

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Kern to construct a grade separation of a public road under the tracks of the San Joaquin Valley Railroad in an unincorporated area of the County of Kern, California. Proposed C.P.U.C. Crossing No. 103Q-111.61-B; Proposed D.O.T. Crossing No. 936384Y.

Application 14-04-017
(Filed April 14, 2014)

**DECISION AUTHORIZING THE COUNTY OF KERN
TO CONSTRUCT A GRADE-SEPARATED
HIGHWAY-RAIL CROSSING UNDER THE SAN
JOAQUIN VALLEY RAILROAD LANDCO
SUBDIVISION MAIN LINE TRACKS IN KERN COUNTY**

Summary

This decision authorizes the County of Kern to construct a grade-separated highway-rail crossing under the San Joaquin Valley Railroad Landco Subdivision main line tracks in an unincorporated area of Kern County. The new crossing will be identified as Atlas Street, California Public Utilities Commission Crossing Number 103Q-111.61-B and United States Department of Transportation Number 936384Y.

This proceeding is closed.

Discussion

The County of Kern (County) requests authorization to construct a grade-separated highway-rail crossing (crossing) under the San Joaquin Valley Railroad (SJVR) Landco Subdivision main line tracks in an unincorporated area

of Kern County. The crossing will extend from Atlas Court westerly, under the SJVR tracks, to the new intersection of Landco Drive, south of Hageman Road.

The County states that the proposed crossing will serve the general public's need by providing alternate traffic circulation and emergency access to a large commercial/industrial area that includes petroleum refining and shipping activities. Nearly 200 acres of this area are served by a single access road, Standard Street, which has an at-grade highway-rail spur crossing identified as California Public Utilities Commission (CPUC/Commission) Crossing No. 103Q-112.40-C and United States Department of Transportation (DOT) No. 029470T. On a number of occasions, rail switching or other rail car incidents have blocked the spur crossing for several hours. The new crossing will serve as a second ingress/egress point to allow emergency responders to freely enter and exit the area without disruption from rail cars. The crossing will be identified as Atlas Street, CPUC Crossing No. 103Q-111.61-B and DOT No. 936384Y.

The crossing will be approximately 3000 feet long, 36 feet wide, and span under three SJVR tracks. The County will construct a new roadway, Landco Drive, to run approximately 700 feet south from the existing Knudsen Drive/Hageman Road T-intersection. The County will then construct Atlas Street from Landco Drive, traveling approximately 3000 feet at a 90-degree angle and predominantly eastward, crossing under the SJVR tracks, and connecting with the existing Atlas Court roadway east of the tracks. The proposed roadway at the point of crossing will maintain a minimum of 17.5 feet vertical clearance from the roadway surface to the bottom of the overhead structure, compliant with minimum clearance requirements set forth in CPUC General Order (GO) 26-D.

SJVR main and spur tracks will be removed during bridge construction and rail operations will be halted until construction completion.

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 as a whole.² Here, the County is the lead agency for this project, 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 As a responsible agency, the Commission must

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

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

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

consider the impacts and mitigation measures for those parts of the project that it has jurisdiction over.⁴

The County published a Mitigated Negative Declaration (MND) in September 2013. On November 14, 2013, the County filed a Notice of Determination (NOD) with the State Clearinghouse, which states that the project will not have a significant effect on the environment, a MND was prepared for this project pursuant to the provisions of CEQA, mitigation measures were made a condition of the approval of the project, a mitigation monitoring plan was adopted for this project, and findings were made pursuant to the provisions of CEQA. Due to comments received by the California Department of Fish & Wildlife, the September 2013 MND was revised. In January 2014, the County published a Mitigated Negative Declaration (MND) entitled *Final Initial Study/Mitigated Negative Declaration, Standard Street Secondary Access Project*, which identified environmental impacts and associated mitigation measures related to the project. The MND replaced the earlier September 2013 MND.

The Initial Study and MND found that the project would have a less than significant impact with mitigation incorporation. However, none of the impacts for which mitigation was required were related to the rail-crossing aspect of the project.

The Commission reviewed and considered the County's NOD and MND and finds them adequate for our decision-making purposes.

⁴ CEQA Guideline (Title 14 of the California Code of Regulations), Section 15096(g)(1).

Filing Requirements and Staff Recommendation

The 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

The application was published in the Commission's Daily Calendar on April 18, 2014. In Resolution ALJ 176-3335, dated May 1, 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 April 18, 2014.
2. The County requests authority, under Public Utilities Code Sections 1201-1205, to construct a grade-separated highway-rail crossing that will span under three tracks owned by SJVR in an unincorporated area of Kern County. The crossing will be identified as Atlas Street, CPUC Crossing No. 103Q-111.61-B and DOT No. 936384Y.
3. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.
4. The County is the lead agency for this project under CEQA.
5. The Commission is a responsible agency for this project, and has reviewed and considered the lead agency's MND and NOD.
6. The County prepared the MND, titled *Final Initial Study/Mitigated Negative Declaration, Standard Street Secondary Access Project*, dated January 2014, for this project.
7. On November 14, 2013, the County filed a NOD.
8. The MND finds that there will be no significant impacts due to the rail crossing part of the overall project.
9. The Commission reviewed and considered the County's MND and NOD as they relate to this crossing and finds them adequate for our decision-making purpose.
10. The proposed crossing will serve the general public's need by providing alternate traffic circulation and emergency access to a large commercial/ industrial area which includes petroleum refining and shipping activities.

Conclusions of Law

1. The MND and NOD reflect the Commission's independent judgment and analysis.
2. The MND and NOD prepared by the County as the documentation required by CEQA for the project are adequate for our decision-making purposes.
3. The MND and NOD were completed in compliance with CEQA.
4. The application is uncontested and a public hearing is not necessary.
5. The application should be granted as set forth in the following Order.

ORDER**IT IS ORDERED** that:

1. The County of Kern is authorized to construct a grade-separated highway-rail crossing, under the San Joaquin Valley Railroad Landco Subdivision tracks in an unincorporated area of Kern County.
2. The grade-separated highway-rail crossing shall have the configuration described above and specified in the application and its attachments. The crossing shall be identified as California Public Utilities Commission Crossing Number 103Q-111.61-B and United States Department of Transportation Number 936384Y.
3. The County of Kern shall comply with all applicable rules, including California Public Utilities Commission General Orders, California Manual on Uniform Traffic Control Devices, and Americans with Disabilities Act.
4. The County of Kern shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering

Branch at least five business days prior to opening the crossing. Notification shall be made to rceb@cpuc.ca.gov.

5. Within 30 days after completion of the work under this order, the County of Kern 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 www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg.htm. This report may be submitted electronically to rceb@cpuc.ca.gov <mailto:rceb@cpuc.ca.gov> as outlined on the web page.

6. Within 30 days after completion of the work under this order, the San Joaquin Valley Railroad Company shall notify the Federal Railroad Administration of the existence of the new grade-separated highway-rail crossing by submitting a U.S.DOT CROSSING INVENTORY FORM, form FRA F6180.71. A copy shall be provided concurrently 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.

7. 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.

8. 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 Engineering Branch at least 30 days before the expiration of that period. A copy of the extension request shall be sent to all interested parties.

9. This application is granted as set forth above.
10. Application 14-04-017 is closed.

This order becomes effective 30 days from today.

Dated _____, 2014, at San Francisco, California.