

Decision 09-07-007 July 9, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Tustin to construct an underpass separation structure for the tracks of the Orange County Transportation Authority/Southern California Regional Railway Authority Railway in the City of Tustin, Orange County, State of California.

Application 09-01-014
(Filed January 26, 2009)

DECISION GRANTING AUTHORIZATION TO THE CITY OF TUSTIN TO CONSTRUCT AN UNDERPASS GRADE-SEPARATION STRUCTURE IN THE CITY OF TUSTIN, COUNTY OF ORANGE

Summary

This decision grants the City of Tustin (City) authorization to construct an underpass grade-separation structure for the existing tracks of the Orange County Transportation Authority (OCTA)/Southern California Regional Rail Authority (SCRRA) Orange Subdivision. This structure will grade-separate the existing railroad tracks and the future extension of Newport Avenue in the City of Tustin, Orange County, and is to be identified as CPUC Crossing No. 101OR 177.52-B.

The project is part of the City’s General Plan and included within the County of Orange Master Plan of Arterial Highways to improve traffic circulation in the county.

Discussion

SCRRA is a five-county joint powers authority, created pursuant to State of California Public Utilities Code Section 130255 and California Government Code

Section 6500 et seq., to build, maintain and operate the “Metrolink” commuter train system. The five-county member agencies are comprised of the following: Los Angeles County Metropolitan Transportation Authority, Ventura County Transportation Commission, Orange County Transportation Authority, San Bernardino Associated Governments, and Riverside County Transportation Commission. SCRRA operates Metrolink commuter train service in the five-county areas on rail rights-of-ways owned by the member agencies. In addition to Metrolink commuter trains, the National Passenger Railroad Corporation operates Amtrak passenger trains and BNSF Railway Company (BNSF) operates freight trains on this rail line.

The Pacific Center East Specific Plan is a major device for implementing the City’s General Plan to commercially develop and improve traffic circulation in the area. The implementation of the City’s General Plan consists of two phases. Phase I involves the creation of a new segment of Newport Avenue that connects existing Valencia Avenue and Edinger Avenue. Phase I also involves the realignment of the on-ramp and off-ramp from the Costa Mesa Freeway/State Route 55 to the new segment of Newport Avenue.

Phase II primarily involves the creation of the new grade-separation structure that will connect the new segment of Newport Avenue with the old segment of Newport Avenue, which is currently a cul-de-sac located just north of the railroad tracks. This grade-separation will improve traffic circulation and access to the Costa Mesa Freeway/State Route 55. The new underpass structure will include a bridge that will support two existing and potentially one future set of SCRRA tracks over an extension of Newport Avenue, which will consist of six traffic lanes, a center median, shoulders, bike lanes, and sidewalks on both sides.

The minimum side clearance from center line of each track to any outside obstruction above the top of the rail will be at least 8 ft 6 in. The minimum clearance between the two parallel tracks will be 15 ft. The minimum vertical clearance from the surface of the public road crossing under the railway tracks to the bottom of the underpass structure will be 15 ft 1 in. The design and construction of the underpass grade-separation structure shall comply with the minimum clearance requirements set forth in California Public Utilities Commission General Order 26-D.

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

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).

implements part of the City's General Plan, 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

The new grade-separation bridge supporting the railroad tracks over Newport Avenue is a component of the larger Pacific Center East project to improve traffic circulation and access to the Costa Mesa Freeway/State Route 55, while conforming to the City's Circulation Element of its General Plan and the County of Orange Master Plan of Arterial Highways. The City found that its overall General Plan will impact biological resources, aesthetics, hydrology, transportation/traffic, air quality and noise. However, according to the Environmental Impact Report (EIR), the Newport Avenue grade-separation structure will only impact land use, and, after adoption of mitigation measures, those impacts will be mitigated to a level of less than significant. Because not all impacts relating to the overall project were able to be mitigated to the level of less than significant, a Statement of Overriding Considerations (SOC) was required to approve the project.

The City subsequently filed a Notice of Determination (NOD) in compliance with the California Public Resources Code on May 6, 2003. The NOD states in pertinent part that 1) the project will have a significant effect on the environment; 2) a Supplement to an EIR was prepared for this project; 3) mitigation measures were made a condition of the approval of the project; 4) A

³ CEQA Guidelines, Sections 15050(b) and 15096.

SOC was adopted for this project; and 5) Findings were made pursuant to the provisions of CEQA.

The impact to land use by the new grade-separation has been mitigated to a level of less than significant. The Commission reviewed and considered the Supplement to the EIR, the NOD and SOC and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

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.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section 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 27, 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 new grade-separated crossing of OCTA/SCRRA railroad tracks above a future extension of Newport Avenue.

3. The City is the lead agency for this project under CEQA.

4. The City prepared an EIR and a Supplement for it and issued a NOD adopting a SOC.

5. The Commission is a responsible agency for this project and has reviewed and considered the City's environmental documentation, including the Supplement to its EIR, NOD and SOC.

6. The grade-separation portion of the project, with mitigations, will not have a significant effect on the environment.

Conclusions of Law

1. The Supplement to the EIR, NOD and SOC, as required by CEQA and as adopted by the City, 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 Tustin (City) is authorized to construct a new grade-separated crossing of Orange County Transportation Authority/Southern California Regional Rail Authority railroad tracks above the future extension of Newport Avenue, to be identified as CPUC Crossing No. 101OR-177.52-B, in the City of Tustin, County of Orange.

2. The City shall notify the Commission's Rail Crossing Engineering Section 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 the Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section (RCES) in writing, by submitting a completed standard Commission 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.

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 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. The application is granted as set forth above.

7. Application 09-01-014 is closed.

This order becomes effective 30 days from today.

Dated July 9, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners