

Decision 12-08-013 August 2, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Eureka for an order to construct a new temporary crossing improvement at the southern part of Eureka, west of Pound Road, for the Elk River Access Area/Hiksari' Trail across the tracks of the North Coast Railroad Authority.

Application 12-03-021
(Filed March 22, 2012)

**DECISION GRANTING AUTHORIZATION TO THE CITY OF EUREKA TO
CONSTRUCT A NEW TEMPORARY AT-GRADE CROSSING OVER THE
NORTH COAST RAILROAD AUTHORITY TRACKS IN THE CITY OF EUREKA,
COUNTY OF HUMBOLDT**

Summary

This decision grants the City of Eureka authorization to construct a new temporary at-grade pedestrian crossing over the tracks of the North Coast Railroad Authority tracks in the City of Eureka in Humboldt County. The new crossing will be identified as CPUC Crossing No. 104-279.60-D.

Discussion

The City of Eureka (City) requests authority to construct new, temporary at-grade pedestrian-only crossing over tracks of the North Coast Railroad Authority (NCRA) in the City, Humboldt County (County). The City states that the purpose of the proposed project is to provide improved public access to the Elk River Access Area/Hiksari' Trail (trail). Currently, the NCRA tracks lie between a convenient public parking location just off State Highway 101 and the trail. People now cross illegally from the parking area across the tracks to access the trail. The City states that the new temporary public crossing will provide an

established, safe location to cross the tracks. The City also proposes that this temporary crossing authorization will expire at such time as NCRA resumes rail service at this location. At that time, the City may request by formal application that the California Public Utilities Commission (Commission) allow it to keep the crossing in place. At such time, a new diagnostic review including the City, NCRA, and Commission staff would be required to determine the configuration of the proposed new crossing, with full consideration of the specifics of rail service on the line, such as train speed and frequency.

The project will create a new 8-foot wide pedestrian path across a single NCRA track. The proposed warning devices shall consist of one Commission Standard 1-R (crossbuck sign on a post) warning device with a Commission Standard 1-D pedestrian crossing sign on each approach, installed 12 feet off centerline of the crossing in each direction of travel. The crossing STOP bars shall be Americans with Disabilities Act (ADA)-compliant detectable warning tactile warning strips placed across the pathway adjacent to the warning device on both sides of the tracks. The track crossing surface shall be asphalt, laid flush with the top of the rails. California Manual on Uniform Traffic Control Devices W10-1 railroad advance warning signs shall be placed in both approach directions. There is currently no rail service on this portion of the NCRA line.

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 it, and is subject to its 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

On January 11, 2011, the City filed a Notice of Determination (NOD) with the Humboldt County Clerk which states, "The proposed project will not have a significant effect on the environment." A Mitigated Negative Declaration (MND) was adopted for the project. Mitigation measures and a mitigation monitoring and reporting program were adopted as a condition of approval of the project.

The Commission reviewed and considered the City's NOD and MND as they relate to this at-grade crossing and finds them adequate for our decision-making purposes.

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.

Filing Requirements and Staff Recommendations

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 road 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 176-3292, dated April 19, 2012, 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

Emory 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 March 28, 2012. There are no unresolved matters or protests. A public hearing is not necessary.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a new temporary at-grade pedestrian crossing over the North Coast Railroad Authority tracks in the City, in Humboldt County.
3. The City is the lead agency for this project under CEQA.
4. On January 11, 2011, the City filed an NOD with the Humboldt County Clerk which states, "The proposed project will not have a significant effect on the environment." An MND was adopted for the project.
5. Mitigation measures and a mitigation monitoring and reporting program were adopted as a condition of approval of the project.
6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's NOD and MND. The NOD and MND prepared by the City as the documentation required by CEQA for the project are adequate for our decision-making purposes.

Conclusions of Law

1. The NOD and MND prepared by the City were completed in compliance with CEQA , and reflect the Commission's independent judgment . With mitigations, the Elk River Access Area/Hiksari' Trail Project will not have significant effect on the environment.
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 Eureka is authorized to construct a new temporary at-grade pedestrian crossing over the North Coast Railroad Authority tracks near the City of Eureka in Humboldt County. The new crossing will be identified as CPUC Crossing No. 104-279.60-D.

2. The proposed warning devices shall consist of one Commission Standard 1-R (crossbuck sign on a post) warning device with a Commission Standard 1-D pedestrian crossing sign on each approach, installed 12 feet off centerline of the crossing in each direction of travel.

3. The crossing STOP bars shall be Americans with Disabilities Act (ADA) compliant detectable warning tactile warning strips placed across the pathway adjacent to the warning device on both sides of the tracks.

4. The track crossing surface shall be asphalt, laid flush with the top of the rails.

5. California Manual on Uniform Traffic Control Devices W10-1 railroad advance warning signs shall be placed in both approach directions.

6. This crossing authorization shall expire at such time as North Coast Railroad Authority resumes rail service at this location.

7. The City of Eureka 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. Notification shall be made to rces@cpuc.ca.gov.

8. Within 30 days after completion of the work under this order, the City of Eureka shall notify the 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.

9. Within 30 days after completion of the work under this order, North Coast Railroad Authority 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. A copy shall 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 .

10. The City of Eureka shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

11. This authorization shall expire if not exercised within one year of the effective date of this decision, 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.

12. A request for extension of the one-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.

13. This temporary crossing authorization will expire at such time as the North Coast Rail Authority or its leaser or other designee resumes rail service at

this location. At that time or in advance of that date, the City of Eureka may request by formal application that the Commission approve the continuation or relocation of the crossing taking into consideration the specifics of pending rail service at the location.

14. The application is granted as set forth above.

15. Application 12-03-021 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