

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JASON NUTT, DIRECTOR, DEPARTMENT OF
TRANSPORTATION AND PUBLIC WORKS
SUBJECT: JENNINGS AVENUE BICYCLE AND PEDESTRIAN RAILROAD
CROSSING

AGENDA ACTION: NO ACTION REQUIRED

RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council hold a Study Session to receive information, ask questions, discuss and provide direction to staff regarding the Jennings Avenue Bicycle and Pedestrian Railroad Crossing project.

EXECUTIVE SUMMARY

The purpose of this item is to allow the Council the opportunity to receive information, ask questions, discuss and provide direction to staff regarding the Jennings Avenue Bicycle and Pedestrian Railroad Crossing project.

BACKGROUND

For years, pedestrians and cyclists have used Jennings Avenue to cross the railway. When the Sonoma Marin Area Transit (SMART) train was initially being considered and the original Environmental Impact Report (EIR) for the SMART project was circulated, a North Area Station was planned at Jennings Avenue along with a crossing at this location. Over the years, the City has recognized the need for a crossing at Jennings Avenue and it has been documented in several City Council approved planning documents, including the Bike and Pedestrian Master Plan, the North Station Area Plan and the City's General Plan.

When a new location for the North Area Station was identified on Guerneville Road, the EIR for the SMART project was amended to reflect this change. However, the need for a crossing at Jennings Avenue still remained. In order to determine the most effective crossing for Jennings Avenue, the City conducted a subsequent EIR to evaluate several options including whether to build an undercrossing, an overcrossing, an at-grade crossing, or no crossing at all.

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Following an extensive EIR process, the City submitted an application to the California Public Utilities Commission (CPUC) to allow the City to construct an at-grade crossing at Jennings Avenue. To the exuberance of the City and community, CPUC ultimately approved the City's request and the City proceeded to work with SMART to construct the crossing. Unfortunately, in September of this year, SMART issued a letter explaining that they no longer support the construction of an at-grade crossing at Jennings Avenue.

PROJECT TIMELINE AND DECISIONS

The proposed Jennings Avenue Bicycle and Pedestrian Crossing at the SMART rail corridor is identified in the City's General Plan, the Bicycle and Pedestrian Master Plan 2010, and specifically in Policy C-5.8 of the North Santa Rosa Station Area Specific Plan.

In October 2012, SMART completed a feasibility study of various options for a pedestrian and bicycle crossing at Jennings Avenue and the SMART rail corridor.

On May 21 2013, the Council, by Resolution No. 28284, unanimously directed City staff to complete an environmental review in compliance with the California Environmental Quality Act (CEQA) for an at-grade pedestrian and bicycle crossing of the SMART railroad tracks at Jennings Avenue, including an ADA compliant bicycle and pedestrian rail overcrossing alternative and possible removal of an existing crossing at West Sixth Street, West Seventh Street or West Eighth Street.

At Council's request, the Jennings Avenue Pedestrian and Bicycle Rail Crossing Final EIR analyzed an at-grade pedestrian and bicycle rail crossing, with and without a potential closure of an existing crossing at either West Sixth Street, West Seventh Street or West Eighth Street and a pedestrian and bicycle rail overcrossing, at the same level of detail.

On September 27, 2014, the Metropolitan Transportation Commission (MTC) approved the list of projects for the Active Transportation Program (ATP) Cycle 1 federal transportation funds which included proposed funding in the amount of \$8,157,000 for the Jennings Avenue Pedestrian and Bicycle Rail Crossing, a grade-separated crossing of the SMART rail corridor.

Since the approval of the ATP funds for the grade-separated crossing, the City was in regular communication with MTC regarding the environmental review analysis and ultimate selection of the project by the City Council. On February 11, 2015 a field meeting was held with Senator Mike McGuire to review the options regarding the potential of an at grade crossing at the Jennings location. In attendance at this meeting were Mike McGuire, Chris Rodgers, Jake Mackenzie, Chris Culver (representing Shirley Zane's office), Steve Birdleough, Julie Combs, Chuck Regalia and David Guhin.

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On March 17, 2015, the City Council approved Resolution No. 28620 approving the Final EIR and directed staff to proceed with the approval and design of an at-grade crossing at Jennings Avenue without closure of any downtown crossings.

Based on that City Council decision, the MTC Commission at its meeting on April 22, 2015, revised the ATP list of projects by removing the Jennings Avenue Pedestrian and Bicycle Rail Crossing.

Shortly following the Final EIR approval, the City submitted an application for an at-grade crossing of the railroad tracks at Jennings Avenue to the California Public Utilities Commission (CPUC) on May 14, 2015. This document is attached (Attachment 1) to provide detailed information about the project background, including images of the proposed crossing, technical analysis relating to sight distance and letters of support.

On May 19, 2015, the City Council by Resolution No. 28638 authorized the Director of Transportation and Public Works to submit an application requesting \$503,313 of Transportation Development Act (TDA) Article 3 funds to construct an at-grade pedestrian and bicycle crossing at Jennings Avenue and the SMART railroad tracks, pending the California Public Utilities Commission's (CPUC) approval of the City's application.

The CPUC Safety Enforcement Division (SED) filed a protest to the City's request for an at-grade rail crossing on June 4, 2015, on the basis that CPUC General Order 75-D policy establishes a net zero increase in the number of at-grade rail crossings.

Interested parties to the City's at-grade crossing application participated in a CPUC mandated mediation between September and November 2015, and included the City, CPUC, North Coast Railroad Association (NCRA), SMART, the Friends of SMART, Western Farm Center and James Duncan. During these meetings, the group, led by an Administrative Law Judge (ALJ), Jeanne McKinney, discussed various safety measures that would need to be included in the design of an at-grade crossing. Suggestions included adding skirts to the crossing gates or full-height gates, countdown signal heads, exit gates with panic bars, pull gates for entry, video monitoring and crossing guards during school hours.

On November 30, 2015, SMART installed permanent fencing along the rail corridor that closed the unofficial crossing at Jennings Avenue. City staff developed and signed a pedestrian and bicycle detour that utilized the crossing at Guerneville Road. This detour added approximately 1/2 mile to the commute for students to/from Helen Lehman Elementary School.

On December 22, 2015, a decision was reached that the closure of an existing downtown crossing would not be pursued further by the CPUC SED staff.

ALJ McKinney conducted a site walk and Public Participation Hearing at Helen Lehman Elementary School on February 1, 2016, to solicit feedback from the community. Over 100 members of the public attended the hearing and 28 spoke in favor of the at-grade

crossing. Participants included representatives for Congressman Thompson and Supervisor Zane, Jake Mackenzie for SMART, and Council Members Coursey, Combs, Carlstrom, Schwedhelm, Wysocki and Rodgers.

ALJ McKinney held evidentiary hearings between March and June 2016 which included testimony by all interested parties.

On July 18, 2016, ALJ McKinney issued a proposed decision to the CPUC granting the City application to construct an at-grade pedestrian and bicycle crossing across the SMART tracks at Jennings Avenue. Within the proposed decision, ALJ McKinney utilizes the following key findings to support her proposed decision:

1. The City demonstrated a public need.
2. "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 includes protection and warning devices in compliance with federal and state regulations...As part of the design process, the City consulted with SMART and SED."
3. "The local community, emergency authorities and the general public all support an at-grade crossing for Jennings Avenue...SMART supports the at-grade pedestrian crossing...Local public officials support the at-grade crossing. Local organizations such as the Sierra Club, Sonoma County Bicycle Coalition and North Bay Greenbelt Alliance support the at-grade crossing because it will increase bicycle and walking access...No community groups or others came forward to express opposition to the at-grade crossing."
4. While SED did not recommend the proposed at-grade crossing, "SED did stipulate that the design itself is safe."
5. The City adequately weighed the cost implications of both an at-grade and separated-grade crossing.
6. "Commission precedent demonstrates that a finding of impracticability can be made even when it is physically possible to build a separated-grade crossing...The facts in the case at hand are comparable to San Diego and LACMTA. In both those cases, the commission approved at-grade crossings."
7. "The City, the Joint Parties and Duncan all applied the seven-factor test to the Jennings Crossing and found that a separated-grade crossing was impracticable. This decision reaches the same conclusion."

In addition, the proposed decision notes that SMART indicated that train speeds in the area of the crossing would not exceed 35 miles per hour, which is consistent with and reasonable for the existing sight distance at the proposed crossing. The Finding of Facts section of the proposed decision outlines numerous information about the necessity of the at-grade crossing at Jennings Avenue.

The CPUC approved Decision 16-09-002 on September 15, 2016, granting the City's application for an at-grade crossing at Jennings Avenue and incorporated the findings contained in ALJ McKinney's proposed decision.

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Decision 16-09-002 must be acted on within three years of the final decision by the CPUC. Extensions may be requested. Based on the action by the CPUC, the City must initiate the project by September 15, 2019 (Attachment 2).

On September 28, 2016, staff submitted a letter to SMART noting that the City was actively working on developing an agreement that would allow SMART to construct the recently approved at-grade crossing at Jennings Avenue at the City's expense. The letter clearly notes the City's interest in aggressively pursuing this agreement to ensure construction of the crossing was completed prior to initiation of SMART's revenue service. City and SMART staff were unable to finalize a draft agreement until June 2017. Evidenced by staff notes, SMART delayed completion of the agreement due to significant delays in responding to requests and revisions.

On October 16, 2016, the SED filed an application for rehearing of the CPUC's Decision 16-09-002. This action was an effort to further SED's contention that a grade-separated crossing would be safer and consistent with CPUC policies.

The City finalized construction drawings for the Jennings Avenue crossing and received concurrence from SED on June 1, 2017, as directed by the CPUC decision.

SMART forwarded the finalized the construction agreement for the City's approval on June 9, 2017, and SMART staff indicated that if the final agreement could be signed and received by SMART by June 14, 2017, it would be placed on the agenda for the June 21, 2017, SMART Board of Director's meeting for consideration. The City hand-delivered a signed agreement on June 13, 2017, in advance of SMART's Board of Director's meeting. In that same correspondence, SMART staff noted that they requested that the Quiet Zone Maintenance Agreement be executed at the same time.

SMART notified the City on June 21, 2017, that it would not consider the Jennings Avenue Crossing Agreement until the City executed the Quiet Zone Maintenance Agreement.

The CPUC made its final decision denying the SED's appeal of the Jennings Avenue Crossing on August 17, 2017. In this final ruling, the CPUC states, "...we considered safety and determined that the proposed Jennings Avenue at-grade crossing was sufficiently safe." In its conclusion, the CPUC further states, "Safety is of paramount importance to the Commission. Ensuring safe service is in the public interest. Safety is thus a critical element of public interest. In this particular case, public interest necessitates consideration of the safety impacts of a separated-grade crossing and the alternative detour. As discussed above, both of these options present safety concerns."

In May 2018, responding to city staff, MTC rescinded the remaining TDA Article III funds which were set to expire in June 2018 based on the unique circumstances related to the construction of the at-grade pedestrian and bicycle crossing at Jennings Avenue and the SMART railroad.

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On August 20, 2018, SMART submitted a letter opposing the construction of the Jennings Avenue at-grade pedestrian crossing on the basis of public safety.

PRIOR CITY COUNCIL REVIEW

On August 14, 2012, the Council adopted Resolution No. 28181 authorizing a funding agreement with the SMART District to complete environmental review and design alternatives for a grade separated bicycle and pedestrian crossing at Jennings Avenue.

On November 13, 2012, staff presented the results of the SMART feasibility study to Council, which was continued to a future date with direction for staff to study an at-grade crossing as the preferred project.

On January 13, 2013, Council received a letter from the California Public Utilities Commission (CPUC) recommending that the City identify two existing at-grade rail crossings, namely West Sixth, West Seventh or West Eighth Street to close in exchange for a new pedestrian and bicycle rail crossing at Jennings Avenue.

On May 21, 2013, the Council approved Resolution No. 28284 directing staff to complete environmental review in compliance with the California Environmental Quality Act (CEQA) for an at-grade pedestrian and bicycle crossing of the SMART railroad tracks and Jennings Avenue, including an ADA compliant bicycle and pedestrian rail overcrossing alternative and possible removal of an existing crossing at either West Sixth Street, West Seventh Street or West Eighth Street.

On November 18, 2014, Council held a public hearing on the Draft EIR, evaluating an at-grade pedestrian and bicycle crossing of the SMART railroad tracks and Jennings Avenue, including an ADA compliant bicycle and pedestrian rail overcrossing alternative with and without a potential closure of an existing crossing at either West Sixth Street, West Seventh Street or West Eighth Street and a pedestrian and bicycle rail overcrossing.

On March 17, 2015, the City Council approved Resolution No. 28620 approving the Final EIR and Resolution No. 28621 approving an at-grade pedestrian and bicycle rail crossing at Jennings Avenue without closure of an existing rail crossing.

On November 29, 2016, the Council took action to enter into an agreement with SMART allowing SMART's contractor to perform the construction of the at-grade crossing to expedite the process to complete construction prior to commuter rail service.

ANALYSIS

Staff acted on the direction from Council to develop, design and receive approval for the Jennings Avenue Crossing:

- Certified the Final EIR.
- Received approval from CPUC to construct a new at-grade crossing of the rail tracks at Jennings Avenue, that did not include the closure of any downtown at-grade crossings.
- Completed construction drawings and received approval from SED and SMART as required by the CPUC.
- Developed an agreement with SMART to utilize SMART's contractor to construct the crossing prior to the initiation of revenue service and delivered a final signed agreement by the June 14, 2017, deadline established by SMART.

The CPUC's decision granting the City's application for an at-grade crossing clearly demonstrates that the City's design would result in a safe crossing. Key findings and statements contained within the decision are as follows:

- "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." (6.1, page 24)
- "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." (6.2, page 25)
- "SED does not assert that the at-grade crossing, as proposed by the City, does not have the appropriate required safety features necessary for an at-grade crossing." (6.2, page 24)
- "The City has made a convincing showing that it has eliminated all potential safety hazards." (6.3.1.2, page 29)
- "The local community, emergency authorities and the general public all support an at-grade crossing for Jennings Avenue." (6.3.1.3, page 30)
- "SMART supports the at-grade pedestrian crossing." (6.3.1.3, page 31)
- "...SED did stipulate that the design itself is safe." (6.3.1.4, page 31)
- "Important considerations in other cases authorizing at-grade crossing (without the closure of an existing at-grade crossing) include: support of emergency authorities, safe design and train speeds, barriers to view, and local development plans. All of these considerations are found in the instant case." (6.3.1.6, page 35)
- "The City has convincingly shown that it has eliminated all potential safety hazards." (Conclusions of Law, page 41)

Staff negotiated a construction cost of \$1,825,000 with SMART for the construction of the Jennings Avenue Crossing, if completed prior to the initiation of revenue service. This estimate included the crossing improvements as well as system integration costs to insert the Jennings Avenue Crossing into SMART's positive train control and signaling network. Additional site work would be constructed by City contract that would increase the total construction cost to \$2,257,000.

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Since construction was not completed within the proposed timeline, staff estimates that construction costs could now exceed \$4.0 million due to challenges now that SMART is fully operational. Many unknowns exist, such as:

- Might SMART seek to deny access to its right-of-way?
- What conditions will SMART impose as a function of the City's encroachment application?
- Can work be completed without interrupting SMART's revenue service?
- What is the cost of interrupting SMART's revenue service?
- What is the current cost of integrating the crossing controls into SMART's positive train control and signaling network?

The City was forced to return approximately \$325,000 of TDA Article III funds due to expiration of the grant on June 30, 2018.

Based on the action by the CPUC, the City must initiate the project by September 15, 2019. An extension can be requested up to 30 days prior to the expiration of the order.

FISCAL IMPACT

Current project funds equal \$1,503,700. If Council wishes to proceed with the Jennings Avenue Crossing, additional funds will be required. This project is grant eligible; however, the next grant cycle begins Spring 2019.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

In 2014, the Bicycle and Pedestrian Advisory Board (BPAB) by motion supported the staff recommendation to submit a grant application requesting funds from the Active Transportation Program (ATP) funds to construct the Jennings Avenue bicycle and pedestrian crossing at the SMART rail corridor.

On March 19, 2015, the Bicycle and Pedestrian Advisory Board (BPAB) by motion supported the staff recommendation for the allocation of FY 2015/16 TDA III funds to the Jennings Avenue at-grade bicycle and pedestrian crossing at the SMART rail corridor.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 - Application to the California Public Utilities Commission to Construct an A-Grade Crossing at Jennings Avenue, May 14, 2015
- Attachment 2 - Decision Granting Application for At-Grade Crossing, California Public Utilities Commission Decision 16-09-002, September 15, 2016

CONTACT

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