

Decision 12-08-011 August 2, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of the CITY of RICHMOND and the EAST BAY REGIONAL PARK DISTRICT for an Order authorizing construction of a grade-separated vehicle/pedestrian/bicycle crossing (CPUC No. 001A-16.50-A) over tracks of the Union Pacific Railroad Company (MP - 16.5 Martinez Subdivision) extending Atlas Road into the Point Pinole Regional Shoreline in the City of Richmond, Contra Costa County.

Application 12-01-002
(Filed January 3, 2012)

DECISION GRANTING AUTHORIZATION TO THE CITY OF RICHMOND AND THE EAST BAY REGIONAL PARK DISTRICT TO CONSTRUCT A NEW GRADE-SEPARATED VEHICLE/PEDESTRIAN/BICYCLE CROSSING OVER THE TRACKS OF THE UNION PACIFIC RAILROAD COMPANY IN THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA

Summary

This decision grants the City of Richmond and the East Bay Regional Park District authorization to construct a new grade-separated vehicle/pedestrian/bicycle crossing over the tracks of the Union Pacific Railroad Company for the Point Pinole Mixed-Use Development Project, extending Atlas Road on the south side of the Union Pacific Railroad Company tracks to the north side of the tracks, in the vicinity of Mile Post No. 16.5 of the Union Pacific Railroad Company Martinez Subdivision tracks, in the City of Richmond,

County of Contra Costa. The new grade-separated overcrossing will be identified as CPUC Crossing No. 001A-16.50-A.

Discussion

The City of Richmond (City) and the East Bay Regional Park District (District) propose to construct a new grade-separated vehicle/pedestrian/bicycle crossing over the tracks of the Union Pacific Railroad Company (UPRR) for the Point Pinole Mixed-Use Development Project, to extend Atlas Road and provide access over the tracks into the Point Pinole Regional Shoreline. The new grade-separated vehicle/pedestrian/bicycle crossing is necessary for the functional operation of the Point Pinole Regional Shoreline, to provide vehicles, pedestrians, and bicyclists access into the Point Pinole Regional Shoreline, crossing the UPRR tracks above-grade.

The subject UPRR tracks are the mainline tracks on the UPRR's Martinez Subdivision. Currently, approximately 41 passenger trains and 9 freight trains per day operate at the Tennent Avenue at-grade crossing, northeast of the new grade-separated vehicle/pedestrian/bicycle overcrossing. Passenger trains travel at 43 miles per hour and freight trains travel at 30 miles per hour at the Tennent Avenue at-grade crossing.

The new grade-separated vehicle/pedestrian/bicycle crossing structure will be constructed by the District under the requirements, regulations, and review of the District. The design and construction of the grade-separated vehicle/pedestrian/bicycle crossing structure will comply with all minimum clearance requirements set forth in CPUC General Order 26-D, as well as all UPRR design standards. After construction, the City will take over ownership

and maintain the grade-separated vehicle/pedestrian/bicycle crossing and appurtenances, including its approaches.

The new grade-separated crossing will be 147 feet in length, and will include two 12-foot wide lanes with 2-foot wide gutter pans outside of each traveled way and an attached 10-foot wide concrete pedestrian walkway. Concrete barriers with chain link railing will be provided at the outermost edge of the overhead structure. Additionally, the Atlas Road 190-foot extension on the south side of the UPRR tracks will provide two 12-foot wide lanes, a 2-foot wide gutter pan outside of each traveled way and an attached 10-foot concrete pedestrian walkway. An additional detached concrete pedestrian walkway and Class 1 trail will be provided as a path of travel with American Disabilities Act compliance. The Atlas Road 825 foot extension on the north side of the UPRR tracks will provide two 12-foot wide lanes, a 2-foot wide gutter pan outside of each travelled way, and a detached 10-foot wide asphalt path.

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 California Public Utilities Commission (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 District is the lead agency for this project because the project is being constructed by them, and subject to their 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

In August 1992, the District issued a Final Environmental Impact Report (FEIR) titled *Point Pinole Mixed-Use Development Project*. On October 27, 1992, the City Council reviewed and certified this FEIR. The District developed Resolution No.: 2011-9-210, dated September 6, 2011, stating that the District staff biologists performed a site assessment and determined that there were no changes in the project area, circumstances or information requiring further review. Resolution No.: 2011-9-210 also finds that there have been no substantial changes in the project described in the City's FEIR and that there is no new information that

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.

would result in new or substantially more severe impacts therefore, no further environment review is required for the project. The application states that “A mitigation monitoring program (MMP) designed to ensure compliance with the required mitigation during project implementation has been adopted by the City of Richmond City Council.” It has been determined that the City did not file a Notice of Determination with the State Clearinghouse. The FEIR, issued in August 1992, is certified without a Notice of Determination. In addition, Resolution No.: 2011-9-210 updates the portion of the FEIR that applies to the project.

The Commission reviewed and considered the FEIR and Resolution No.: 2011-9-210 and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendation

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 highway across a railroad.

The Commission’s Consumer Protection and Safety Division – Rail Crossings Engineering Section has inspected the site of the proposed crossing, has 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 176-3259, dated August 12, 2010, 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

Jack Hagan is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on January 5, 2012. There are no unresolved matters or protests. A public hearing is not necessary.
2. The City and District requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated crossing to extend Atlas Road and provide access into the Point Pinole Regional Shoreline, over the tracks of UPRR in the City of Richmond, County of Contra Costa. The new grade-separated crossing will be identified as CPUC Crossing No. 001A-16.50-A.
3. The District is the lead agency for this project under CEQA, as amended.
4. The District prepared a FEIR, titled *Point Pinole Mixed-Use Development Project*, dated August 1992, for this project. On October 27, 1992, the City Council reviewed and certified this FEIR. On September 6, 2011, the District prepared a Resolution No.: 2011-9-210 finding that no changes in the project area, circumstances or information will require further review.
5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR and Resolution No.: 2011-9-210.

6. The project will not have a significant effect on the environment.

7. The FEIR, MMRP and Resolution No. 2011-9-210 reflect the Commission's independent judgment and analysis.

Conclusions of Law

1. The FEIR, titled *Point Pinole Mixed-Use Development Project*, dated August 1992, prepared by the City and Resolution No.: 2011-9-210, dated September 6, 2011, and the MMP prepared by the District as the documentation required by CEQA for the project are adequate for our decision-making purposes.

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

3. 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 Richmond and East Bay Regional Park District are authorized to construct a new grade-separated crossing over the tracks of the Union Pacific Railroad Company for the Point Pinole Mixed-Use Development Project in the vicinity of Mile Post No. 16.50 in the City of Richmond of the County of Contra Costa.

2. The new grade-separated crossing will be identified as CPUC Crossing No. 001A-16.50-A. Union Pacific Railroad Company will acquire and assign a new United States Department of Transportation number to the crossing.

3. The City of Richmond and East Bay Regional Park District 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.

4. The City shall notify the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section at least five (5) business days prior to opening the crossing for public use. Notification should be made to rces@cpuc.ca.gov .

5. Within 30 days after completion of the work under this order, the City of Richmond shall notify the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section in writing, by submitting a completed 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 CPUC web site Form G page at <http://www.cpuc.ca.gov/formg> . This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

6. 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 acquiring a valid United States Department of Transportation crossing number and submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. A copy is to be provided concurrently to the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@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 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 Rail Crossings Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

9. The application is granted as set forth above.

10. Application 12-01-002 is closed.

This order is effective today.

Dated August 2, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J. K. SANDOVAL

MARK J. FERRON

Commissioners