

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Oakland a municipal corporation, acting by and through its Board of Port Commissioners, for permission to construct an at-grade railroad crossing of Maritime Street in the City of Oakland.

Application 15-11-008
(Filed November 9, 2015)

DECISION AUTHORIZING THE PORT OF OAKLAND TO CONSTRUCT ONE NEW AT-GRADE HIGHWAY-RAIL CROSSING ON MARITIME STREET IN THE CITY OF OAKLAND, ALAMEDA COUNTY

Summary

This decision grants the City of Oakland, acting by and through its Port of Oakland Board Commissioners, authorization to construct one at-grade highway-rail crossing on Maritime Street in the City of Oakland, Alameda County. The crossing will be identified as California Public Utilities Commission Crossing Number 098MSL-1.61, and United States Department of Transportation Number 969056Y.

This proceeding is closed.

Discussion

The new Maritime Street at-grade highway-rail crossing (crossing) will provide service from the Union Pacific Railroad (UPRR) yard, to existing and new industries in the Maritime Support Center. Currently, UPRR trains travel through the Joint Intermodal Terminal (JIT), crossing Maritime Street at two locations:

1. Maritime Street near 7th Street identified as California Public Utilities Commission (Commission/CPUC) Number (No.) 001A-1.57-C and United States (US) Department of Transportation (DOT) No. 751047T.
2. Maritime Street near Middle Harbor Road identified as CPUC No. 098-1.60 and US DOT No. 928988H.

UPRR operated trains cross Maritime Street six times to complete a switch assignment. The new crossing will reduce the required UPRR train crossings into two.

The crossing will be located on a property owned by the UPRR. The property owned and controlled by the Port of Oakland (Port), known as Maritime Street, is on an exclusive, perpetual easement, which Port acquired from the Southern Pacific Lines in 1990. The Port is the road agency.

Maritime Street is a four-lane road running north-south with two lanes in each direction. Maritime Street near Middle Harbor Road crossing, identified as CPUC No. 098-1.60 and US DOT No. 928988H, is located south of the proposed crossing. The Maritime Street near Middle Harbor Road crossing is protected with two Commission Standard No. 9 (Flashing Lights Assembly with Automatic Gate Arms) warning devices. The average daily traffic on Maritime Street is 3,765 mainly large trucks. The average daily train count at the crossing will be approximately two trains. The train activity will generally take place outside of working hours of the trucks. In order to keep the number of at-grade highway-rail crossings to a minimum, the Port will close the Middle Harbor Road at-grade highway-rail crossing identified as CPUC Crossing No. 098BFS-1.87 and US DOT No. 928994L.

The Port will include the following features in the construction of the crossing:

- 1) The new crossing will be protected by two Commission Standard No. 9A (Flashing Light Assembly with Automatic Gate Arms and Additional Flashing Light Signals over the Roadway on a Cantilevered Arm) warning devices, one in each direction of travel.
- 2) East or west across Maritime Street trains movements will be required to stop and train conductors will manually activate the at-grade crossing warning devices before crossing Maritime Street.
- 3) The driveway near the crossing will be protected with a Commission Standard No. 9 warning device to prevent vehicular left turns across Maritime Street.
- 4) Raised medians on both approaches will prevent gate drive around incidents.
- 5) Both existing Maritime Street driveway crossings will be integrated to function as a single crossing. Activation of the warning devices on either crossing will activate the other crossing warning devices.
- 6) Advance warning signs, including W10-1 "RXR" and skewed crossing signs will be posted for each direction on Maritime Street and at the nearby driveway.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) 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 Port is the lead agency for this project because the project is being constructed at the Port, by the Port, and is subject to the Port'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 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 Cool Port Oakland Project. In July of 2002, the City of Oakland acting through the Oakland Base Reuse Authority approved a reuse plan for the Oakland Army Base (OAB). The City of Oakland, as the lead

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.

⁴ CEQA Guidelines, Section 15096(h).

agency under CEQA, certified an Environmental Impact Report (EIR) at that time for the OAB Area Redevelopment Plan. On September 17, 2002, the Board, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and the mitigation measures program in the City of Oakland's EIR (Resolution No. 02317). Due to some changes in the project description, primarily on the City of Oakland's property, the 2012 OAB Project Initial Study/ Addendum (2012 Addendum) was prepared. In June 2012, the Board considered the 2012 Addendum and adopted mitigation measures applicable to the Port from the City of Oakland's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP) with Resolution No. 12-76. The EIR project description included, among other Maritime Subdistrict redevelopment activities, a Maritime Support Center (MSC) for centralized ancillary maritime support (AMS) operations on 75 acres located in the vicinity of the existing JIT. The MSC would house activities that directly facilitate the Port's container operations, such as container freight stations, truck parking, container/chassis repair, storage, trans-loading, related cargo handling and distribution operations, and Port harbor maintenance functions.

To ensure that the proposed temperature-controlled logistics facility and other AMS proposals were properly analyzed under CEQA, Port staff, with assistance from Lamphier-Gregory, prepared the "Port of Oakland Third Addendum to the OAB Area Redevelopment Plan EIR: Maritime Support Center Logistics Improvements," dated July 2015 (2015 Addendum). The 2015 Addendum evaluated the proposed project's potentially significant environmental effects, particularly Hazardous Materials, Traffic, and Air Quality and Greenhouse Gas Emissions and concluded that the project would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts

already identified in prior CEQA reviews conducted for the OAB, and thus no further CEQA review is required.

Specifically, the 2015 Addendum found that no further or additional CEQA review is required as none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15164, are present:

- (1) There are no substantial changes to the OAB Project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2002 OAB Area Redevelopment Plan EIR, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b) (2002 EIR), the Port's 2006 Maritime Street Addendum, and the 2012 OAB Project Initial Study/ Addendum (collectively called Previous CEQA Documents);
- (2) There are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Previous CEQA Documents; and
- (3) There is no new information of substantial importance relating to this proposed project, which was not known and could not have been known with the exercise of reasonable diligence at the time the Previous CEQA Documents were certified, which is expected to result in:
 - a. New significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Previous CEQA Documents or
 - b. Mitigation measures, which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those

recommended in the Previous CEQA Documents, and which would substantially reduce significant effects of the OAB Project, but the Port declines to adopt them.

Impacts identified under CEQA relating to the rail crossing are within the scope of the Commission's jurisdiction. The Final EIR (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 FEIR, the 2012 Addendum, and the 2015 Addendum 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 highway across a railroad.

The Commission's Safety and Enforcement Division - Rail Crossings and Engineering Branch has inspected the site of the crossings, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to modify the subject crossing be granted for a period of eight years.

Categorization and Need for Hearings

In Resolution ALJ 176-3367, dated November 19, 2015, 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 November 16, 2015.
2. The City of Oakland, acting by and through its Port of Oakland Board Commissioners, request authority, under Public Utilities Code Sections 1201-1205, to construct a new at-grade highway-rail crossing over Maritime Street in the City of Oakland, County of Alameda. The new crossing will be identified as CPUC Crossing No. 098MSL-1.61 and DOT No. 969056Y.
3. The Port will close the Middle Harbor Road at-grade highway-rail crossing identified as CPUC No. 098BFS-1.87 and DOT No. 928994L
4. The Port is the lead agency for this project under CEQA.
5. The City of Oakland and Federal Transit Administration are the lead agencies for this project under CEQA, as amended.
6. In July of 2002, the City of Oakland acting through the Oakland Base Reuse Authority approved a reuse plan for the OAB. The City of Oakland, as the lead agency under CEQA, certified an EIR at that time for the OAB Area Redevelopment Plan.

7. On September 17, 2002, the Port of Oakland Board Commissioners, acting on behalf of the Port as a responsible agency under CEQA, adopted findings and the mitigation measures program in the City's EIR (Resolution No. 02317).

8. In June 2012, the Board considered the 2012 Addendum and adopted mitigation measures applicable to the Port from the City's OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP) with Resolution No. 12-76.

9. In July 2015 the Port issued an addendum evaluating the proposed project's potentially significant environmental effects, particularly Hazardous Materials, Traffic, and Air Quality and Greenhouse Gas Emissions and concluded that the project would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in prior CEQA reviews conducted for the OAB, and thus no further CEQA review is required.

10. In October 2015, the Port adopted the addendum to the FEIR.

11. The proposed crossing will lower the number of train crossings on Maritime Street in a safe and effective manner.

Conclusions of Law

1. The Port's analysis of the overall environmental impacts is adequate for our decision-making purposes.

2. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR.

3. The FEIR, the 2012 Addendum and the 2015 Addendum reflect the Commission's independent judgment and analysis.

4. The FEIR, the 2012 Addendum and the 2015 Addendum prepared by the City of Oakland and the Port, as the documentation required by CEQA for the project are adequate for our decision-making purposes.

5. The FEIR, the 2012 Addendum and the 2015 Addendum 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.

8. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The City of Oakland, acting by and through its Port of Oakland Board Commissioners, is authorized to construct one new at grade crossing on Maritime Street in the City of Oakland, Alameda County.

2. The new Maritime Street crossing shall have the crossing treatments and configuration described above and specified in the application and its exhibits. The new Maritime crossing shall be identified as California Public Utilities Commission No. 098MSL-1.61 and DOT No. 969056Y.

3. The Port of Oakland shall comply with all applicable rules, including California Public Utilities Commission General Orders, Americans with Disabilities Act and the California Manual on Uniform Traffic Control Devices.

4. The Port of Oakland shall close the Middle Harbor Road at-grade highway-rail crossing identified as California Public Utilities Commission No. 098BFS-1.87 and Department of Transportation No. 928994L.

5. The City of Oakland and Port of Oakland shall comply with all applicable rules, including California Public Utilities Commission General Orders, the

United States Americans with Disabilities Act and the California Manual on Uniform Traffic Control Devices.

6. The Port of Oakland shall notify the California Public Utilities Commission's Safety Enforcement Division – Rail Crossings and Engineering Branch at least five business days prior to opening of the crossing for public use. Notification should be made to rceb@cpuc.ca.gov.

7. Within 30 days after completion of the work under this order, the Port of Oakland 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/Crossings>. This report may be submitted electronically to rceb@cpuc.ca.gov.

8. Within 30 days after completion of the work under this order, the Union Pacific Railroad (UPRR) shall notify the Federal Railroad Administration of the existence of the new Maritime crossing and closure of the Middle Harbor Road crossing by submitting United States Department of Transportation CROSSING INVENTORY FORM, forms FRA F6180.71. Concurrently UPRR shall provide a copy of the inventory forms 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.

9. This authorization shall expire in three years, unless time is extended. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

10. 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.

11. The application is granted as set forth above.

12. Application 15-11-008 is closed.

This order is effective today.

Dated _____, at Sacramento, California.