

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the San Diego Unified Port District to convert an existing at-grade private crossing into an at-grade crossing for a public road over the tracks of San Diego & Arizona Eastern Railway Company and the San Diego Metropolitan Transit System (MTS) in the City of Chula Vista, County of San Diego, California.

Application 10-01-018
(Filed January 19, 2010)

DECISION GRANTING AUTHORIZATION TO THE SAN DIEGO UNIFIED PORT DISTRICT TO CHANGE THE STATUS OF THE AT-GRADE HIGHWAY-RAIL CROSSING OVER THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM TRACKS AND H STREET FROM PRIVATE TO PUBLIC IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO

Summary

This decision grants the San Diego Unified Port District authorization to improve the existing at-grade crossing of H Street and the San Diego Metropolitan Transit System tracks and change the status of the crossing from a private crossing to a public crossing, in the City of Chula Vista, San Diego County. The new crossing is to be identified by CPUC Crossing No. 036C-7.78. The Federal Department of Transportation No. is 662076H.

Discussion

The current crossing of H Street and the San Diego Metropolitan Transit System (“MTS”) tracks is 65 feet wide, a private at-grade crossing, and accessed by the public through gated access to H Street. The San Diego Unified Port

District (“Port”) proposes to improve and change the status of the crossing from private to public as part of the Chula Vista Bayfront Development project (“project”).

Formerly, the San Diego and Arizona Eastern Railway operated the line. However, the line is currently out of service with no foreseeable plans to reinstate service on these tracks. The existing H street private crossing is located at milepost 7.78. The nearest crossings to the north and south are the crossings of F Street (CPUC Crossing No. 7.40) and J Street (CPUC Crossing No. 036-8.47).

The Port proposes to extend and widen H Street as part of the project. H Street would be extended from the Interstate 5 freeway west to Marina Parkway, which is the area where it currently has gated access. The current crossing is located within this proposed extension.

The extension is needed to provide traffic circulation for the Chula Vista Bayfront Development. H Street in its buildout condition would serve an Average Daily Traffic of approximately 7,100.

The Port studied the feasibility of constructing H Street at separated grades from the MTS tracks. However, a grade separation at this location is not geometrically possible because of the following constraints:

- Existing fixed elevations and street slopes of H Street at the intersection of Bay Boulevard and the I-5 bridge.
- The ability to lower the tracks or street is limited, due to the high-ground water elevation related to the nearby sea level.
- Impacts to the adjacent industrial properties including vehicular and pedestrian access.

The Port proposes no active warning devices for the resulting public crossing because the tracks are currently out of service. However, if service ever

resumes along these tracks, the Port agrees to place Commission Standard 9 warning devices (flashing light signal assembly with automatic gate arm) on each roadway approach. Also if service resumes, a diagnostic team will convene beforehand, evaluate the crossing, and determine whether gates and other modifications are needed pursuant to the Commission's General Order 88-B¹ process.

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,² or the one with the greatest responsibility for supervising or approving the project as a whole.³ Here, the Port is the lead agency for this project because it is undertaking and funding the project, and the Commission is a responsible

¹ General Order 88-B sets forth the Rules for Altering Public Highway Crossings.

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

³ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

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.⁴

The Port prepared an Environmental Impact Report ("EIR") in September 1997, and filed it with the San Diego Unified Port District Clerk's Office on October 30, 1997. The EIR reviewed the Chula Vista Business Park and Port Master Plan Amendment, and found that the proposed development would have one significant environmental impact (described below). However, potentially significant impacts that would result from the development would be reduced to less-than-significant levels with mitigation measures.

The EIR identified recommended several mitigation measures to noise, traffic, and short-term air quality impacts. To reduce the noise impact to a nearby recreational vehicle park (park), the EIR recommended locating sources of noise such as loading docks and trash collection facilities of a biomedical manufacturing plant (plant) away from the south side of it to avoid facing the park. Where noise exposure to the park could not be avoided, the EIR recommended that design include noise barriers. To avoid noise impacts to Belding's Savannah sparrow, the EIR recommended surveying for presence before building the plant, and developing a mitigation program if presence was found. To mitigate the traffic impacts, the EIR recommended improving and extending Marina Parkway, and extending H Street to improve circulation. To reduce construction related air quality impacts, the EIR recommended

⁴ CEQA Guidelines, Sections 15050(b) and 15096.

compliance with local regulations. However, none of the potentially significant impacts identified in the environmental document related specifically to the crossing.

The single significant and unavoidable air quality impact, even with proposed design of control and traffic control mitigation measures, was Volatile Organic Compound, and Nitrogen Oxide emissions, which was discussed as an impact associated with the entire project.

The Port filed a Notice of Determination (“NOD”) with the Office of the San Diego County Clerk dated October 8, 1997.

The Commission reviewed and considered the Port’s EIR and finds it 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 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 two years.

Categorization and Need for Hearings

In Resolution ALJ 176-3248 dated February 4, 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, 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

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 4, 2010. There are no unresolved matters or protests. A public hearing is not necessary.
2. The Port requests authority, under Public Utilities Code Sections 1201-1205, to improve an existing private at-grade highway-rail crossing and convert it to a public highway-rail crossing.
3. The proposed crossing is over the inactive MTS railroad line.
4. The Port is the lead agency for this project under CEQA.
5. The Port prepared an EIR and issued a NOD for the project.
6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's NOD.
7. Both the EIR and NOD identified that the proposed project, with mitigations, would have one significant effect and unavoidable impact on emissions of Volatile Organic Compounds and Oxides of Nitrogen. All other impacts would be mitigated to less-than-significant levels.

Conclusions of Law

1. The EIR prepared by the Port as the documentation required by CEQA for the project is 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 San Diego Unified Port District is authorized to construct an at-grade highway-rail crossing to be identified as CPUC Crossing No. 036C-7.78, in the City of Chula Vista, County of San Diego.
2. Should railroad service ever be reinstated on the line, active warning devices in compliance with Commission General Order 75-D, consisting at a minimum of Commission Standard 9 warning devices, shall be installed at the crossing.
3. The San Diego Unified Port District shall notify the Commission's Consumer Protection and Safety Division – Rail Crossing Engineering Section as soon as it becomes aware of any rail service being initiated upon the line.
4. The San Diego Unified Port District shall notify the Commission's Consumer Protection and Safety Division – Rail Crossing Engineering Section at least five (5) business days prior to opening the modified and improved crossing. Notification should be made to rces@cpuc.ca.gov.
5. Within 30 days after completion of the work under this order, the San Diego Unified Port District shall notify the Commission's Consumer Protection and Safety Division – Rail Crossing 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. The San Diego Unified Port District shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

7. This authorization shall expire if not exercised within two 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 two-year authorization period must be submitted to the Commission's Consumer Protection and Safety Division – Rail Crossing 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 10-01-018 is closed.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.