

Decision_____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Sacramento for Authority to construct a new McKinley Village Way Underpass roadway-rail crossing, proposed CPUC Crossing No. 001A-91.60-B, DOT No. 440824N, under the Union Pacific Railroad, within the City of Sacramento, California.

Application 14-08-006
(Filed August 7, 2014)

**DECISION AUTHORIZING THE CITY OF SACRAMENTO TO
CONSTRUCT A NEW GRADE-SEPARATED CROSSING
UNDER THE UNION PACIFIC RAILROAD COMPANY TRACKS
IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO**

Summary

This decision grants the City of Sacramento authorization to construct a new grade-separated highway-rail crossing under the tracks of the Union Pacific Railroad Company in the City of Sacramento, Sacramento County. The new crossing will be identified as McKinley Village Way, California Public Utilities Commission Crossing No. 001A-91.60-B and United States Department of Transportation No. 440824N.

This proceeding is closed.

Discussion

The City of Sacramento (City) requests authority to construct a grade-separated highway-rail crossing (crossing) under three tracks (two mainline Martinez Subdivision tracks and one mainline Fresno Subdivision tracks) of the Union Pacific Railroad Company (UPRR) in the City, Sacramento County, at mile

post 91.5 on UPRR Martinez Subdivision railroad tracks. The new McKinley Village Way will be a two-lane roadway serving the new McKinley Village neighborhood.

The City states that the new crossing will provide a required additional access route into a new residential neighborhood called McKinley Village. The crossing is part of the larger McKinley Village Project, which includes development of 336 residential units, a neighborhood recreation center, parks, and associated infrastructure. The McKinley Village neighborhood is within the area bounded by the UPRR tracks and the California Department of Transportation's (Caltrans) Interstate 80/State Route 51 (Capital City Freeway) in the City. The underpass will provide safe public access to and from the neighborhood under the UPRR tracks. The grade-separated crossing will result in increased efficiency of public safety and health services delivery will be adequately provided with minimized response times.

To provide continued and unrestricted railroad operations during construction, the underpass construction will proceed in two stages. The first stage will construct the northerly portion of the structure and shoofly tracks for both UPRR mainline Martinez Subdivision tracks and the Fresno Subdivision turnout track. Once the three shoofly tracks become operational, the southerly portion of the underpass can be constructed without impact to railroad operations.

The McKinley Village Way underpass will be approximately 65 feet wide and 16 feet 8 inches high. It will extend approximately 150 feet through the levee under three tracks of the UPRR on the western leg of the Elvis Wye. The new McKinley Village Way will be a 46 feet wide, two-lane vehicular roadway with a 10 feet wide raised median, as well as 4 feet wide pedestrian sidewalks that are

compliant with the United States Department of Transportation's Americans with Disabilities Act Standards for Transportation Facilities, and 7 feet wide bikes lanes in both directions. The crossing will comply with all minimum clearance requirements set forth in California Public Utilities Commission (Commission or CPUC) General Order (GO) 26-D.

The crossing will be identified as CPUC Crossing No. 001A-91.60-B and United States Department of Transportation (DOT) No. 440824N. UPRR, BNSF Railway Company and the National Railroad Passenger Corporation run approximately 36 combined freight and passenger trains per day at this location.

Environmental Review and CEQA Compliance

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 has the exclusive authority to 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 either the public agency that carries out the project,¹ or the one with the greatest responsibility for supervising or approving the project

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

as a whole.² Here, the City is the lead agency for this project because they prepared the environmental documents, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. 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.³ Also, as a responsible agency, 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.⁴

The crossing is part of the larger McKinley Village Project. In November 2013, the City issued the Draft Environmental Impact Report (DEIR) for the McKinley Village Project and issued the Final Environmental Impact Report (FEIR) in March 2014. On April 29, 2014, the City issued Resolution No. 2014-0102, certifying the DEIR/FEIR and adopting the Mitigation Monitoring Program (MMP) and CEQA Findings of Fact (FOF) for the McKinley Village Project. The FOF states that although the McKinley Village Project will cause a number of potentially significant environmental impacts, all of the identified impacts can be reduced to less-than-significant levels by the adoption of feasible mitigation measures. The City determined that the proposed project would not have a significant effect on the environment because all identified impacts have been reduced to less-than-significant levels by the adoption of the MMP.

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

⁴ CEQA Guideline Section 15096(g).

On April 30, 2014, the City filed a Notice of Determination (NOD), approving the project and adopting the existing FEIR. The NOD states that an Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA, mitigation measures were made a condition of the approval of the project, and findings were made pursuant to the provisions of CEQA. The NOD also states that the project will have a significant impact on the environment. However, as explained in the FOF, a Statement of Overriding Considerations was not adopted for this project because all impacts from the project will be reduced to a less-than-significant level by the adopted mitigation measures. The finding that the project will have a less-than-significant impact with mitigation incorporation is consistent with the DEIR/FEIR. Thus, the NOD should have stated that the project will not have a significant effect on the environment.

Impacts identified under CEQA relating to the rail crossing are within the scope of the Commission's jurisdiction. The FEIR and other environmental documents did not identify any impacts associated with the rail crossing aspect of the overall project. The Commission reviewed and considered the City's DEIR/FEIR, MMP, FOF, and NOD as these documents relate to this grade-separated highway-rail structure and find these documents adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public road across a railroad.

The Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch has inspected the site of the proposed crossing, reviewed

and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossing be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3340, dated August 14, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, it is not necessary to disturb the preliminary determinations.

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

Denise Tyrrell is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on August 12, 2014.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a new crossing under three tracks owned by UPRR in the City, Sacramento County. This new grade-separated structure will be identified as CPUC Crossing No. 001A-91.60-B, and DOT No. 440824N.

3. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.

4. The City is the lead agency for this project under CEQA.

5. On March 2014, City issued the FEIR for the McKinley Village project, of which the rail crossing is one aspect of the project.

6. On April 29, 2014, the City issued an FOF that states that although the McKinley Village Project will cause a number of potentially significant environmental impacts, all of the identified impacts can be reduced to less-than-significant levels by the adoption of mitigation measures and the MMP to track compliance with these mitigation measures.

7. None of the potentially significant impacts identified, and thus none of the mitigation measures adopted, related to the rail crossing aspect of the project.

8. The proposed McKinley Village Way underpass will provide safe public access to and from the neighborhood and will result in increased efficiency of public safety and health services delivery will be adequately provided with minimized response times.

Conclusions of Law

1. Impacts related to the rail crossing aspect of a project are within the scope of the Commission's permitting process.

2. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's DEIR/FEIR, MMP, FOF, and NOD.

3. The DEIR/FEIR, MMP, FOF, and NOD reflect the Commission's independent judgment and analysis.

4. The DEIR/FEIR, MMP, FOF, and NOD prepared by the City as the documentation required by CEQA for the project are adequate for our decision-

making purposes. The McKinley Village Project will not have a significant effect on the environment.

5. The DEIR/FEIR, MMP, FOF, and NOD were completed in compliance with CEQA.

6. The application is uncontested and a public hearing is not necessary.

7. The application should be granted as set forth in the following Order.

O R D E R

IT IS ORDERED that:

1. The City of Sacramento is authorized to construct a new grade-separated highway-rail crossing under three tracks (two mainline Martinez Subdivision tracks and one mainline Fresno Subdivision tracks) owned by the Union Pacific Railroad Company in the City of Sacramento, Sacramento County, at mile post 91.5 on Union Pacific Railroad Company Martinez Subdivision railroad tracks. This new grade-separated crossing shall be identified as California Public Utilities Commission Crossing No. 001A-91.60-B and United States Department of Transportation No. 440824N.

2. The City of Sacramento shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least five (5) business days prior to opening the grade-separated roadway structure. Notification must be made to rceb@cpuc.ca.gov.

3. Within 30 days after completion of the work under this order, the City of Sacramento shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings 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 Form G page at <http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg.htm>. This report may be submitted electronically to rceb@cpuc.ca.gov as outlined on the web page.

4. Within 30 days after completion of the work under this order, Union Pacific Railroad Company shall notify the Federal Railroad Administration of the existence of the roadway under track crossing by submitting a United States Department of Transportation CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently Union Pacific Railroad Company shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

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

6. This authorization shall expire if not exercised within three years, unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

7. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

8. The application is granted as set forth above.

9. Application 14-08-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.