

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Glendale to construct a Grade-Separated Crossing of Fairmont Ave over two Los Angeles County Metropolitan Transportation Authority (LACMTA) tracks, in the City of Glendale, Los Angeles County.

Application 07-02-001
(Filed February 1, 2007)

O P I N I O N

Summary

This decision grants the City of Glendale (City) authority to construct a grade-separated highway-rail crossing of Fairmont Avenue over two Los Angeles County Metropolitan Transportation Authority (LACMTA)-owned mainline tracks, in the City of Glendale, Los Angeles County.

Discussion

LACMTA is one of the five member agencies of the Southern California Regional Rail Authority (SCRRA), which operates Metrolink commuter trains over this railroad line. In addition to Metrolink commuter trains, National Railroad Passenger Corporation (Amtrak) operates Amtrak passenger trains, and the Union Pacific Railroad Company (UPRR) operates freight trains over this railroad line.

Plans attached to the application show the minimum vertical clearance from top of rail to the lowest point of the structure will be 24 feet

9 inches after the completion of construction. However, during construction the vertical clearance will be 21 feet 0 inches. Commission General Order (GO) 26-D requires a minimum vertical clearance of 22 feet 6 inches. City requests a permission for temporary deviation from the vertical clearance requirements of GO 26-D. The Rail Crossings Engineering Section (RCES) of the Commission's Consumer Protection and Safety Division contacted SCRRA, Amtrak, and UPRR regarding the temporary deviation, and their representatives indicated they do not oppose the request.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources (PR) 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 must approve the project pursuant to Sections 1201-1202 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 the public agency with the greatest responsibility for supervising or approving the project as a whole.¹ Here, California

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

Department of Transportation (Caltrans) is the lead agency for this project and the Commission is a responsible agency. 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.²

An Initial Study/Environment Assessment (IS/EA) was prepared by Caltrans and the Federal Highway Administration (FHWA), resulting in a Mitigated Negative Declaration/Finding of No Significant Impact (MND/FONSI). The MND incorporated traffic mitigation reduced the impact to less than significant. The MND/FONSI finds that the project, in combination with proposed mitigation measures, would not have a significant effect on the environment and was certified on July, 10, 2000. The CPUC reviewed the MND/FONSI and finds it adequate for our decision-making purposes. Specifically, for the transportation concerns within the scope of the Commission's permitting process, we find that the City adopted feasible mitigation measure to either eliminate or substantially lessen any associated impacts of the crossing project.

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.7 of Rules of Practice and Procedure, which relates to the construction of a public highway across a railroad. RCES reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant City's request.

² CEQA Guidelines, Sections 15050(b) and 15096.

Categorization and Need for Hearings

In Resolution ALJ 176-3187, dated February 15, 2007, and published in the Commission Daily Calendar on February 16, 2007, the Commission preliminary categorized this application as Ratesetting, and preliminary determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3187.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. City also requests that this decision be made effective immediately due to impending funding deadlines. 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 and this decision will be made effective immediately.

Assignment of Proceeding

Richard Clark 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 5, 2007. There are no unresolved matters or protests; a public hearing is not necessary.

2. City requests authority, under Public Utilities Code Sections 1201-1205, to construct a grade-separated highway-rail crossing over two LACMTA-owned tracks.
3. City requires permission for temporary deviation, during construction period, from the vertical clearance requirements of GO 26-D. SCRRRA, Amtrak, and UPRR do not oppose this request.
4. Caltrans is the lead agency for this project under CEQA, as amended.
5. Caltrans and the FHWA prepared an IS/EA resulting in an MND/FONSI.
6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's MND/FONSI.
7. City requests this decision be made effective immediately due to impending funding deadlines.

Conclusions of Law

1. The MND/FONSI prepared by Caltrans and FHWA as the documentation required by CEQA for the project is adequate for our decision-making purposes.
2. We adopt the City's NOD. With respect to significant impacts from traffic, we find that the lead agency adopted feasible mitigation measures to substantially lessen the environmental impact to a less-than-significant level. We adopt these mitigation measures for purposes of our approval.
3. The application is uncontested and a public hearing is not necessary.
4. The application should be granted as set forth in the following order.

ORDER

IT IS ORDERED that:

1. The City of Glendale (City) is authorized to construct a grade-separated highway-rail crossing of Fairmont Avenue over two Los Angeles County Metropolitan Transportation Authority owned-tracks, identified as CPUC Crossing No. 101VY-8.10-A.

2. City is granted permission to have temporary impaired vertical clearance of 21 feet 0 inches (measured from top of rail to the lowest portion of overhead structure) during the construction period only.

3. Southern California Regional Rail Authority (SCRRA), National Railroad Passenger Corporation (Amtrak) and Union Pacific Railroad Company (UPRR) shall issue instructions to their operating employees regarding the temporary reduced overhead clearance of 21 feet 0 inches beneath the proposed Fairmont Avenue Overhead bridge structure. They shall submit the instructions in advance of the date when the City will create the temporary overhead clearance to the Los Angeles office of the Commission's Consumer Protection and Safety Division - Rail Operations Safety Branch (ROSB) and Rail Crossings Engineering Section (RCES).

4. The City shall notify SCRRA, UPRR and Amtrak and the Los Angeles office of ROSB and RCES at least 15 days but not more than 30 days in advance of the date when the City will create the temporary overhead clearance.

5. Within 30 days after completion of the grade-separated crossing, City shall notify RCES that the authorized work is completed by submitting a completed Commission Standard Form G titled *Report of Changes at Highway Grade Crossings and Separations*.

6. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

7. A request for extension of the three-year authorization period must be submitted to RCES at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

8. This application is granted as set forth above.

9. Application 07-02-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.