

Decision 07-10-003 October 4, 2007

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

Application of the Port of Stockton to construct a new at-grade railroad crossing as well as to install passive and active warning devices at Navy Drive within the County of San Joaquin.

Application 07-07-013  
(Filed July 16, 2007)

**OPINION GRANTING AUTHORITY TO CONSTRUCT A NEW AT-GRADE HIGHWAY RAIL CROSSING AT NAVY DRIVE IN THE PORT OF STOCKTON**

**Summary**

This decision grants the Port of Stockton's (Port) request for authority to construct a new at-grade highway-rail crossing at Navy Drive by extending its existing tracks over Navy Drive in the Port. The crossing will be identified as Commission Crossing No. 123-1.22.

**Discussion**

The Port requests authority to construct a new at-grade highway-rail crossing at Navy Drive near Washington Street in the Port. Navy Drive is currently a north/south running, two lane, two-way street at the project location. There is an existing industrial spur that serves a customer that ends just prior to Navy Drive. The project will extend two tracks across Navy Drive to serve a new Pacific Ethanol Inc. (PEI) manufacturing plant. The track is currently owned by the Port and is served by the Central California Traction Company.

The proposed warning devices consist of one Commission Standard No. 9 flashing light signal with automatic gate in each traffic direction. A California Manual on Traffic Control Devices (CAMUTCD) R8-8 "Do Not Stop on Tracks"

sign will be located adjacent to the stop bars on both approaches. In addition to the CAMUTCD W10-1 railroad advance warning signs placed on Navy Drive, a CAMUTCD W10-2 will be placed on each approach of Washington Street to Navy Drive. All pavement markings will comply with CAMUTCD guidelines.

A 100-foot long unmountable raised median will be installed on the north side of the crossing and a 75-foot long unmountable raised median will be installed on the south side.

This will be a two-track crossing with CTCC running 4 trains per day at 10 miles per hour. The current Average Daily Traffic (ADT) count is approximately 1,750 cars per day at 45 miles per hour. This would increase to 2,000 cars per day after completion of the PEI plant. The 2025 ADT is expected to be 2,200 cars per day at 45 miles per hour.

The Port states that separation of grade is not practicable due to the geometry of the nearby intersection and the long approaches needed to clear the tracks. The tracks cannot be raised or lowered due to the need for extremely long approaches and adjacent industrial sidings serving other customers.

#### Environmental Review

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 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. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission must approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the

environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.<sup>1</sup> Here, Port is the lead agency for this project and the Commission is a responsible agency. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.<sup>2</sup>

The Port Board of Directors certified and adopted the Final Environmental Impact Report (FEIR) on January 17, 2007. The FEIR addresses the concerns raised by Commission staff in comment letters and acknowledges the jurisdiction of the Commission. It also indicates the Port will meet any safety requirements put forth by the Commission. We have reviewed the FEIR for the project and believe it is adequate for our decision-making purposes.

With respect to the potentially significant noise and transportation impacts identified in the FEIR, the Commission finds that the Port adopted feasible mitigation measures to either eliminate or substantially lessen those impacts. The Port adopted a Statement of Overriding Considerations for those impacts that could not be mitigated to less-than-significant levels. We will adopt Port's environmental findings and mitigations for purposes of our approval.

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<sup>1</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

<sup>2</sup> CEQA Guidelines, Sections 15050(b) and 15096.

### **Filing Requirements and Staff Recommendation**

Application 07-07-013 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 3.9, which relates to constructing a railroad across a public road. The Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section has reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the Port's request.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3196 dated July 25, 2007, and published in the Commission Daily Calendar on July 20, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3196.

### **Waiver of Comment Period**

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

### **Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. Notice of the application was published in the CDC on July 20, 2007. No protests have been filed.

2. The Port requests authority, under Public Utilities Code Sections 1201-1205, to construct a new at-grade crossing at Navy Drive. The crossing will be identified as Commission Crossing No. 123-1.22.

3. The Port is the lead agency for the project under CEQA, as amended.

4. The Commission is a responsible agency for this project and has reviewed and considered the Port's environmental documentation specified in this decision, and finds the documentation adequate for decision-making purposes.

5. The Commission finds that for each potentially significant impact related to safety, transportation, or noise, the Port sought feasible mitigation measures to reduce those impacts to less-than-significant levels. For those impacts that they were unable to reduce to less-than-significant levels, the Port adopted a Statement of Overriding Consideration in its approval of the project.

### **Conclusions of Law**

1. The application is uncontested and a public hearing is not necessary.
2. The application should be granted as set forth in the following order.

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

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

1. The Port of Stockton (Port) is authorized to construct a new at-grade crossing at Navy Drive. The crossing will be identified as Commission Crossing No. 123-1.22.

2. Public safety requires that the crossing be equipped with warning devices as summarized in the discussion section of this decision.

3. Construction and maintenance costs shall be borne in accordance with an agreement that has been entered into between the Port and Pacific Ethanol Inc.

Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

4. Within 30 days after completion of the work under this order, the Central California Traction Company shall notify the Commission's Rail Crossing Engineering Section (RCES) in writing, ) that the authorized work was completed by submitting a completed Standard Commission Form G (Report of Changes at Highway Grade Crossing and Separations).

5. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

6. A request for extension of the two-year authorization must be submitted to RCES at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

7. This application is granted as set forth above.

8. Application 07-07-013 is closed.

This order is effective today.

Dated October 4, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners