

Decision 09-09-016 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of San Jose for an order authorizing construction of a grade-separated pedestrian/bicycle crossing (CPUC No. 001E-58.70) over tracks of the Union Pacific Railroad Company (MP 55.35-Coast Subdivision) and over State Route 82 (Monterey Road) near Blossom Hill Road in the City of San Jose, County of Santa Clara.

Application 09-03-025
(Filed March 25, 2009)

DECISION GRANTING AUTHORIZATION TO THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY TO CONSTRUCT A NEW GRADE-SEPARATED PEDESTRIAN AND BICYCLE CROSSING IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA

Summary

This decision grants the City of San Jose (City) and Santa Clara Valley Transportation Authority (VTA) authorization to construct a new grade-separated pedestrian and bicycle crossing over the track and right-of-way of the Union Pacific Railroad Company (UPRR) in the City of San Jose, County of Santa Clara. The new crossing will be identified by CPUC Crossing No. 001E-58.70-AD.

Discussion

The location of the proposed pedestrian overpass currently experiences a high amount of trespassers over the railroad tracks. The trespassing issues are due to a shopping plaza being located east of the railroad tracks and a residential

area located west of tracks. Pedestrians currently travel over both State Route 82 (Monterey Highway), which has eight travel lanes, and the UPRR mainline tracks. The existing Blossom Hill Road vehicle overpass provides access to both sides of Monterey Highway. However this structure does not have sidewalks for pedestrian use. The closest railroad crossing with pedestrian access is located about 0.50 miles to the north. A vicinity map of the project is attached to the application.

The new grade-separated crossing will be a steel truss bridge, approximately 315 feet in length, and 12 feet in travel-way width that will cross a UPRR mainline track on the Coast Line (001E Line), and State Route 82 (Monterey Highway) in San Jose. Fencing to channelize the pedestrians to the overpass will be installed along the railroad right-of-way west of the tracks.

The Peninsula Corridor Joint Powers Board (Caltrain) operates six passenger trains per day and Amtrak operates two passenger trains per day on this segment of track in addition to UPRR freight traffic.

For this project, the City, VTA and the California Department of Transportation (Caltrans) are entering agreements to delineate responsibilities relating to the project that will allow it to proceed. Caltrans owns State Route 82 and the property upon which the east landing of the structure will be located; the City owns Endicott Boulevard and the land upon which the west landing will be located; and VTA will be the lead agency for design, funding and construction of the structure.

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 is located in the City of San Jose and after construction the City will assume ownership and maintenance responsibilities of the structure, 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 City has determined the project to be Categorical Exempt based on Caltrans issuing a Notice of Determination for this project, declaring the project is exempt under Public Resources Code § 21084 (CEQA) and excluded under 23 United States Code § 326 (National Environmental Policy Act (NEPA) from the requirements to prepare an Environmental Impact Statement or Report.

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.

The Commission reviewed and considered the City's determination and the Notice of Determination issued by Caltrans 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 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 three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3232, dated April 16, 2009, and published in the Commission Daily Calendar on April 17, 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 176-3232.

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 March 30, 2009. There are no unresolved matters or protests. A public hearing is not necessary.
2. The City and VTA request authority, under Public Utilities Code Sections 1201-1205, to construct one new grade-separated pedestrian/bicycle bridge crossing over the track and right-of-way of UPRR in the City of San Jose, Santa Clara County. This crossing will be identified as CPUC Crossing No. 001E-58.70-AD.
3. VTA will be the lead agency for design, funding, and construction of the overpass.
4. The City will take ownership and maintenance responsibilities after the overpass is constructed.
5. The City is the lead agency for this project under CEQA, as amended.
6. Caltrans issued a Notice of Determination for this project declaring the project is exempt under Public Resources Code § 21084 (CEQA) and excluded under 23 United States Code § 326 (NEPA) from the requirements to prepare an Environmental Impact Statement or Report.
7. The City adopted the Notice of Determination and has determined the project to be categorically exempt and categorically excluded from further environmental review under CEQA or NEPA.
8. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's determination of the project to be categorically exempt, including the Notice of Determination issued by Caltrans.

9. The pedestrian/bicycle overpass will not have a significant effect on the environment.

Conclusions of Law

1. The City's determination of the project to be categorically exempt and the Notice of Determination prepared by Caltrans 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 City of San Jose (City) and Santa Clara Valley Transportation Authority (VTA) are authorized to construct a grade-separated pedestrian/bicycle crossing to be identified as CPUC Crossing No. 001E-58.70-AD, over the track and right-of-way of the Union Pacific Railroad Company in the City of San Jose, County of Santa Clara.

2. VTA shall install fencing along the railroad right-of-way west of the tracks to channelize the pedestrians to the overpass.

3. The City shall notify the Commission's Consumer Protection and Safety Division - 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.

4. Within 30 days after completion of the work under this order, the City shall notify RCES 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.

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

6. 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.

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. The application is granted as set forth above.

9. Application 09-03-025 is closed.

This order becomes effective 30 days from today.

Dated September 10, 2009, at San Francisco, California.

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