

Decision 16-10-027 October 27, 2016

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

Application of the City of Carpinteria for authorization to Construct a Bridge over Union Pacific Railroad tracks at railroad mile post 380.49, new crossing DOT # 441148Y to link the Carpinteria Bluffs and Rincon Beach County Park in the City of Carpinteria, County of Santa Barbara.

Application 16-02-009  
(Filed February 11, 2016)

**DECISION AUTHORIZING THE CITY OF CARPINTERIA TO  
CONSTRUCT A GRADE-SEPARATED PEDESTRIAN  
CROSSING OVER THE UNION PACIFIC SANTA BARBARA  
SUBDIVISION MAIN LINE TRACKS IN THE CITY  
OF CARPINTERIA, SANTA BARBARA COUNTY**

**Summary**

This decision authorizes the City of Carpinteria to construct a grade-separated pedestrian rail crossing over the Union Pacific Railroad Company Santa Barbara Subdivision main line track located in the City of Carpinteria, Santa Barbara County. The new grade-separated pedestrian rail crossing will be identified as California Public Utilities Commission Crossing Number 001E-380.49-AD and United States Department of Transportation Number 441148Y.

This proceeding is closed.

**Discussion**

The City of Carpinteria (City) requests authorization to construct a grade-separated pedestrian rail crossing (crossing) over the Union Pacific Railroad Company (UPRR) Santa Barbara Subdivision main line track in the City, Santa

Barbara County. The City proposed Rincon Trail Project (project) will close a gap in the California Coastal Trail. This project will link the Carpinteria Bluffs nature reserve and Rincon Beach County Park, thereby improving recreation safety along the south coast. The crossing will be identified as California Public Utilities Commission (Commission/CPUC) Crossing No. 001E-380.49-AD and United States Department of Transportation (DOT) No. 441148Y.

The nearest highway-rail crossings are located at grade-separated U.S. Highway 101 (CPUC Crossing No. 001E-380.57) to the east and an at-grade private crossing (CPUC Crossing No. 001E-378.93-X) to the west. Due to the lack of a direct non-vehicular access, the frequently traveled route to hike or bike to Rincon Beach County Park from the City of Carpinteria is either along the shoulder of U.S. Highway 101 or across the railroad through an unsanctioned trail. The UPRR track in the City is a major north-south rail route for freight and passenger trains. Despite safety concerns, people walk and bike along and across the UPRR track from the City to Rincon Beach County Park. The project will provide a safe link between the Carpinteria Bluffs nature reserve, Rincon Beach County Park and access to the coast.

The crossing will be a prefabricated bridge approximately 110 feet long and 11 feet wide. The crossing approaches will include trail switchbacks having grades between 7% and 10%. Both crossing and approach trails will be equipped with security fencing and/or railings at least 42 inches in height along portions of the trail for safety and route guidance, and to inhibit users from deviating off the designated path.

The permanent minimum vertical clearance from top of rail on the UPRR track to the bottom of the grade-separated bridge structure will be 26 feet, 3 inches. However, during construction, the vertical clearance will be 21 feet,

which is less than the minimum 22 feet, 6-inch requirement of Commission General Order (GO) 26-D. As such, the Commission interprets this aspect of the City's Application as a request for a temporary exemption from GO 26-D's vertical clearance requirement.<sup>1</sup>

The Commission has previously recognized the possibility that temporary exemptions from vertical clearance requirements may be necessary during construction of crossings, stating that:

Typically, during the construction period of grade-separated crossings, temporary support structures are constructed that may intrude into the track clearance envelope required by GO 26-D. After construction is completed, the temporary support structures are removed and clearance is permanently restored to GO 26-D minimum requirements.<sup>2</sup>

Commission staff has reviewed the City's application and found no safety issues that would warrant denying a temporary exemption from GO 26-D's vertical clearance requirements during construction of this crossing. Further, no protests were received to the City's application. UPRR is in concurrence with the crossing and does not object to the temporary impaired overhead clearance during construction. The horizontal clearance from the center of the track to the bridge structure on each side will be 25 feet, in compliance with GO 26-D requirements.

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<sup>1</sup> Exemptions from vertical clearance requirements are permitted, in the Commission's discretion, pursuant to General Order 26-D, Section 16.2 "Any exemption so granted will be limited to the particular case covered by the application." Id.

<sup>2</sup> Resolution SX-76 at pp. 1-2.

## **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,<sup>3</sup> or the one with the greatest responsibility for supervising or approving the project as a whole.<sup>4</sup> Here, the City 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

<sup>4</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

<sup>5</sup> CEQA Guidelines, Sections 15050(b) and 15096.

<sup>6</sup> CEQA Guideline Section 15096(g).

The crossing is one aspect of the larger project in the City. The project will link the City Rincon Beach County Park with the Carpinteria Bluffs. On May 4, 2015, the City published the Final Mitigated Negative Declaration (FMND) entitled "*Proposed Final Mitigated Negative Declaration: Rincon Trail.*" On May 11, 2015, the City filed a Notice of Determination (NOD) with the State Clearinghouse which states that (1) the project will not have a significant effect on the environment, (2) a Negative Declaration was prepared for this project pursuant to the provisions of CEQA, (3) mitigation measures were made a condition of the approval of the project, (4) a mitigation reporting or monitoring plan was adopted for this project, (5) a Statement of Overriding Considerations was not adopted for this project, and (6) findings were made pursuant to the provisions of CEQA.

Impacts identified under CEQA relating to the construction and implementation of the crossing aspects of the overall project are within the scope of the Commission's jurisdiction. The City's CEQA process identified several impacts as potentially significant without mitigation measures incorporated. However, except for noise impacts, all of the potentially significant aspects of the project were not related to the crossing but are due to other aspects of the larger Rincon Trail Project.

The City's FMND indicates that the proposed project would have potentially significant, albeit temporary, noise impacts due to the construction of the crossing. However, these impacts would be reduced to less-than-significant levels with the implementation of the identified mitigation measures. The FMND adopted mitigation measures related to noise impacts associated with construction of the crossing, which consist of limiting construction activity to set

Construction Hours, and requiring construction equipment to have the original manufacturer's approved muffling devices.

The Commission finds the proposed mitigation measures feasible and reasonable. The Commission reviewed and considered the City's FMND and NOD as these documents relate to the crossing and finds the 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**

The application was published in the Commission's Daily Calendar on February 16, 2016. In Resolution ALJ 176-3373, dated February 25, 2016, 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**

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 February 16, 2016.

2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a crossing that will span over one track owned by UPRR in the City, Santa Barbara County. The crossing will be identified as CPUC Crossing No. 001E-380.49-AD and US DOT No. 441148Y.

3. The City requests permission for a temporary deviation, during the construction period, from the vertical clearance requirements of GO 26-D.

4. The City 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 FMND and NOD.

6. The City prepared the FMND, titled *Proposed Final Mitigated Negative Declaration: Rincon Trail*, dated May 2015, for this project.

7. The FMND identified several impacts as potentially significant without mitigation measures incorporated. However, except for noise impacts, all of the potentially significant aspects of the project were not related to the crossing but are due to other aspects of the larger Rincon Trail Project.

8. The FMND adopted mitigation measures to address noise impacts identified as less than significant with mitigation measures incorporated, including limiting construction activity to set Construction Hours, and requiring construction equipment to have the original manufacturer's approved muffling devices.

9. On May 11, 2015, the City released a NOD.

10. The FMND determined that there will be no significant impacts with mitigation measures incorporated due to the crossing part of the overall project.

11. The Commission reviewed and considered the City's FMND and NOD as they relate to this crossing and finds them adequate for our decision-making purpose.

### **Conclusions of Law**

1. Safety, traffic, noise, and other impacts related to the crossing are areas within the scope of the Commission's permitting process.

2. The FMND and NOD prepared by the City as the documentation required by CEQA for the project are adequate for our decision-making purposes.

3. The FMND and NOD were completed in compliance with CEQA.

4. The FMND and NOD reflect the Commission's independent judgment and analysis.

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

6. The application should be granted as set forth in the following order.

7. The proceeding should be closed.

### **ORDER**

**IT IS ORDERED** that:

1. The City of Carpinteria is authorized to construction a new grade-separated pedestrian rail crossing above Union Pacific Railroad Company track in the City of Carpinteria, Santa Barbara County.

2. The new grade-separated pedestrian crossing and railroad right-of-way fencing shall have the configuration described above and specified in the application and its attachments. The grade-separated pedestrian rail crossing shall

be identified as California Public Utilities Commission Crossing Number 001E-380.49-AD and United States Department of Transportation Number 441148Y.

3. The minimum permanent clearance between the new grade-separated pedestrian rail crossing and the track shall be 26 feet 3 inches.
4. The City of Carpinteria is granted permission for a temporary impaired vertical clearance of 21 feet (measured from top of rail to the lowest portion of the overhead structure or construction falsework) during the construction period only.
5. The Union Pacific Railroad Company shall notify all the track operators about the impaired vertical clearance during construction.
6. The City of Carpinteria shall notify Union Pacific Railroad Company and the Los Angeles Office of the Safety and Enforcement – Rail Operations Safety Branch (ROSB) and Rail Crossings and Engineering Branch at least 15 days but not more than 30 days in advance of the date when the City of Carpinteria will create the temporary reduced vertical clearance. For the California Public Utilities Commission, this notification may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).
7. Within 30 days after completion of the work under this order, the City of Carpinteria 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/crossings](http://www.cpuc.ca.gov/crossings). This report may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

8. The City of Carpinteria 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.

9. Within 30 days after completion of the work under this order, the Union Pacific Railroad Company shall notify the Federal Railroad Administration of the existence of the grade-separated pedestrian 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](mailto:rceb@cpuc.ca.gov).

10. 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.

11. 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 its expiration of that period. A copy of the extension request shall be sent to all interested parties.

12. This application is granted as set forth above.

13. Application 16-02-009 is closed.

This order becomes effective today.

Dated October 27, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.