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To: [Banuelos, Caroline](#); [Rogers, Natalie](#); [Alvarez, Eddie](#); [Fleming, Victoria](#); [MacDonald, Dianna](#); [Okrepkie, Jeff](#); [Stapp, Mark](#)
Cc: [CityCouncilListPublic](#)
Subject: [EXTERNAL] Agenda Item #15.1 - Jennings Avenue Bicycle and Pedestrian Railroad Crossing
Date: Monday, December 1, 2025 2:53:59 PM

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From: James L. Duncan

To: Honorable Mayor and Members of the Santa Rosa City Council

Re: Agenda Item #15.1 - Jennings Avenue Bicycle and Pedestrian Railroad Crossing Real Property Agreement and Construction and Funding Agreement with the Sonoma-Marin Area Rail Transit District and Appropriation of Funds to Construct the Crossing.

I am submitting the following comments for your consideration regarding this Agenda Item.

In August 2017, the California Public Utilities Commission (CPUC) issued Decision 17-08-017 ruling that the City had made "a convincing showing of safety of the [Jennings] at-grade crossing had been established." (D.17-08-017, p. 5.) The CPUC also ruled that Public Utilities Code sections 1201, 1202, 99152, and 229, read together, provided the CPUC with exclusive jurisdiction over the Jennings Crossing. (Id, pp. 9-13.) Exclusive jurisdiction means that only the CPUC has discretionary authority over the Jennings Crossing. Accordingly, SMART is limited to only ministerial authority to realize the CPUC's decisions.

SMART's requirements for insurance and indemnification must presumably be based on the premise that the approved crossing is unsafe. SMART's Real Property Agreement must presumably be based on the premise that it has ultimate authority over whether the approved Jennings Crossing is actually constructed. But both premises are contrary to D.17-08-017.

The City initiated the design of the Jennings Crossing and will initiate its inclusion in the existing Quiet Zone where train horns are not routinely sounded at rail crossings. Any legal action based solely on the design of the Jennings Crossing would be barred by the design immunity section 830.6 of Government Code. Any legal action based solely on the failure of the train engineer to sound the train horn in a Quiet Zone would be barred by preemptive federal law CFR 222.23 (a)(2). Thus, any legal action regarding areas over which only the City has control would be barred by State and Federal law.

Only SMART has control over the operation of its crossing signal system and the operation of its trains by its employees. The City should not have any liability for anything over which it has no control.

SMART's Draft Construction and Funding Agreement provides that SMART may terminate the Agreement without cause: "6.C Termination Either party may terminate this Agreement by giving 30-days prior written notice to the other party, in the manner described in Section 6.D of this Agreement, of its intent to terminate. In the event of termination, CITY shall pay District for all expenses associated with the proportion of work

completed as of the termination date" This provision should be of great concern to the City Council, especially in view of SMART's role in why the approved Jennings Crossing was not constructed as planned in 2017.

In 2015, when the City Council was considering the EIR for the Jennings Crossing, SMART Chief Engineer Bill Gamlen told the Council "First and foremost, SMART supports the City in whatever it chooses to do at the Jennings Crossing. We've been working very closely with staff and the CPUC looking at this location probably for well over two years. We will continue to do that. I'd also like to point out the CPUC does have jurisdictional authority here." When asked whether " ... a bike-ped crossing with the swing gates, as we've seen on the pictures here, is that considered a safe crossing?" Gamlen answered "Absolutely".

The CPUC approved the Jennings Crossing in September 2016. The City promptly requested SMART to bid on having its contractors construct the crossing at the City's expense. By early 2017, everything was in place to build the Jennings Crossing -- the City and SMART's contractors had set the price to build the crossing and connect it to SMART's signal system, the specific plans had been approved by the CPUC's staff, the City Council had allocated the funding and authorized the City Manager to enter into a Reimbursement Agreement to build the crossing. But SMART stalled the finalization of the Reimbursement Agreement.

Finally, in June 2017, SMART sent the Reimbursement Agreement to the City for signature. SMART also sent the City an unrelated agreement in which the City would fund the costs of SMART's Quiet Zones. Bill Gamlen said the Reimbursement Agreement would have to go to the SMART Board of Directors for approval. The City promptly returned the signed Reimbursement Agreement but did not return the Quiet Zone agreement.

The Reimbursement Agreement did not go to the SMART Board. SMART's General Manager reportedly suspended the Reimbursement Agreement stating that the City must also enter into the Quiet Zone Agreement. The Reimbursement Agreement never did go to the SMART Board.

Meanwhile, the estimated cost of constructing the Jennings Crossing has at least doubled and the actual construction date is uncertain. The history of why the Jennings Crossing has remained closed all these years shows that SMART's assurances cannot be trusted. The termination provision noted above would allow SMART to terminate the construction of the Jennings Crossing at any time without cause and then bill the City for any unfinished construction work.

Thank you,

James L. Duncan



Santa Rosa, 95401