

***ENVIRONMENTAL DECLARATION**

(CALIFORNIA FISH AND GAME CODE SECTION 711.4)

LEAD AGENCY NAME AND ADDRESS

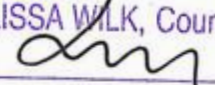
FOR COUNTY CLERK USE ONLY

WHEN RECORDED MAIL TO:

Public Works Department
The City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 11 2024

MELISSA WILK, County Clerk
By  Deputy

FILE NO:

24-389

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:

(PLEASE MARK ONLY ONE CLASSIFICATION)

1. NOTICE OF EXEMPTION / STATEMENT OF EXEMPTION

☒ A - STATUTORILY OR CATEGORICALLY EXEMPT

\$ 50.00 - COUNTY CLERK HANDLING FEE

2. NOTICE OF DETERMINATION (NOD)

☐ A - NEGATIVE DECLARATION (OR MITIGATED NEG. DEC.)

\$ 2,916.75 - STATE FILING FEE

\$ 50.00 - COUNTY CLERK HANDLING FEE

☐ B - ENVIRONMENTAL IMPACT REPORT (EIR)

\$ 4,051.25 - STATE FILING FEE

\$ 50.00 - COUNTY CLERK HANDLING FEE

3. OTHER: _____

*****A COPY OF THIS FORM MUST BE COMPLETED AND SUBMITTED WITH EACH COPY OF AN ENVIRONMENTAL DECLARATION BEING FILED WITH THE ALAMEDA COUNTY CLERK.*****

BY MAIL FILINGS:

PLEASE INCLUDE FIVE (5) COPIES OF ALL NECESSARY DOCUMENTS AND TWO (2) SELF-ADDRESSED ENVELOPES.

IN PERSON FILINGS:

PLEASE INCLUDE FIVE (5) COPIES OF ALL NECESSARY DOCUMENTS AND ONE (1) SELF-ADDRESSED ENVELOPES.

ALL APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING.

FEES ARE EFFECTIVE JANUARY 1, 2024

MAKE CHECKS PAYABLE TO: ALAMEDA COUNTY CLERK

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Alameda

1106 Madison Street

Oakland, CA 94607

From: (Public Agency): City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587

(Address)

Project Title: Closure of Railroad At-Grade Crossing at I Street in Union City

Project Applicant: City of Union City

Project Location - Specific:

I Street at-grade rail crossing; DOT No. 834187C; CPUC Crossing No. 004-26.70.

Project Location - City: Union City Project Location - County: Alameda

Description of Nature, Purpose and Beneficiaries of Project:

Closing of a railroad at-grade crossing pursuant to Order of the California Public Utilities Commission for the safety of residents and the traveling public.

This improvement is part of the At-Grade BART Pedestrian Crossing, City Project No. 14-14. See Attachment for Resolution No. 6370-24.

Name of Public Agency Approving Project: City of Union City

Name of Person or Agency Carrying Out Project: City of Union City

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☒ Statutory Exemptions. State code number: PRC 21080.14

**ENDORSED
FILED
ALAMEDA COUNTY
OCT 11 2024**

MELISSA WILK, County Clerk
By [Signature] Deputy

Reasons why project is exempt:

California Public Resource Code, section 21080.14.

Lead Agency

Contact Person: Farooq Azim

Area Code/Telephone/Extension: 510-675-5368

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: [Signature] Date: 10/10/24 Title: Economic and Community Development Director

Carmela Campbell

▪ Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

Attachment:

1. City of Union City Resolution No. 6370-24

RESOLUTION NO. 6370-24

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
UNION CITY APPROVING THE CLOSURE AND
VACATION OF THE I STREET RAILROAD CROSSING AS
PART OF THE AT-GRADE PEDESTRIAN CROSSING AT
BART, CITY PROJECT NO. 14-14**

WHEREAS, the City of Union City intends to construct a new at-grade crossing on the Oakland Subdivision to facilitate pedestrian and bicycle access between the BART Station and the City's Intermodal Station District and the neighborhoods east of the Oakland Subdivision known as the At-Grade Pedestrian Crossing at BART, City Project No. 14-14 (the "At-Grade Pedestrian Crossing Project"); and

WHEREAS, in order to move forward with the new At-Grade Pedestrian Crossing Project, the City is required by the California Public Utility Commission ("CPUC") Order issued on December 4, 2017, to make various railroad improvements throughout the City, including permanent closure of the existing I Street at-grade railroad crossing between 11th and 12th Street on the Oakland Subdivision tracks (the "I Street Railroad Crossing") (see Exhibit A); and

WHEREAS, detailed information regarding the At-Grade Pedestrian Crossing Project and the requirement to close the I Street Railroad Crossing is set forth in the City Council staff report dated October 8, 2024; and

WHEREAS, the City Council has preliminarily considered the proposed I Street Railroad Crossing closure at multiple public meetings; and

WHEREAS, during the month of June 2024, Union City hosted a series of District Dialogue Meetings which included a presentation of the At-Grade Pedestrian Crossing at BART Project, City Project No. 14-14, detailing the proposed closure of the I Street Railroad Crossing; and

WHEREAS, on September 14, 2024, the City held a Community Meeting at the Kennedy Youth Center to discuss the At-Grade Pedestrian Crossing Project and required closure of the I Street Railroad Crossing; and

WHEREAS, the Traffic Study evaluated the prospective closures of the three (3) existing railroad crossings on the Oakland Subdivision at F Street, H Street, and I Street. determined that the closure of I Street Railroad Crossing would be least impactful to the public; and

WHEREAS, the City Council desires to approve the closure and vacation of the I Street Railroad Crossing pursuant to Streets and Highways Code Section 8320 *et seq.*; and

WHEREAS, the existing H Street At-Grade Railroad Crossing, one block north of the I Street At-Grade Railroad Crossing, will serve as a convenient alternative to the I Street Crossing; and

WHEREAS, the closure and vacation of the I Street Railroad Crossing will commence upon the City Manager's determination that the completion of the At-Grade Pedestrian Crossing Project is imminent, thereby requiring the closure and vacation of the I Street Railroad Crossing prior to the opening of the new pedestrian crossing at BART; and

WHEREAS, the City Council desires to reserve public utility easements across the I Street Railroad Crossing in order to further the public convenience and necessity; and

WHEREAS, on October 8, 2024, the City Council held a public hearing to consider the closure and vacation of the I Street Railroad Crossing, at which time all interested parties had the opportunity to be heard; and

WHEREAS, notice of the public hearing was provided in the manner required by Streets and Highways Code sections 8322 and 8323. In addition, the public hearing notice was published on both Union City's and New Haven Unified School District's social media; and

WHEREAS, the City Council has considered the public's oral and written comments, the staff report dated October 8, 2024, and the staff presentation during the public hearing.

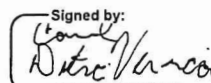
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Union City as follows:

1. The above recitals are true and correct and are incorporated into this Resolution by reference.
2. The adoption of the Resolution is statutorily exempt from further review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.14.
3. The closure of the I Street Railroad Crossing would have the least impact to public access compared to the closure of the railroad crossings at either F Street or H Street. Because of the alternative crossings, the I Street Railroad Crossing is unnecessary for present or prospective public use.
4. The closure and vacation of the I Street Railroad Crossing, as depicted in **Exhibit B**, attached hereto and incorporated herein, is hereby approved.
5. The City Manager shall determine the timing of the closure and vacation of the I Street Railroad Crossing and shall occur before the opening of the new At-Grade Pedestrian Crossing at BART.
6. Pursuant to Streets and Highways Code section 8340, the vacation of the I Street Railroad Crossing is subject to the reservation of a public utility easement to construct, maintain, operate, replace, remove, and renew public utilities in, upon, under, over, and across the I Street Railroad Crossing.
7. Upon the City Manager's determination, the closure and vacation of the I Street Railroad Crossing in advance of the opening of the new At-Grade Pedestrian Crossing at BART, the City Clerk is hereby directed to record a certified copy of this Resolution in the Alameda County Recorder's Office.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City
at a regular meeting held on the 8th day of October 2024 by the following vote:

AYES: Councilmembers Patiño, Sakakihara, Singh, and Mayor Dutra-Vernaci
NOES: None
ABSENT: Vice Mayor Wang
ABSTAIN: None

APPROVED:

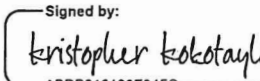
Signed by:

40F62C62D985497...
CAROL DUTRA-VERNACI
Mayor

ATTESTED:

Signed by:

DF989B5884B44A8...
THAI NAM N. PHAM
City Clerk

APPROVED AS TO FORM:

Signed by:

A8DB916180E345C...
KRISTOPHER J. KOKOTAYLO
City Attorney

Attachments:

1. Exhibit A - Final CPUC Order (Dec. 2017)
2. Exhibit B - I Street Railroad Crossing Closure Exhibit

ALJ/RWH/ek4

Date of Issuance 12/4/2017

Decision 17-11-014 November 30, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of Union City for an order to install one new Pedestrian at-grade crossing, across and over the track of the Union Pacific Railroad Oakland Subdivision, Mile Post 27.10, and the closure of one existing at-grade crossing at Mile Post 26.70, in the City of Union City, County of Alameda, State of California.

Application 17-02-010

**DECISION AUTHORIZING THE CITY OF UNION CITY, TO CONSTRUCT
AN AT-GRADE PEDESTRIAN RAIL CROSSING ACROSS THE UNION
PACIFIC OAKLAND SUBDIVISION, MILE POST 27.10 IN CITY OF
UNION CITY, ALAMEDA COUNTY**

A.17-02-010 ALJ/RWH/ek4

Table of Contents

Title	Page
DECISION AUTHORIZING THE CITY OF UNION CITY, TO CONSTRUCT AN AT-GRADE PEDESTRIAN RAIL CROSSING ACROSS THE UNION PACIFIC OAKLAND SUBDIVISION, MILE POST 27.10 IN CITY OF UNION CITY, ALAMEDA COUNTY	1
Summary	2
1. Background.....	2
2. Procedural Issues	3
3. Jurisdiction.....	4
4. Discussion.....	5
4.1. Seven-Factor Test for Impracticability Current Seven-Factor Test.....	9
4.1.1. Demonstration of Public Need	10
4.1.2. Convincing Showing that the City has Eliminated All Potential Safety Hazards.....	10
4.1.3. Concurrence of Local Community Emergency Authorities, and the General Public.	11
4.1.4. Recommendation of Staff that it Concurs with the Safety of the Proposed Crossing.....	12
4.1.5. Comparative Cost	12
4.1.6. Commission Precedent	13
4.1.7. Seven-Factor Standard Supports At-Grade Crossing.....	16
4.2. Environmental Review and CEQA.....	16
5. Categorization and Need for Hearing.....	17
6. Comments on Proposed Decision	17
7. Assignment of Proceeding	18
Findings of Fact.....	18
Conclusions of Law	20
ORDER	21

A.17-02-010 ALJ/RWH/ek4

**DECISION AUTHORIZING THE CITY OF UNION CITY, TO CONSTRUCT AN
AT-GRADE PEDESTRIAN RAIL CROSSING ACROSS THE UNION PACIFIC
OAKLAND SUBDIVISION, MILE POST 27.10 IN CITY OF UNION CITY,
ALAMEDA COUNTY**

Summary

This decision grants the City of Union City authorization to construct an at-grade rail pedestrian only crossing over Union Pacific Railroad's Oakland Subdivision at mile post 27.10 in the City of Union City, Alameda County. The new crossing will be identified as DOT Number 859611R, and California Public Utilities Commission Crossing Number 004-27.08. The decision also grants the City of Union City authorization to close the "I" Street at-grade highway rail crossing identified as DOT Number 834187C, California Public Utilities Commission Crossing Number 004-26.70.

This proceeding is closed.

1. Background

Over the last twenty years the City of Union City (the City) has been working toward creating a Transportation Oriented Development (TOD) and Intermodal Station District. The availability of an approximately 90-acre underutilized and environmentally constrained site within walking distance of the BART Station was seen as an opportunity by the City to create the Transit Oriented Development. The City has spent years cleaning up the site and installing infrastructure to create the Transit Oriented District. Single family homes and town homes were built on the former steel mill site and multi-family housing continues to be built on the remaining 30-acre parcel that has since been subdivided and fitted with public infrastructure to facilitate housing, retail and job centers.

A.17-02-010 ALJ/RWH/ek4

The City's Transit Oriented District and Intermodal Station District is approaching the completion of Phase 2A, which included modifying the circulation and ticketing elements of the Bay Area Rapid Transit (BART) Station so that pedestrians can enter the BART Station from the residential area to the east (railroad north) once the pedestrian at-grade crossing (Phase 2B) is constructed. The construction of the Pedestrian at-grade crossing under Phase 2B will culminate in establishing a direct pedestrian and bicycle connection to and from the BART station by providing a new east-side opening from the TOD area and proposed parking lot to the east of the BART Station. The Union Pacific Railroad (UPRR) tracks are currently inactive with a potential to be reactivated in the future. The projected daily number of pedestrians using the crossing is estimated at 3,040 pedestrians.

2. Procedural Issues

The City of Union City filed this application on February 27, 2017. On March 24, 2017, in Resolution ALJ 176-3394 this proceeding was preliminarily categorized as ratesetting, and it was preliminarily determined that evidentiary hearings would be necessary. On March 29, 2017, this matter was reassigned from Administrative Law Judge Richard Smith to Administrative Law Judge (ALJ) Robert Haga.

A telephonic prehearing conference (PHC) was held on June 15, 2017. At the PHC the scope of the issues to be resolved and a possible procedural schedule were discussed. The City agreed that evidentiary hearings would not be necessary and that a Public Participation Hearing would not be needed. On June 29, 2017, the Safety and Enforcement Division (SED) of the Commission submitted a late-filed response and a motion to accept the late-filed response. In its response, SED stated that it does not oppose the application but wishes to

A.17-02-010 ALJ/RWH/ek4

apprise the Commission of relevant information on this project, including information on SED's past site visit and the type and location of warning devices that it recommends be implemented at the crossing.

On July 24, 2017, ALJ Haga issued a ruling directing the applicant to provide copies of the Final Environmental Impact Reports (EIR) that include evaluation of the potentially significant impacts and any mitigation measures required to mitigate any such impacts for this project. On August 3, 2017, the City responded to the ruling and providing a copy of the Final EIR and a summary of the environmental impacts and mitigation measures identified for the project in the environmental reports.

This proceeding was submitted on October 13, 2017.

3. Jurisdiction

Pursuant to Section 1201 of the California Public Utilities Code (Pub. Util. Code),¹ the Commission must grant permission before an at-grade crossing can be constructed across the track of a railroad corporation. Pub. Util. Code § 1202 gives the Commission exclusive authority to determine the point of crossing, the terms of installation, and the terms of operation. As part of this authority, the Commission is tasked with evaluating proposed warning devices, technology and other safety measures, with the consent of the local jurisdiction.²

The basis of the Commission's jurisdiction is not limited to Sections 1201 and 1202, the Commission is responsible for a number of different rail safety laws that, when read together give the Commission jurisdiction over railroad

¹ All subsequent Section references are to the California Pub. Util. Code unless otherwise indicated.

² Pub. Util. Code § 1202(d).

A.17-02-010 ALJ/RWH/ek4

crossings in California. For example, Section 229 defines railroad to include any "commercial, interurban, and other railway, other than a street railroad," and under Section 99152, "Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures."

Rule 3.7(c) provides additional details. As summarized in Decision (D.) 14-08-045,

Rule 3.7(c) requires applications to construct a railroad crossing be made by the municipal, county, state or other governmental authority which proposes construction and, if the proposed crossing is at-grade, the applicant must demonstrate that: 1) There is a public need to be served by the crossing; 2) A grade separation of the crossing is not practicable; and 3) There are warning signs, signals, and other devices at the crossing. All three elements of Rule 3.7(c) must be satisfied in order for the application to be approved.

The Commission's analysis always begins with the presumption that grade separation is appropriate. The City bears the burden of overcoming this presumption with convincing evidence that this particular crossing will be safely operated as an at-grade crossing.

4. Discussion

The City and SED have provided evidence of how the public interest will be served by having the pedestrian crossing at-grade. These reasons are well-summarized by the City in its Application and supplemental submissions:

- a. The construction of an at-grade crossing will establish a direct pedestrian and bicycle connection to and from the BART station for new housing and job centers in the City's Station District as well as the new 800-stall parking lot.
- b. The current configuration requires commuters to travel ½ mile from the 800-stall parking lot to the west BART

A.17-02-010 ALJ/RWH/ek4

entrance, crossing the railroad tracks at Mile Post 26.90 on a Decoto Road sidewalk without pedestrian signals.

- c. The City's Station District Plan was approved in 2001 to create new multiple points of pedestrian, bicycle, and bus access to the Union City BART Station and included the new east entrance.
- d. The City expended \$71 million to remodel the Union City BART station to create the new east entrance.
- e. The City has invested \$161 million on property acquisitions, installation of infrastructure for high density housing and offices in the Station District, reconfiguration of the BART Station, and construction of 250 units of affordable housing.
- f. It would cost more than \$200 million to create a pedestrian grade-separated crossing to the new east entrance.
- g. The City has overseen more than \$450 million in private sector investment for construction of 1,300 housing units in the Station District less than ¼ mile from the east entrance. An additional 443 residential units and 1.2 million square feet of office space are seeking entitlements to construct in the Station District within ¼ mile of the new east entrance.
- h. The Alameda County Transportation Commission is specifically funding the construction of the pedestrian at-grade crossing to provide easier access to the Union City BART station.

SED does not dispute the factual truth of the City's reasoning or that the City's reasons do not demonstrate that the crossing is in the public interest.

Safety is of paramount importance to the Commission. Ensuring safe rail crossings is in the public interest. But safety and public interest are not synonymous. Evaluating a particular facility for safety is different from evaluating what is in the public interest as a whole. The safest course would be to allow for no rail crossing, however, that would not be practicable nor in the public interest. When a crossing must occur, usually the safest type of crossing is

A.17-02-010 ALJ/RWH/ek4

a separated grade crossing. However, the public interest requires a more nuanced review that considers the public interest as a whole. This includes safety impacts of a separated grade crossing and the use of the existing crossings. As discussed below, both of these options are impracticable and present safety concerns.

Those safety concerns include: the nearest crossing is at-grade and not designed for pedestrians and requires pedestrians to walk an additional ½ mile; individuals may choose to cut the fence and walk across the tracks at-grade to avoid walking to the nearest crossing; and the significant amount of time the existing conditions will exist before a grade-separated crossing could be funded and built makes it impracticable that such a grade-separated crossing would be built.

In an effort to improve safety at the new at-grade pedestrian crossing the City has agreed with SED that it will install the following:

- a. Two CPUC Standard Number 8 (flashing light signal assembly) warning devices;
- b. Two CPUC Standard Number 9 (flashing light signal assembly with automatic pedestrian gate) pedestrian warning devices;
- c. Two pedestrian exit swing gates;
- d. Advance Americans with Disability Act (ADA) tactile stripes at each approach;
- e. Fencing to channelize pedestrians to the crossing; and
- f. Precast concrete panel crossing surface.

Further, the applicant agrees to close an existing at-grade crossing, the existing "I" Street at-grade highway rail crossing, DOT Number 834187C, CPUC Number 004-26.70. The City identified this crossing for closure as the nearby BART support columns impair the sight distance from both "I" and 12th Streets.

A.17-02-010 ALJ/RWH/ek4

As part of removing the existing "I" Street crossing, a new security fence will be erected on both sides of the track to prevent trespassing. The existing intersection where 12th Street, which parallels the Oakland Subdivision track, meets "I" Street would be rebuilt into a 90 degree turn leading away from the track using new curb, gutter, and barriers. The existing auto and pedestrian traffic would be diverted to either the existing "H" Street or Decoto Road at-grade crossings.

Finally, the City has committed to make a number of improvements to at-grade crossings in the vicinity of the proposed new crossing. Specifically, the City shall:

1. Install mitigation measures at the existing Niles Subdivision Track Decoto Road at-grade highway-rail crossing identified as DOT Number 749781G, CPUC Number 001D-26.60;
2. Install sidewalk improvements at the existing Oakland Subdivision Track Decoto Road at-grade highway-rail crossing identified as DOT Number 834186V, CPUC Number 004-26.90;
3. Install mitigation measures at the existing Niles Subdivision Track Whipple Road at-grade highway-rail crossing identified as DOT Number 749776K, CPUC Number 001D-25.60; and
4. Install mitigation measures at the existing Coast Subdivision Track Smith Street identified as DOT Number 749927X, CPUC Number 001-L-25.50.

All of the above mitigation measures and sidewalk improvements will be filed separately under General Order (GO) 88-B. The City's commitment to these improvements is a factor in the consideration of its current request, but we take no action today on the mitigation measures and sidewalk improvements the City has committed to install.

A.17-02-010 ALJ/RWH/ek4

4.1. Current Seven-Factor Test for Impracticability

Determining whether a separated grade crossing is or is not practicable is a fact-specific inquiry. The Commission has evaluated practicability of separated grade crossings on numerous occasions. In *City of San Mateo v. SoPac Transp. Co.*, D.82-04-033 (*City of San Mateo*), the Commission distinguished between impracticable and impractical, focusing primarily on two facts: the physical possibility of constructing the separated grade crossing at the site and the cost of construction. The Commission found in *City of San Mateo* that the high cost of construction might make the separated grade crossing impractical, but the high cost, by itself, did not make the separated grade crossing impracticable.³ The Commission defined practicable as "being possible physically of performance, a capability of being used, a feasibility of construction."⁴

In the years since *City of San Mateo* was decided, the Commission has laid out more specific factors for the analysis. Currently, the Commission uses a seven-factor test to determine practicability,⁵ and applies the same test at all at-grade crossing cases no matter whether a rail line is heavy rail or light rail.⁶

³ *City of San Mateo*, D.82-04-033, at n.8.

⁴ *Id.*

⁵ See, *City of San Diego*, D.03-12-018, *City of Los Angeles*, D.09-02-031, *City of Los Angeles*, D.14-08-045.

⁶ See, *In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Constructors Authority for an Order Authorizing the Construction of Two Light Rail Transit Tracks At-Grade Crossing West Avenue 45 in the City and County of Los Angeles, California, and Related Matters*, D.02-05-047. See also, *City of Bakersfield*, D.04-08-013, *City of Los Angeles*, D.14-08-045, *City of San Diego*, D.03-12-018, *City of Santa Rosa*, D.16-09-002.

A.17-02-010 ALJ/RWH/ek4

The seven factors, or criteria, for evaluating impracticability of a separated-grade crossing are as follows:

1. A demonstration of public need for the crossing;
2. A convincing showing that all potential safety hazards have been eliminated;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and especially those who may be affected by an at-grade crossing;
5. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions;
6. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation; and
7. Commission precedent in factually similar crossings.

We set forth the analysis required by Rule 3.7(c) below, including application of the seven criteria. No party disputes whether the City has met the standard for impracticability using the seven-factor test.

4.1.1. Demonstration of Public Need

Rule 3.7(c)(1) requires the City of Union City demonstrate that there is a public need to be served by the proposed crossing. As explained above, the City and SED have provided evidence of how the public interest will be served by having the pedestrian crossing at-grade. That evidence also demonstrates that there is a public need that will be served by the crossing.

4.1.2. Convincing Showing that the City has Eliminated All Potential Safety Hazards.

The City has made a convincing showing that it has eliminated all potential safety hazards. The proposed crossing has been designed to comply with numerous legal requirements. The design is ADA compliant. The design

A.17-02-010 ALJ/RWH/ek4

includes protection and warning devices in compliance with federal and State regulations (including GO 75-D and the California Manual of Uniform Traffic Control Devices).⁷ As part of the design process the City consulted with UPRR, Federal Railroad Administration and SED.

The City states that the steps and ramps associated with the crossing on the east side will be constructed outside the railroad right-of-way. However, due to structure constraints at the BART station, these will encroach a few feet into the UPRR right-of-way, though as far from the track as physically possible.⁸

The City also states the approaches to the new crossing will be totally enclosed with security fencing to direct all pedestrian traffic only to the crossing from each side. In addition, lighting to illuminate the pathway will be installed, and the crossing itself will be equipped with two CPUC No. 8 and two CPUC No. 9 warning devices (gates and lights), escape gates on either side of the crossing, and precast concrete panel crossing surface.⁹

SED stated that the proposed design meets all legal requirements.¹⁰

4.1.3. Concurrence of Local Community Emergency Authorities, and the General Public.

The local community, emergency authorities, and the general public all support an at-grade crossing at milepost 27.10 of UPRR Oakland Subdivision railroad track to facilitate entrance to the BART station. The City Council

⁷ Application at 6.

⁸ *Id.*

⁹ *Id.*

¹⁰ Response of the Safety and Enforcement Division of the Commission, Attachment A at 2.

A.17-02-010 ALJ/RWH/ek4

approved the at-grade crossing proposal in a resolution. UPRR supports the at-grade pedestrian crossing.¹¹

No community groups or others came forward to express opposition to the at-grade crossing, or the closing of the at-grade crossing at "I" Street. There is no support in the record for a separated-grade crossing.

4.1.4. Recommendation of Staff that it Concurs with the Safety of the Proposed Crossing.

As explained above SED submitted a late filed response and a motion to accept the late filed response in June. In its response SED did not oppose the application but sought to apprise the Commission of relevant information on this project, including information on SED's past site visit and the type and location of warning devices that it recommends be implemented at the crossing. In Attachment A to its response, SED states "the application meets the requirements of CPUC staff and Rules of Practice and Procedure, Rule 3.7."¹²

4.1.5. Comparative Cost

Either type of crossing will cost millions of dollars. Since the adoption of the Station District Plan, the City has invested \$161 million on property acquisitions, installation of infrastructure, construction of 250 units of affordable housing, and reconfiguration of the BART Station. The Union City BART Station was designed and remodeled to create a new east entrance at a cost of \$71 million paid for by the City and leveraged county, regional, state, and federal grants.

¹¹ Application at Exhibit F.

¹² Response of the Safety and Enforcement Division of the Commission, Attachment A at 2.

A.17-02-010 ALJ/RWH/ek4

While the City of Union City's ultimate plan for the Station District is to elevate the Oakland Subdivision tracks sufficiently to facilitate a full multimodal transportation station by allowing the pathway to be grade-separated, funding for such an endeavor is dependent upon future bond measures. The engineers estimated in 2006 it would cost \$200 million to elevate the Oakland Subdivision tracks to create a pedestrian grade separation, and that did not include the cost of acquiring the Oakland Subdivision. Installation of a grade-separated pedestrian crossing at the BART station now would increase those estimated costs for the long-term plans to elevate the Oakland Subdivision tracks.

4.1.6. Commission Precedent

The practicability of a separated-grade crossing is a fact-specific analysis that requires a weighing of the factors above. In assessing practicability of a separated-grade crossing, prior cases have considered whether the line is a heavy or light rail, whether the crossing is for pedestrians or vehicles, the number of trains, train speeds, and support of the local community and emergency authorities.

In 2003, the Commission held that a separated-grade crossing was impracticable for a heavy and light rail crossing that was part of a redevelopment project in San Diego. In that case the community was divided, with some supporting an at-grade crossing and others opposing the redevelopment project as a whole.¹³ Other factors the Commission considered in that case included increased traffic from separate ongoing development near the crossing, a cost of more than \$30 million more for the grade-separated crossing, and how the

¹³ D.03-12-018.

A.17-02-010 ALJ/RWH/ek4

separated crossing would have divided the downtown area and interfered with many buildings' views of San Diego Bay.

In 2014, the Commission found that a two-track light rail crossing for trains not exceeding 35 miles per hour did not warrant an additional \$250 to \$300 million expenditure on a grade-separated crossing.¹⁴ In that case, several community groups opposed the at-grade crossings. When weighing the factors, the Commission emphasized that safety requirements had been met and that the high cost of the separated-grade crossing was not justifiable.

The Commission has also denied at-grade crossing proposals in part because of lack of support from local emergency authorities.¹⁵ The Commission has also denied an application for an at-grade crossing where the rail line was used by 14 freight and 32 passenger trains per day and there was an existing unauthorized crossing.¹⁶ In that case, the Commission did not reach the seven factor test because the applicant failed to meet the threshold requirement of demonstrating a public need for the crossing. A key factor in the analysis was the existence of a legal crossing just 926 feet away.

At-grade crossings have been authorized most often in situations where, like here, the applicant agrees to close an existing at-grade crossing.¹⁷ At-grade crossings have also been approved in situation where it is expected there will be

¹⁴ D.14-08-045.

¹⁵ See D.09-02-031, D.06-06-032.

¹⁶ D.13-02-003.

¹⁷ See, e.g., D.15-05-043 (authorizing at-grade crossing in the County of Santa Cruz), D.13-12-044 (authorizing at-grade pedestrian crossing in Fremont).

A.17-02-010 ALJ/RWH/ek4

fewer than 10 trains per week and/or trains will be travelling at slow speeds.¹⁸ The City argues that the limited freight service¹⁹ plus the proposed passenger train service,²⁰ and the closing of the existing public at-grade crossing at "I" Street makes its application closely resemble those that the Commission has approved in the past. Further the significant additional cost of a grade-separated crossing that would require elevating the Oakland Subdivision track, the support of local authorities and the SED and the convincing showing that it has eliminated all potential safety hazards support a finding of impracticability in this case.

Commission precedent demonstrates that a finding of impracticability can be made even when it is physically possible to build a separated-grade crossing. Important considerations in other cases authorizing at-grade crossings include: the closure of an existing at-grade crossing, support of local authorities, safe design and train speeds, physical separation of the community, and local development plans. Most of these considerations are found in the instant case.

The facts in the case at hand while similar to D.14-08-045 and D.03-12-018, where the Commission approved at-grade crossings, are most comparable to D.13-12-044 which authorized an at-grade crossing in Fremont where there was strong community support for a crossing and applicant would close an existing crossing.

¹⁸ See D.04-08-013 (authorizing at-grade crossing where low volume of trains (2-3 per day) would be travelling at slow speeds (10 mph)).

¹⁹ Application, Supplemental Attachment B2, Draft EIR Volume 1 at 3.1-6.

²⁰ Application, Supplemental Attachment B2, Draft EIR Volume 1 at 3.7-5.

A.17-02-010 ALJ/RWH/ek4

4.1.7. Seven-Factor Standard Supports At-Grade Crossing

The City of Union City applied the seven-factor test to the proposed railroad crossing for the east entrance to the BART station and found that a separated-grade crossing was impracticable. SED agreed that the application meets its requirements and Rule 3.7. This decision reaches the same conclusion. All seven factors are considered in our determination of impracticability. In particular, the long term planning, development, and commitment of financial resources shows the strong local support for an at-grade crossing at this time. The evidentiary record in this case reflects that at this time implementing a separated-grade crossing is impracticable.

4.2. Environmental Review and California Environmental Quality Act (CEQA)

The City is the lead agency for this project under CEQA, as amended. In March 2002, the City issued a Final EIR for the Community Redevelopment Project that included the Transit Oriented District. The Final EIR found that potentially significant impacts under the Commission's purview could result from a pedestrian grade-separated crossing under the BART and UPRR tracks, but that these impacts would be reduced to less-than significant levels with implementation of the identified mitigation measures. In June 2005, the City issued a Final EIR for the City Intermodal Station Project. On June 30, 2005, the City filed a Notice of Determination indicating the project will have a significant impact on the environment, and adopted a Statement of Overriding Considerations for the impacts that could not be fully mitigated.

Regarding impacts from the rail-crossing aspect of the project, mitigations measures require that the City (1) develop and implement construction noise abatement and mitigation plan; (2) ensure construction contractors have

A.17-02-010 ALJ/RWH/ek4

sound-control devices with all relevant provisions of applicable local noise policies and ordinances; (3) ensure all construction equipment has sound-control devices no less effective than those provided on the original equipment and that no equipment has un-muffled exhaust; and (4) ensure the contractor implements appropriate additional noise mitigation measures including, but not limited to, changing the location of stationary construction equipment, shutting off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, rerouting heavy truck traffic, or installing acoustic barriers around stationary construction noise sources or construction sites. Further mitigation measures related to dust control include limiting traffic speeds on unpaved roads to 15 miles per hour and installing sandbags or other erosion control measures to prevent silt runoff to public roadways.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3394 dated March 24, 2017, the Commission preliminarily determined that this proceeding should be categorized as ratesetting and that hearings were required. The Scoping Memo issued on October 13, 2017, confirmed the ratesetting categorization, but concluded that there were no issues of disputed facts requiring evidentiary hearings. Accordingly, we formally change the preliminary determination to find that no hearings are required.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

A.17-02-010 ALJ/RWH/ek4

7. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Robert Haga is the assigned ALJ in this proceeding.

Findings of Fact

1. On February 27, 2017, the City filed the instant application (Application 17-02-010) for an order authorizing the construction, maintenance, and operation of a new at-grade crossing to provide pedestrian connection to the City's Transit Oriented District and BART station.
2. Notice of the application appeared on the Commission's Daily Calendar on March 6, 2017.
3. On June 21, 2017, the City supplemented its application with additional information regarding its environmental review and report.
4. On August 3, 2017, the City further supplemented its application with additional information regarding the Final EIR and a summary of the environmental impacts and mitigation measures identified for the project in the environmental reports.
5. On June 29, 2017, the SED submitted a late-filed response and a motion to accept the late-filed response.
6. The proposed new at-grade crossing would be at mile post 27.10, located approximately 1,000 ft. south (railroad east) of the Decoto Road /Union Pacific Railroad Oakland Subdivision railroad crossing, City of Union City, California, mile post 26.90, and will be identified as CPUC Crossing Number 004-27.08 and DOT Number 859611R.
7. The City has committed to install the following at the new at-grade crossing at mile post 27.10:
 - a. Two CPUC Standard Number 8 (flashing light signal assembly) warning devices;

A.17-02-010 ALJ/RWH/ek4

- b. Two CPUC Standard Number 9 (flashing light signal assembly with automatic pedestrian gate) pedestrian warning devices;
 - c. Two pedestrian exit swing gates;
 - d. Advance Americans with Disability Act (ADA) tactile stripes at each approach;
 - e. Fencing to channelize pedestrians to the crossing; and
 - f. Precast concrete panel crossing surface.
8. The existing at-grade crossing at "I" Street at mile post 26.70 (CPUC Crossing Number 004-26.70, DOT Number 834187C) will be closed upon completion of the new at-grade crossing.
9. No protests were filed to the City's application.
10. The City is the lead agency for this project under CEQA, as amended.
11. In March 2002, the City issued a Final EIR for the Community Redevelopment Project that included the Transit Oriented District.
12. In June 2005, the City issued a Final EIR for the City's TOD and Intermodal Station Project.
13. On June 30, 2005, the City of Union City filed a Notice of Determination indicating the project will have a significant impact on the environment, and adopted a Statement of Overriding Considerations for the impacts that could not be fully mitigated.
14. The Final EIR required mitigation measures to address impacts from the rail-crossing aspect of the project.
15. The crossing is necessary to provide a primary access route for the 800 parking stalls east of the BART station as well as the 1300 new housing units less than ¼ mile from the new east entrance to BART.

A.17-02-010 ALJ/RWH/ek4

16. The crossing configuration provides a safer alternative over the existing at-grade crossing at I street that will be closed and is more practicable than constructing a grade-separated crossing, given the existing configuration of the Oakland Subdivision and the BART station, environmental impact, and cost exceeding the entire public investment in the Union City Station District.

17. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR, and Notice of Determination.

Conclusions of Law

1. The seven-factor test applies to the crossing proposed for the City's TOD and Intermodal Station District.

2. A rail crossing to allow direct connection to the BART Station with the City's TOD in the public interest and there is a public need for the crossing.

3. As a matter of policy, the Commission disfavors new at-grade crossings.

4. The unique facts of this crossing overcome the presumption against an at-grade crossing.

5. It is impracticable to construct a grade-separated overcrossing at the Transit Oriented District.

6. The City has convincingly shown that it has eliminated potential safety hazards.

7. The City has convincingly shown that it is in the public interest to close the existing at-grade pedestrian and vehicular crossing at "I" Street, mile post 26.70 (0.4 miles north (railroad west) of the proposed pedestrian crossing.

8. The City has committed to file under GO 88-B its plans to install mitigation measures for the Niles Subdivision Track Decoto Road at-grade highway-rail crossing identified as DOT Number 749781G, CPUC Number 001D-26.60.

A.17-02-010 ALJ/RWH/ek4

9. The City has committed to file under GO 88-B its plans to install sidewalk improvements at the existing Oakland Subdivision Track Decoto Road at-grade highway-rail crossing identified as DOT Number 834186V, CPUC Number 004-26.90.

10. The City has committed to file under GO 88-B its plans to install mitigation measures at the existing Niles Subdivision Track Whipple Road at-grade highway-rail crossing identified as DOT Number 749776K, CPUC Number 001D-25.60.

11. The City has committed to file under GO 88-B its plans to install mitigation measures at the existing Coast Subdivision Track Smith Street identified as DOT No. 749927X, CPUC Number 001L-25.20.

12. The Final EIR found that potentially significant impacts under the Commission's purview could result from a pedestrian grade-separated crossing under the BART and UPRR tracks, but that these impacts would be reduced to less than significant levels with implementation of the identified mitigation measures.

13. The Commission has reviewed and considered the 2002, 2005, and 2006 Final EIRs and finds that they are adequate for its independent decision-making purposes.

14. Hearings are not necessary in this proceeding.

15. The proceeding should be closed.

ORDER

IT IS ORDERED that:

1. The application by the City of Union City for an at-grade crossing at mile post 27.10, located approximately 1,000 ft. south (railroad east) of the Decoto

A.17-02-010 ALJ/RWH/ek4

Road/Union Pacific Railroad Oakland Subdivision railroad crossing, City of Union City, California, mile post 26.90, is approved.

2. The new at-grade crossing at mile post 27.10 for the City of Union City's Transit Oriented Development and Intermodal Station District shall have the crossing treatments and configuration described above and specified in the application. The new public at-grade crossing at mile post 27.10 for the City of Union City's Transit Oriented Development and Intermodal Station will be identified as DOT Number 859611R, and CPUC Crossing Number 004-27.08.

3. The City of Union City shall install the following at the new at-grade crossing at mile post 27.10:

- a. Two CPUC Standard Number 8 (flashing light signal assembly) warning devices;
- b. Two CPUC Standard Number 9 (flashing light signal assembly with automatic pedestrian gate) pedestrian warning devices;
- c. Two pedestrian exit swing gates;
- d. Advance Americans with Disability Act tactile stripes at each approach;
- e. Fencing to channelize pedestrians to the crossing; and
- f. Precast concrete panel crossing surface.

4. Upon completion of the new at-grade crossing at mile post 27.10, the City of Union City shall permanently close the existing at-grade pedestrian and vehicular crossing at "I" Street, mile post 26.70, identified as CPUC Crossing Number 004-26.70, and DOT Number 834187C.

5. We adopt and incorporate by reference the significant environmental impacts and proposed mitigation measures set forth in the Final Environmental Impact Report prepared by the City of Union City.

A.17-02-010 ALJ/RWH/ek4

6. We adopt and incorporate by reference the Findings of Fact in the Final Environmental Impact Report prepared by the City of Union City.

7. The City of Union City shall provide the Commission's Rail Crossings Engineering Section of the Rail Crossings and Engineering Branch of the Safety Enforcement Division finalized engineering crossing designs prior to commencement of construction activities. The Rail Crossings Engineering Section of the Rail Crossings and Engineering Branch of the Safety Enforcement Division will evaluate their conformance with the crossing designs approved in this decision.

8. The City of Union City shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

9. The City of Union City shall notify the Commission's Rail Crossings Engineering Section of the Rail Crossings and Engineering Branch of the Safety Enforcement Division at least 30 days prior to the opening of the crossing. Notification should be made by certified U.S. Mail and by e-mail to rces@cpuc.ca.gov.

10. With 30 days after completion of the work authorized by this decision, the City of Union City shall notify the Commission's Rail Crossings Engineering Section of the Rail Crossings and Engineering Branch of the Safety Enforcement Division, in writing, by submitting a completed Commission Standard Form G (Report of Changes at Highway Grade Crossing and Separations), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission web site. The completed report must be submitted in hard copy and via email to rces@cpuc.ca.gov.

A.17-02-010 ALJ/RWH/ek4

11. This authorization shall expire if not exercised within 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.

12. A request for extension of the three-year authorization must be submitted to the Commission's Rail Crossings Engineering Section of the Rail Crossings and Engineering Branch of the Safety Enforcement Division at least 30 days before the expiration of that period.

13. The preliminary determination for this proceeding of hearings are necessary is changed to "no hearings necessary."

14. All motions not previously ruled on in this proceeding are denied.

15. Application 17-02-010 is closed

This order is effective today.

Dated November 30, 2017, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

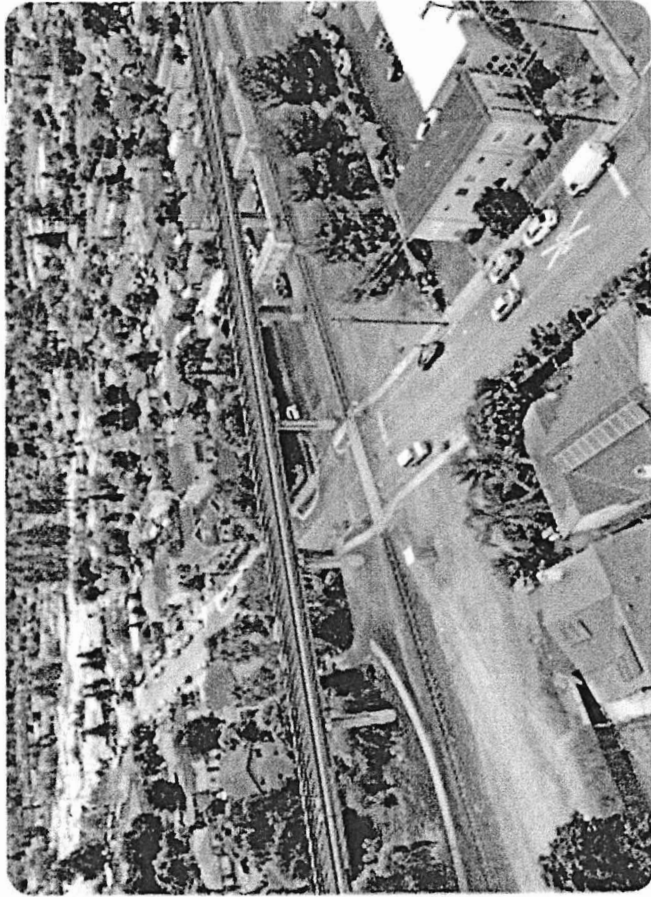
LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

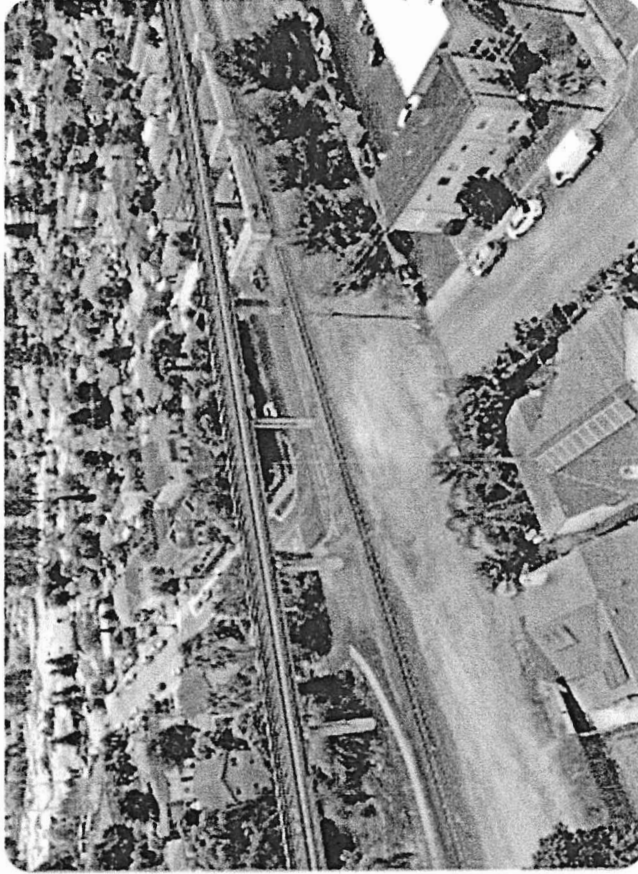
Commissioners

"I" Street At-Grade Crossing (Oakland Sub)



BEFORE

AFTER



METROPOLITAN
TRANSPORTATION
COMMISSION



BART
ba



UNION
CITY
transit



State of California - Department of Fish and Wildlife
2024 ENVIRONMENTAL DOCUMENT FILING FEE
CASH RECEIPT
DFW 753.5a (REV. 01/01/24) Previously DFG 753.5a

Print

StartOver

Save

AC RECEIPT #: 3679248

RECEIPT NUMBER:
01--10/11/2024--389

STATE CLEARINGHOUSE NUMBER (If applicable)
--

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY.

LEAD AGENCY	LEAD AGENCY EMAIL	DATE
PUBLIC WORKS DEPT. THE CITY OF UNION CITY		10/11/2024
COUNTY/STATE AGENCY OF FILING		DOCUMENT NUMBER
ALAMEDA		24 - 389

ALAMEDA COUNTY CLERK-RECORDER
1106 MADISON STREET
OAKLAND, CA 94607
(510) 272-6362

CLOSURE OF RAILROAD AT-GRADE CROSSING AT I STREET IN UNION CITY

ISSUED TO:
PUBLIC WORK DEPT. OF THE CITY OF UNIO

RECEIPT # 3679248

DATE 10/11/2024 08:58:38 AM

SERVICE PGS QTY FEE

CASHIERING

HANDLING FEE 1 1 50.00

Total Amount Due \$50.00

CASH 50.00

Total Amount Paid \$50.00

MELISSA WILK
County Clerk-Recorder
Deputy: Sandy H

PROJECT APPLICANT NAME	PROJECT APPLICANT EMAIL	PHONE NUMBER
FAROOQ AZIM		(510) 675-5368
PROJECT APPLICANT ADDRESS	CITY	STATE
34009 ALVARADO-NILES ROAD	UNION CITY	CA
ZIP CODE		
94587		
PROJECT APPLICANT (Check appropriate box)		
☒ Local Public Agency	☐ School District	☐ Other Special District
☐ State Agency	☐ Private Entity	

CHECK APPLICABLE FEES:

- ☐ Environmental Impact Report (EIR) \$4,051.25 \$ 0.00
☐ Mitigated/Negative Declaration (MND)(ND) \$2,916.75 \$ 0.00
☐ Certified Regulatory Program (CRP) document - payment due directly to CDFW \$1,377.25 \$ 0.00

- ☒ Exempt from fee
☒ Notice of Exemption (attach)
☐ CDFW No Effect Determination (attach)
☐ Fee previously paid (attach previously issued cash receipt copy)

- ☐ Water Right Application or Petition Fee (State Water Resources Control Board only) \$850.00 \$ 0.00
☒ County documentary handling fee \$ 50.00
☐ Other \$

PAYMENT METHOD:

- ☒ Cash ☐ Credit ☐ Check ☐ Other

TOTAL RECEIVED \$ 50.00

SIGNATURE

AGENCY OF FILING PRINTED NAME AND TITLE