

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the CITY OF SAN JOSE for an Order authorizing construction of a grade-separated pedestrian/bicycle crossing (CPUC No.001E-55.65-AD) over tracks of the Union Pacific Railroad Company (MP 55.70-Coast Subdivision, DOT No.440645X) near Blossom Hill Road in the City of San Jose, County of Santa Clara.

Application 14-05-019
(Filed May 14, 2014)

DECISION GRANTING AUTHORIZATION TO THE CITY OF SAN JOSE TO CONSTRUCT A GRADE-SEPARATED PEDESTRIAN CROSSING AT BLOSSOM HILL STATION OVER THE UNION PACIFIC RAILROAD COMPANY TRACKS IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA

Summary

This decision grants the City of San Jose authorization to construct a new grade-separated pedestrian crossing over the Union Pacific Railroad Company's Coast Subdivision tracks at the Blossom Hill Station in the City of San Jose, County of Santa Clara. The crossing will be identified as California Public Utilities Commission Crossing Number 001E-55.65-AD and United States Department of Transportation Number 440645X.

This proceeding is closed.

Discussion

The City of San Jose (City) requests authority to construct a new grade-separated pedestrian crossing (crossing) over the Union Pacific Railroad

Company (UPRR) Coast Subdivision mainline tracks. The crossing will provide safe access between the Peninsula Corridor Joint Powers Board's (Caltrain) Blossom Hill Station and a new mixed-used transit-oriented development technology campus with residential development west of the tracks.

Rail operations include six freight trains per day travelling 60 miles per hour and eight combined National Railroad Passenger Corporation (Amtrak) and Caltrain passenger trains per day travelling 79 miles per hour at the crossing.

The design and construction of the crossing structure will comply with all minimum clearance requirements set forth in California Public Utilities Commission (Commission/CPUC) General Order (GO) 26-D, as well as all UPRR design standards.

The crossing will be identified as CPUC No. 001E-55.65-AD, and United States Department of Transportation (DOT) No. 440645X.

The crossing will provide a safe passage for pedestrians and bicyclists over UPRR's tracks between the west of the tracks, adjacent to Great Oaks Parkway, over to the east of the tracks at the northwest corner of the intersection of Monterey Road and Ford Road. The structure will be approximately 69 feet long, and ten feet wide. The City will install California Department of Transportation (Caltrans) standard type three chain link railing at both sides of the overhead structure with stairways for access, as well as the landings and ramps, on each end of the overpass structure to be compliant with the Americans with Disabilities Act (ADA). The City will also install 300 feet of chain link fence along the railroad right of way on the east side of the tracks to prevent pedestrians from traversing the tracks at-grade. The new fence, combined with

the existing fence on the west side of the tracks, will mitigate trespassing concerns over the railroad tracks.

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 City is the lead agency for this project because the project is being constructed by the City, and is subject to the City's review and approval, 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

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).

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 must make findings regarding each significant effect of the project components under its jurisdiction; such findings shall include relevant mitigation measures.⁴

The crossing is part of the larger Hitachi Campus and Transit Village Project. In July 2004, the City filed a Notice of Preparation (NOP) titled the *Hitachi Campus and Transit Village Project*. The City released the Draft Environmental Impact Report (DEIR) in March 2005. The City released an amendment to the DEIR in May 2005. On June 6, 2005, the City issued Resolution No. 05-030, certifying the DEIR and Final Environmental Impact Report (FEIR). On June 17, 2005, the City issued an addendum to the FEIR. On June 21, 2005, the City issued Resolution No. 72772, recertifying the DEIR/FEIR, adopting the Mitigation Monitoring and Reporting Program (MMRP) and adopting a Statement of Overriding Considerations (SOC).

On June 29, 2005, 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

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

⁴ CEQA Guidelines, Section 15096(h)

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 and a SOC was adopted for the project.

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, MMRP, NOD, and Amendment as these documents relate to this rail crossing structure and finds these documents adequate for our decision-making purposes.

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

In Resolution ALJ 176-3337, dated June 12, 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, a public hearing is not necessary, and 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

Elizaveta Malashenko is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on May 22, 2014.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated pedestrian crossing over two mainline tracks owned by UPRR in the City, Santa Clara County. The crossing will be identified as CPUC Crossing Number 001E-55.65-AD, and DOT No. 440645X.
3. The crossing design and construction will conform to ADA requirements.
4. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.
5. The City is the lead agency for this project under CEQA.
6. In July 2004, the City filed the NOP for the Hitachi Campus and Transit Village Project, of which the rail crossing is one aspect of the project.
7. In March 2005, the City issued the DEIR for the project.
8. In May 2005, the City released an Amendment to the DEIR.
9. In June 2005, the City issued the FEIR for the project.
10. On June 17, 2005, the City issued an addendum to the FEIR.
11. On June 21, 2005, the City certified this FEIR.

12. On June 29, 2005, the City filed a NOD stating the project will cause a number of potentially significant environmental impacts. Some of the identified impacts can be reduced to less-than-significant levels by the adoption of mitigation measures, MMRP to track compliance with these mitigation measures, and a SOC for the impacts that could not be fully mitigated.

13. The project will have a potential significant effect on the environment and mitigation measures are required, as a condition of approval.

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

15. The City adopted an SOC, stating the project "will provide substantial economic beneficial impacts to the City, will expand the City's tax base, will increase job opportunities, will provide up to approximately 3,000 needed housing units (including affordable units) and foster industrial business retention." In addition, the project "will provide a pedestrian connection to Caltrain and traffic improvements that will relieve existing traffic congestion."

16. The proposed crossing will provide safe public access to and from the neighborhood and will result in increased efficiency of public safety.

Conclusions of Law

1. Impacts such as safety, traffic/transportation, and noise impacts, if related to the rail crossing, are areas within the scope of the Commission's permitting process.

2. The design features selected by City for the crossing are consistent with the GO 26-D requirements regarding pedestrian facilities.

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

4. The DEIR/FEIR, Amendment, and NOD reflect the Commission's independent judgment and analysis.

5. The DEIR/FEIR, titled *Hitachi Campus and Transit Village Project*, dated June 2005, prepared by the City, the Amendment, and the NOD prepared by the City as the documentation required by CEQA for the project are adequate for our decision-making purposes.

6. The DEIR/FEIR, Amendment, and NOD were completed in compliance with CEQA.

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

8. 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 San Jose is authorized to construct a new grade-separated pedestrian-rail crossing over the Union Pacific Railroad Company's Coast Subdivision mainline double tracks at Blossom Hill Station, in the City of San Jose, County of Santa Clara, as described in its application.

2. The grade-separated pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 001E-55.65-AD and United States Department of Transportation Number 440645X.

3. The grade-separated pedestrian-rail crossing shall have the crossing treatments and configuration described above and specified in the application and attachments.

4. The City of San Jose shall comply with all applicable rules, including California Public Utilities Commission General Orders, the United States Department of Transportation's Americans with Disabilities Act Standards for

Transportation Facilities and the California Manual on Uniform Traffic Control Devices.

5. The City of San Jose 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.

6. Within 30 days after completion of the work under this order, the City of San Jose 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.

7. 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 crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71 (inventory form). 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.

8. 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 requires.

9. 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.

10. The application is granted as set forth above.

11. Application 14-05-019 is closed.

This order is effective today.

Dated _____, 2015, at San Francisco, California.