

Decision 09-12-012 December 3, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Merced for an order authorizing construction of two new grade separated crossings over one rail line operated by the Burlington Northern Santa Fe Railway Company at the proposed Campus Parkway in the County of Merced, State of California.

Application 09-07-030
(Filed July 28, 2009)

DECISION GRANTING AUTHORIZATION TO THE COUNTY OF MERCED TO CONSTRUCT TWO NEW GRADE-SEPARATED CROSSINGS OVER THE TRACK AND RIGHT-OF-WAY OF THE BNSF RAILWAY AT THE PROPOSED CAMPUS PARKWAY EXPRESSWAY IN THE COUNTY OF MERCED

Summary

This decision grants the County of Merced (County) authorization to construct two new grade-separated crossings over the track and right-of-way of the BNSF Railway (BNSF) at the proposed Campus Parkway Expressway in the County. The new grade-separated crossings, one for northbound traffic and the other for southbound traffic, will be approximately 50 feet apart, and together will be identified as CPUC Crossing No. 002-1052.9-A.

Discussion

The proposed project involves the construction of two new grade-separated crossings, approximately 50 feet apart. One of the new grade-separated crossings will be for northbound traffic and the other for southbound traffic. Both new grade-separated crossings will cross over the BNSF track and State Route (SR) 140 in the County. The proposed project is part of the overall Campus Parkway Project. The Campus Parkway Project includes a 4.5-mile

long, 4-lane expressway that will extend from the SR 99/Mission Avenue interchange to Yosemite Avenue in the northeastern part of the County, by crossing several local roadways and over the BNSF track and SR 140. The proposed expressway will be known as the Campus Parkway Expressway. The proposed expressway will be to provide additional access to SR 99, not restricted by BNSF tracks for existing and planned development in the northern and eastern portions of the City of Merced (City) and County. This expressway will also provide additional emergency service access in the City and County, and improve access to the Merced campus of the University of California, near Yosemite Avenue which is at the end of the expressway. The existing traffic circulation network that serves the northern and eastern portions of the City, as well as the adjacent urban portions of the County, is inadequate to support planned growth. Motorists traveling from north to south toward the City/SR 99 encounter increasingly congested conditions on main arterial roadways within the City. Capacity improvement on north-south arterial roadways such as the City's G, M, and R Streets would require substantial right-of-way acquisition through established neighborhoods. The proposed project, as part of the Campus Parkway Expressway, will help to improve traffic circulation problems by increasing the capacity of the regional circulation network.

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 grade-separated crossings, 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

Pursuant to CEQA and the National Environmental Policy Act (NEPA),⁴ the County, California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA) prepared environmental documentation titled *Campus Parkway Project, Final Environmental Impact Statement (FEIS)*, approved November 2006, which identifies environmental impacts and associated mitigation measures related to the construction of the Campus Parkway Expressway, which this project is a part. The FHWA issued a Record of

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.

⁴ 42 USC 4332 (2)(c) of 1969 as amended. Projects undertaken in California that utilize federal funds, require discretionary federal approval, or are undertaken by federal agencies are subject to both NEPA and CEQA.

Decision on the FEIS on May 1, 2007. In addition to this FEIS, on December 20, 2006, the County filed a Notice of Determination as required by CEQA.

In the FEIS, there are several impacts that are identified as significant effects on the environment due to the overall construction of the Campus Parkway Expressway; however, no significant adverse impacts related to safety, traffic (transportation) and noise are identified for the proposed project. Environmental impacts related to safety, traffic (transportation), and noise are within the scope of the Commission's permitting process.

In the County's Notice of Determination filed for the overall Campus Parkway Project, amongst other findings, the County determined that the Campus Parkway Project will have a significant effect on the environment, mitigation measures would be made a condition for project approval, and a Statement of Overriding Considerations would be adopted for the Campus Parkway Project.

In regards to the Statement of Overriding Considerations, after review of the Campus Parkway Project, the County determined that construction of the new expressway, but not the construction of the grade separations of this project, will result in certain significant adverse impacts which will not be substantially lessened or avoided even with the adoption of all feasible mitigation measures or alternatives. The specific impacts subject to these overriding considerations include noise and farmland/agricultural land impacts. Despite these impacts, the County chose to approve the Campus Parkway Project, because in its view, the economic, social, technological, legal, and other benefits of the project outweigh the unavoidable adverse environmental effects. Based on these views, in order to approve the Campus Parkway Project, pursuant to CEQA, the County adopted a Statement of Overriding Considerations.

The Commission reviewed and considered the *Campus Parkway Project, Final Environmental Impact Statement*, and the County's Notice of Determination and Statement of Overriding Considerations, and find 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 3.7 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 176-3239 dated August 20, 2009, and published in the Commission's Daily Calendar on August 21, 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, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3239.

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 August 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 two new grade-separated crossings over the track and right-of-way of BNSF at the proposed Campus Parkway Expressway in the County. The new grade-separated crossings together will be identified as CPUC Crossing No. 002-1052.90-A.
3. The County is the lead agency for this project under CEQA, as amended.
4. The County, Caltrans, and FHWA prepared pursuant to CEQA and NEPA, an FEIS approved in November 2006. Pursuant to NEPA, FHWA issued a Record of Decision on May 1, 2007, and pursuant to CEQA, the County prepared a Notice of Determination, filed on December 20, 2006, and adopted a Statement of Overriding Considerations in approving the project.
5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIS, Notice of Determination, and Statement of Overriding Considerations.
6. In the environmental documents, it has been determined that the overall Campus Parkway Project, of which this grade-separation construction is a part, will have a significant effect on the environment; however, no significant impacts related to safety, traffic (transportation), and noise are identified for the grade separation portion of the project. Safety, transportation, and noise are within the scope of the Commission's permitting process.

7. The construction of the railroad grade-separation will not have a significant effect on the environment.

Conclusions of Law

1. The FEIS, prepared pursuant to CEQA and NEPA, and the Notice of Determination and Statement of Overriding Considerations, prepared pursuant to CEQA, 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 Merced is authorized to construct two new grade-separated crossings over the track and right-of-way of the BNSF Railway at the proposed Campus Parkway Expressway in the County of Merced. The new grade-separated crossings together will be identified as CPUC Crossing No. 002-1052.90-A.

2. The County of Merced shall notify the Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section at least 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 County of Merced shall notify the Rail Crossings 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 Commission's 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. The County of Merced shall comply with all applicable rules, including Commission General Orders and the California Manual on Traffic Control Devices.

5. 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.

6. A request for extension of the three-year authorization period must be submitted to the Rail Crossings Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

7. The application is granted as set forth above.

8. Application 09-07-030 is closed.

This order becomes effective 30 days from today

Dated December 3, 2009, at San Francisco, California.

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