated by the Commission.<sup>15</sup>

Under CEQA, project-specific and cumulative impact analyses on population and housing, air quality, and hazards and hazardous materials are required which also address any potential disproportionate impacts on ESJ communities. Noticing of the CEQA document and an opportunity for public comment also allow for outreach to ESJ communities that may be affected by the project. The following sections discuss how the project’s CEQA process addressed the Commission’s ESJ Action Plan.

**5.4.2. CalEnviroScreen Analysis**

CalEnviroScreen is a screening methodology developed by the California Office of Environmental Health Hazard Assessment that is used to help identify California communities disproportionately burdened by multiple sources of pollution.<sup>16</sup> The proposed railroad crossing is within Census Tract 6071007200 with a total population of 5,964 as of 2019. According to CalEnviroScreen and

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<sup>15</sup> ESJ Action Plan at <https://www.cpuc.ca.gov/ESJActionPlan>

<sup>16</sup> CalEnviroScreen 4.0 at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>

the ESJ Action Plan, the Census Tract qualifies as an ESJ community.<sup>17</sup> The County's project, as a whole, which the proposed crossing is a part, has the potential to improve access to high-quality transportation services as set forth in Goal 3 of the Commission's ESJ Action Plan. The multi-use trail would be used for active transportation and recreation by pedestrians and cyclists. The non-motorized uses of the trail would help improve local air quality and public health. The project also offers emissions reduction due to its location in an urban infill setting with access to public transportation, recreational facilities, and retail centers.

#### **5.4.3. Impact on Local Air Quality from the Project**

Air quality impacts associated with the project were identified as less than significant in the IS/MND with implementation of standard dust control measures.

#### **5.4.4. Outreach to ESJ Communities**

The proposed MND was circulated through the State Clearinghouse (SCH#2014051019) on May 5, 2014, to the responsible and trustee agencies, interested organizations, and individuals for the 30-day comment period as specified in the CEQA Guidelines. In addition, a Notice of Availability and a Notice of Intent to Adopt the MND were directly mailed to surrounding property owners and posted on the County website.

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<sup>17</sup> As defined by the Commission's ESJ Action Plan, ESJ communities are amongst the 95-percent highest scores (99th percentile) when using Cal EPA's CalEnviroScreen tool. See, EPA, Cal. "Census Tract (6071007200)." Oehha.ca.gov, CalEnviroScreen Tool 4.0, October 2021, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

#### **5.4.5. Promotion of Economic and Workforce Development Opportunities in ESJ Communities**

Construction would not be expected to result in substantial changes to the existing population in the project study area. A substantial employment base and residential population currently exist in the area and are within commuting distance of the project. Therefore, employment opportunities would not be expected to result in substantial migration of additional residents to the project area. In addition, because of the temporary nature of construction jobs, employment opportunities resulting from construction would not be expected to induce substantial population growth in communities and neighborhoods in the project area.

#### **5.4.6. Determination**

We conclude that approval of this Application will not have a negative impact on ESJ communities and does not conflict with any of the ESJ Action Plan goals.

### **6. Summary of Public Comments**

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 relevant written comment was submitted in this proceeding.

### **7. Conclusion**

The Application complies with our Rules for granting authority to construct a grade separated bikeway and multi-use trail rail crossing. We grant the County the authority to construct the crossing, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs. We authorize the

County three years from the issuance date of this decision to complete the work requested. We also find that RSD's recommended language for the Ordering Paragraphs of this decision are reasonable.

#### **8. Procedural Matters**

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

#### **9. Waiver of Comment Period**

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

#### **10. Assignment of Proceeding**

Matthew Baker is the assigned Commissioner and Eric Fredericks is the assigned Administrative Law Judge in this proceeding.

### **FINDINGS OF FACT**

1. On February 29, 2024, the County filed an application to construct a new public bikeway and multi-use trail crossing in the City of San Bernardino on the SCRRRA San Gabriel Subdivision at Milepost 60.22 (Proposed Commission Crossing Number 101SG-60.22-BD and Proposed United States Department of Transportation Crossing Number 977311B).

2. RSD conducted a diagnostic review of the proposed crossing location on February 15, 2023, and found no safety or other issues.

3. RSD completed its review of Application 24-02-010 and concluded that the application complies with all the requirements of the Commission's Rules as well as all applicable requirements of the Commission's GOs.

4. RSD has no objections to the application.

5. The County prepared the IS/MND and the County Board of Supervisors adopted the MND on December 16, 2014.

6. The Commission reviewed and considered the environmental compliance documents submitted by the County, including the MND. The County has committed to mitigating significant environmental impacts to below significant levels, as specified in the MND.

7. The County demonstrated compliance with the Commission's ESJ requirements.

8. The project will yield increased safety and therefore yield social and community benefits.

9. Giving the County three years to complete the project, as opposed to six-months as requested in the Application, may avoid them needing to ask the Commission for a time extension.

### **CONCLUSIONS OF LAW**

1. The Application complies with all applicable Commission Rules and regulatory requirements and should be approved.

2. The MND, as it relates to the proposed crossing, is adequate and should be considered for Commission decision-making purposes.

3. The project increases public safety benefits resulting from the crossing and should be approved.

4. Upon issuance of this decision and in compliance with 14 Cal. Code Regs. §§15096(h)-(i), the Commission's Energy Division should file a Notice of Determination with the CEQA clearinghouse certifying that the Commission considered the environmental documents related to the proposed crossing.

5. The proposed crossing is consistent with the Commission's ESJ Action Plan and should be approved.

6. A period of three years to complete the proposed improvements is reasonable and should be approved.

7. The proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. San Bernardino County is authorized to construct a grade separated bikeway and multi-use trail rail crossing under the Southern California Regional Rail Authority San Gabriel Subdivision track at Milepost 60.22 in the County of San Bernardino.

2. The grade separated bikeway and multi-use trail rail crossing of the Southern California Regional Rail Authority San Gabriel Subdivision track at Milepost 60.22 shall have the configuration specified in Application 24-02-010 and its attachments.

3. The grade separated bikeway and multi-use trail rail crossing of the Southern California Regional Rail Authority San Gabriel Subdivision track at Milepost 60.22 shall be identified as California Public Utilities Commission Crossing Number 101SG-60.22-BD and United States Department of Transportation Number 977311B.

4. San Bernardino County shall comply with all applicable rules, including California Public Utilities Commission General Orders, the California Manual on Uniform Traffic Control Devices, and the Americans with Disabilities Act.

5. San Bernardino County shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division

at least five business-days prior to the opening of the crossing. Notification should be made by e-mail to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within 30-days after completion of the work authorized by this decision, San Bernardino County shall notify the California Public Utilities Commission's (Commission) Rail Crossings and Engineering Branch of the Rail Safety Division by submitting a completed Commission Form-G (Report of Completed Changes at Rail Crossings), for the completion of the authorized work. Form-G requirements and forms can be obtained at the Commission website at: <https://www.cpuc.ca.gov/crossings>. The completed report may be submitted via e-mail to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. San Bernardino County shall coordinate with the Southern California Regional Rail Authority to notify the Federal Railroad Administration by submitting a Crossing Inventory Form (FRA F6180.71) acknowledging the establishment of the new crossing. A copy shall be provided concurrently to the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

8. San Bernardino County shall complete construction of the project within three-years of the issuance date 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. Any extension requests must be submitted to California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30-days before the three-year expiration date.

9. Application 24-02-010 is closed.

This order is effective today.

Dated December \_\_\_, 2024, at Sacramento, California