

Decision 09-10-039 October 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Napa to construct a new grade-separated overcrossing at the extension of Devlin Road in the vicinity of Mile Post No. 62.6 in the Napa Subdivision of the Union Pacific Railroad in an unincorporated area of the County of Napa, State of California.

Application 09-03-031
(Filed March 30, 2009)

DECISION GRANTING AUTHORIZATION TO THE COUNTY OF NAPA TO CONSTRUCT ONE NEW GRADE-SEPARATED HIGHWAY-RAIL CROSSING AND ONE TEMPORARY PRIVATE AT-GRADE HIGHWAY-RAIL CROSSING ACROSS THE TRACKS OF THE UNION PACIFIC RAILROAD IN AN UNINCORPORATED AREA, COUNTY OF NAPA

Summary

This decision grants the County of Napa (County) authorization to construct one new grade-separated highway-rail crossing at the extension of Devlin Road and one temporary private at-grade crossing in the vicinity of Mile Post No. 62.6, across the Union Pacific Railroad Company (UPRR) Napa Subdivision tracks in an unincorporated area, County of Napa. The new crossing will be identified by CPUC Crossing No. 108AB-62.60-A.

Discussion

The County proposes to construct a grade-separated highway-rail crossing at the extension of Devlin Road and a temporary private at-grade crossing required for construction of the new grade-separation structure, to provide

access to a new industrial development in the County. The new grade-separated highway-rail crossing is necessary to provide access to a new industrial development located west of the UPRR tracks with no direct access to another public roadway.

These UPRR tracks are leased to and operated by the California Northern Railroad (CFNR), a subsidiary of RailAmerica. Currently, there are CFNR freight train movements two times a day, five days per week, at less than twenty miles per hour over this location. There is no passenger service on this line.

The new grade-separated highway-rail crossing structure will have two traffic lanes, shoulders, and sidewalks. The new grade-separated highway-rail crossing will be constructed by Napa Industrial, LLC. in compliance with the requirements, regulations, and subject to review of the County. The Napa Industrial, LLC. will maintain the grade-separated highway-rail crossing subsequent to the dedication of Devlin Road to the County for a period of one year, after which it will be maintained by the County. The design and construction of the grade-separated highway-rail crossing structure will comply with all minimum clearance requirements set forth in California Public Utilities Commission General Order 26-D.

The temporary private at-grade crossing is necessary for earthwork operations during construction of bridge approaches for approximately six months. The temporary private at-grade crossing will include two Commission Standard 1-X private crossing signs, two R15-1 railroad crossbucks, two R1-1 stop signs, and locked gates. The temporary private at-grade crossing will be removed at the conclusion of the construction. The temporary at-grade crossing will be constructed and removed by CFNR forces.

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 County is the lead agency for this project because they intend to construct the proposed overcrossing, through their contractor, to provide access to development planned in the area, and will assume ownership and control of the roadway extension and grade-separation structure after construction. The Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the

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).

Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³

The County has prepared an Initial Study/Environmental Impact Report (EIR) Addendum titled *Napa Commerce Center Project*, dated December 2008. The Addendum built upon an EIR certified for another project at this location, the Beringer Wine Estates Devlin Road Facility project. The Addendum analyzed changes from the original analysis of the Beringer EIR, based on the scope of this modified project. The Beringer EIR identified environmental impacts related to the original proposed project and mitigation measures were made a condition of the approval of that project. A Statement of Overriding Considerations was adopted by the Napa County Planning Commission on December 18, 2001, in approving the Beringer EIR.

The EIR Addendum did not identify any new or additional impacts that were significant. The County approved the project and adopted a Notice of Determination on January 9, 2009, reaffirming the original Beringer EIR Statement of Overriding Considerations, finding that the project will have a significant effect on the environment, and adopting a mitigation monitoring plan.

Environmental impacts related to transportation/traffic and noise are within the scope of the Commission's permitting process. In the Initial Study/EIR Addendum, the County identified less-than-significant impacts related to transportation/traffic and noise as a result of the revisions to the

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

project from the original Beringer EIR. Potential future mitigations were identified in the original Beringer EIR to address potentially significant impacts on traffic/transportation, pertaining to roadway turn lane pocket lengths at SR29/South Kelly Road and South Kelly Road/Devlin Road intersections and potential future need to signalize the South Kelly Road/Devlin Road intersection, along primary access routes to the project site. No specific impacts relating to the crossing or its construction were identified.

The Commission reviewed and considered the Beringer EIR and its CEQA findings, the Initial Study/EIR Addendum and the adopted Notice of Determination and Mitigation Monitoring Plan 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 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.

Additionally, Staff recommends authorization for the temporary private crossing to be utilized by the construction contractor and its agents, during construction. Staff recommends the temporary crossing be removed within 30 days of the completion of construction of the grade-separation structure.

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 April 3, 2009. There are no unresolved matters or protests. A public hearing is not necessary.

2. The County requests authority, under Public Utilities Code Sections 1201-1205, to construct one new grade-separated highway-rail crossing at the extension of Devlin Road and one temporary private at-grade crossing across the track of UPRR in the unincorporated area, County of Napa. The new crossing will be identified by CPUC Crossing No. 108AB-62.60-A.

3. The County is the lead agency for this project under CEQA, as amended.

4. The County prepared an Initial Study/EIR Addendum titled *Napa Commerce Center Project*, dated December 2008 for this project. The Addendum

built upon an EIR certified for another project at this location, the Beringer Wine Estates Devlin Road Facility project (Beringer EIR). The Addendum analyzed changes from the original analysis of the Beringer EIR, based on the scope of this modified project. The Beringer EIR identified environmental impacts related to the proposed project and the County adopted a Statement of Overriding Considerations. Mitigation measures were made a condition of the approval of that original project.

5. In the Initial Study/EIR Addendum, the county identified environmental impacts as a result of the revised project and mitigations were adopted to address these impacts. The County identified less-than-significant impacts related to transportation/traffic and noise. The Notice of Determination signed January 9, 2009, re-adopted the previously adopted Statement of Overriding Considerations, determined that the project will have a significant effect on the environment, and adopted a Mitigation Monitoring Plan.

6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's original Beringer EIR and findings, Initial Study/EIR Addendum and Notice of Determination.

7. The project, with mitigations, will have a significant effect on the environment. A Statement of Overriding Considerations was adopted by the Napa County Planning Commission in approving the project.

8. The Commission finds that the County adopted reasonable mitigations where possible, to reduce the identified impacts to the extent possible.

Conclusions of Law

1. The Initial Study/EIR Addendum titled *Napa Commerce Center Project*, dated December 2008, and Notice of Determination signed January 9, 2009,

prepared by the County as the documentation required by CEQA for the project, 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 County of Napa is authorized to construct one new grade-separated highway-rail crossing at the extension of Devlin Road in the vicinity of Mile Post No. 62.6, to be identified as CPUC Crossing No. 108AB-62.60-A, over the Napa Subdivision tracks of the Union Pacific Railroad Company, in an unincorporated area, County of Napa.

2. The County of Napa is authorized to construct one new temporary private at-grade crossing, equipped with two Commission Standard 1-X private crossing signs, two R15-1 railroad crossbucks, two R1-1 stop signs, and locked gates.

3. The temporary private at-grade crossing is authorized during the period of construction only, and shall be removed within 30 days of completing the grade-separation structure.

4. The County of Napa shall notify the Commission's Consumer Protection and Safety Division - Rail Crossing Engineering Section at least five (5) business days prior to opening the grade-separated crossing. Notification should be made to rces@cpuc.ca.gov.

5. Within 30 days after completion of the work under this order, the County of Napa shall notify 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 County of Napa 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 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.

8. A request for extension of the three-year authorization period must be submitted to 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 09-03-031 is closed.

This order becomes effective 30 days from today.

Dated October 29, 2009, at San Francisco, California.

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