

Decision 09-07-013 July 9, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Fairfield to construct a new at-grade crossing across Huntington Drive, South of Peabody Road, in the vicinity of M.P. 53.08 of the Union Pacific Railroad in the City of Fairfield, County of Solano, State of California.

Application 08-12-015
(Filed December 9, 2008;
amended February 11, 2009
and March 12, 2009)

**DECISION GRANTING THE CITY OF FAIRFIELD
AUTHORITY TO CONSTRUCT A NEW AT- GRADE
HIGHWAY-RAIL CROSSING ACROSS THE
TRACKS OF THE UNION PACIFIC RAILROAD**

Summary

This decision grants the City of Fairfield (City) authority to construct a new at-grade highway-rail crossing across Huntington Drive for the extension of a spur track of the Union Pacific Railroad (UPRR) in the City, in the County of Solano. The new crossing shall be identified as CPUC Crossing No. 001A-53.65 C.

Discussion

The City requests authority to construct a new at-grade highway-rail spur crossing across Huntington Drive for the UPRR tracks in the City. The proposed spur crossing will be in one of the City’s industrial areas. The new crossing will allow the servicing of the Frank-Lin Distillers Products, Ltd., a distilled bottling facility, and its warehouse. The facility is being relocated due to the railroad abandoning service along the line that serves the current Frank-Lin Distillers Products facility.

An existing spur track, which connects to a UPRR mainline and is adjacent to a Clorox facility, will be extended southward across Huntington Drive (creating the proposed new crossing) and onto the bottling facility. Rail cars will typically deliver once a week, and occasionally up to twice per week during September, October, and November, totaling between 100 and 125 rail deliveries annually in multiples of 3 to 5 cars at a time.

The new at-grade crossing will include two Commission Standard 9-A warning devices, two W10-1 railroad crossing advanced warning signs, railroad crossing pavement markings, 100-foot long raised medians on both approaches, and a sidewalk on the east side of Huntington Drive with detectable warning tactile strips on both sidewalk approaches.

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 because it **is the roadway owner and** is issuing a Site License for the project and submitting an application to the Commission for authorization **of** the project. 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

Pursuant to CEQA, two Initial Studies were prepared by the City which identified environmental impacts due to the construction and operation of the crossing and the building it would serve. The City signed the first Initial Study on October 29, 2008, finding that the proposed rail crossing could not have a significant effect on the environment. Therefore, the City issued a Negative Declaration based upon a determination on November 18, 2008 by Fairfield City Council. The City signed the second Initial Study, finding that the rail crossing, and the new building it would serve would have less than significant impacts with mitigation measures incorporated. Therefore, the City signed a Mitigated Negative Declaration based upon a determination by the Planning Commission on May 13, 2009.

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.

Environmental impacts related to safety, traffic (transportation), and noise are within the scope of the Commission's permitting process. In its Initial Studies, the City identified no significant impacts related to safety, less-than-significant impacts related to noise, and less-than-significant impacts related to traffic (transportation) with mitigation measures incorporated due to the construction and operation of the crossing. Regarding impacts related to transportation of hazardous materials, one Initial Study acknowledged that concentrated spirits are delivered via rail, but that the operation will be required to comply with state regulations regarding hazardous material storage and record keeping standards.

In the Mitigated Negative Declaration, the City determined that with mitigation measures incorporated for the rail crossing, the project will not have a significant impact on the environment.

The Commission reviewed and considered the Initial Studies, Negative Declaration, and Mitigated Negative Declaration and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements, including Rule 3.9 of Rules of Practice and Procedure, which relates to the construction of a railroad across a public road.

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 proposed crossing, 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 176-3228 dated January 29, 2009, and published in the Commission's Daily Calendar on January 30, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Two Amendments to this Application were filed, one on February 11, 2009, regarding a change in the angle of the track at the crossing, and the other on March 12, 2009, regarding the addition of a sidewalk to the crossing. 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 Public Utilities Code Section 311(g)(2) 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 December 23, 2008. 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 at-grade highway-rail spur crossing across Huntington Drive for the tracks of UPRR in the City of Fairfield, Solano County. The new crossing shall be identified as CPUC Crossing No. 001A-53.65-C.

3. The City, acting as lead agency pursuant to CEQA, prepared Initial Studies, a Negative Declaration, and a Mitigated Negative Declaration. The City determined that with appropriate mitigation measures incorporated, the project will not have a significant impact on the environment.

4. Safety, traffic (transportation), and noise are within the scope of the Commission's permitting process. The City's Initial Studies identified no significant impacts related to safety, less-than-significant impacts related to noise, less-than-significant impacts related to traffic (transportation), and less-than-significant impacts related to transportation of hazardous materials on the rail cars with mitigation measures incorporated, due to the construction and operation of the crossing.

5. The City's Negative Declaration determined that the proposed project, as submitted, will not have a significant effect on the environment.

6. The City's Mitigated Negative Declaration determined that the proposed project will have less than significant impacts with mitigation measures incorporated.

7. The Commission is a responsible agency for this project and has reviewed and considered the City's Initial Studies, Negative Declaration, and Mitigated Negative Declaration.

Conclusions of Law

1. The Initial Studies, Negative Declaration, and Mitigated Negative Declaration, as required by CEQA and as prepared by the City, are adequate for our decision-making purposes.

2. We adopt the City's environmental findings that the project will not have a significant impact on the environment.

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.

O R D E R

IT IS ORDERED that:

1. The City of Fairfield (City) is authorized to construct a new at-grade highway-rail spur crossing across Huntington Drive for the tracks of the Union Pacific Railroad Company (UPRR) in the City of Fairfield, Solano County, at the location described in the application. The new crossing shall be identified as CPUC Crossing No. 001A-53.65-C.

2. The new at-grade crossing shall be equipped with two Commission Standard 9-A warning devices, two W10-1 railroad crossing advanced warning signs, railroad crossing pavement markings, 100-foot long raised median islands on both approaches, and a sidewalk on the east side of Huntington Drive with detectable warning tactile strips on both sidewalk approaches.

3. The City shall notify the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) at least five (5) business days prior to opening the crossing. Notification should be made to rces@cpuc.ca.gov.

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

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

6. 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.

7. A request for extension of the two-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 08-12-015 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