

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Hesperia to construct a public road under an existing railroad operated by BNSF Railway Company.

Application 09-01-003
(Filed January 8, 2009)

DECISION GRANTING AUTHORITY TO THE CITY OF HESPERIA TO CONSTRUCT A PUBLIC ROAD UNDER AN EXISTING RAILROAD OWNED BY BNSF RAILWAY COMPANY WITHIN THE CITY OF HESPERIA, IN THE COUNTY OF SAN BERNARDINO

Summary

This decision grants the City of Hesperia (City) authorization to construct an underpass grade-separation structure for the existing BNSF Railway Company’s (BNSF) Mainline 2 railroad tracks, in the City, in the County of San Bernardino. The structure will grade-separate the existing railroad tracks and the future extension of Rancho Road in the City, in the County of San Bernardino, and is to be identified as CPUC Crossing No. 002-48.00-A.

Discussion

The City proposes to construct a public road beneath BNSF’s Mainline 2 railroad tracks at the future realigned Rancho Road in the City, in the County of San Bernardino. The project includes the realignment of Rancho Road between 7th Avenue and Danbury Road. The proposed Rancho Road grade-separated highway-rail grade crossing will be identified as CPUC Crossing No. 002-48.00-A. In addition

to BNSF freight trains, the National Passenger Railroad Company (Amtrak) operates Amtrak passenger trains on this line.

Currently, BNSF bisects the west half and east half of the City along a north/south alignment. The nearest public road crossing the railroad to the north of the proposed underpass is an overhead grade-separation structure at Main Street, identified as CPUC Crossing No. 002-45.30-A. The current traffic volume across the Main Street Bridge is 39,000 vehicles per day. This east/west crossing serves the entire City and has insufficient capacity to meet the existing traffic needs. Accidents on either side of or on the Main Street grade-separated crossing have resulted in temporary closure of the roadway. This closure not only affects vehicular traffic, but also severely restricts fire and police departments' response times throughout the City. The nearest public road crossing to the south of the proposed underpass is an underpass grade-separated structure at State Route 15, identified as CPUC Crossing No. 002-59.60-B.

The design and construction of the underpass grade-separation structure shall comply with all minimum clearance requirements set forth in California Public Utilities Commission General Order 26-D. The application states the permanent minimum vertical clearance to be 17 feet 9 inches from the surface of the road crossing under the railway tracks to the bottom of the railroad bridge structure, which meets the minimum requirement for General Order 26-D of 15.0 feet.

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 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 which 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 it is carrying out the rail crossing, and the Commission is a responsible agency because it has the 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

The City filed a Notice of Determination (NOD) in compliance with the California Public Resource Code, dated September 12, 2006. The NOD 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

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.

condition of the approval of the project; 4) a statement of overriding considerations was not adopted for this project; and 5) findings were made pursuant to the provisions of CEQA.

The new underpass grade-separation structure is a component of the larger project to realign and widen Ranchero Road from two to four lanes. The City's mitigated negative declaration (MND) found that several resource areas, including air quality, biological resources, cultural resources, noise, population and housing, and transportation and traffic, required mitigation measures to reduce the environmental impacts to below the level of significance. The MND identified all other environmental impacts as being below the level of significance.

In addition, pursuant to CEQA and the National Environmental Policy Act (NEPA),⁴ California Department of Transportation (Caltrans) and the United States Department of Transportation's Federal Highway Administration (FHWA) approved an Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) for this project on August 27, 2008.

The Commission reviewed and considered the MND, the FONSI, and the NOD, and finds them 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 Rules and Practice and Procedures,

⁴ 42 USC 4332 (2)(c) of 1969 as amended provides that projects undertaken in California that utilize federal funds, require discretionary federal approval, or are undertaken by federal agencies are subject to both NEPA and CEQA

which relates to the construction of a public road across a railroad and Rule 3.8 relating to alteration or relocations of an existing railroad crossing.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section has reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the City's request.

Categorization and Need for Hearings

In Resolution ALJ 176-3228 dated January 29, 2009, and published in the Commission Daily Calendar on January 30, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily 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 176-3228.

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

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 January 12, 2009. 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 grade-separated crossing of BNSF's Mainline 2 railroad tracks above a future extension of a realigned Rancho Road.

3. The City, acting as the lead agency under CEQA, certified an MND on March 15, 2006 and filed an NOD in compliance with the Public Resources Code dated September 14, 2006.

4. FHWA/Caltrans approved an EA with FONSI on August 27, 2008.

5. The Commission is a responsible agency for this project pursuant to CEQA, and has reviewed and considered the MND, EA with FONSI, and NOD of the lead agencies.

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

Conclusions of Law

1. The MND and NOD prepared by the City pursuant to CEQA are both 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.

ORDER

IT IS ORDERED that:

1. The City of Hesperia (City) is authorized to construct a new grade-separated railroad crossing of BNSF Railway Company's Mainline 2 railroad tracks above the future extension of a realigned Rancho Road, in the City, in the County of San Bernardino. The new Rancho Road crossing will be identified as CPUC Crossing No. 002-48.00-A.

2. The City shall notify the Commission's Rail Crossing Engineering Section (RCES) at least five (5) business days prior to opening the crossing. Notification should be made to rces@cpuc.ca.gov.

3. Within 30 days after completion of the work under this order, the City shall notify RCES that the authorized work is completed by submitting a completed Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*) of the completion of the authorized work.

4. 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.

5. 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.

6. This application is granted as set forth above.

7. Application 09-01-003 is closed.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.