

Decision 10-04-002 April 8, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Stockton For an Order Authorizing the City to: Construct a Riverbend and Riverbend West Bike and Pedestrian Path, Under the Trestle and Tracks and Through the Right-of-Way of the Union Pacific Railroad Company (SPRR) in the City of Stockton, San Joaquin County, State of California.

Application 09-11-018
(Filed November 18, 2009)

DECISION GRANTING AUTHORIZATION TO THE CITY OF STOCKTON TO CONSTRUCT A NEW GRADE-SEPARATED RIVERBEND AND RIVERBEND WEST BIKE AND PEDESTRIAN PATH UNDER THE TRACKS OF THE UNION PACIFIC RAILROAD IN THE CITY OF STOCKTON, SAN JOAQUIN COUNTY

Summary

This decision grants the City of Stockton (City) authorization to construct a new grade-separated Riverbend and Riverbend West bike and pedestrian path under the tracks of Union Pacific Railroad (UPRR) in the City, in San Joaquin County. The crossing will be identified as CPUC Crossing No. 001BEL-81.30-BD.

Discussion

The proposed project involves the construction of the new Riverbend and Riverbend West bike and pedestrian path undercrossing, which will be a 16-foot wide grade-separated crossing under the existing UPRR rail bridge approximately one-tenth of a mile south of the at-grade highway-rail crossing at McAllen Road (Crossing No. 001BEL-81.24). The crossing will allow bicyclists and pedestrians to move safely between the existing Riverbend West community and the future Riverbend community on the opposite side of the UPRR tracks. A

30-foot long steel shelter will cover the path on either side of the rail bridge to protect users from any debris that may come from trains overhead.

Due to the overhead shelter, the minimum vertical clearance above the path will be approximately ten (10) feet. Only bicycles and pedestrians will be permitted to use the path. Section 12 of Commission General Order (GO) 26-D specifies overhead clearances for “Public Roads, Highways, and Streets Crossing Under Tracks.” Section 12.1 provides for an overhead clearance of 15 feet. However, because no vehicles other than bicycles will use the path, because there are no specific requirements for pedestrian/bike pathways under tracks in GO 26-D, and because there has been no opposition to the proposed ten-foot overhead clearance, the ten-foot clearance is found to be appropriate. UPRR is aware of the proposed clearance and they have no objections.

Rail service at the proposed grade-separated crossing will be approximately 16 freight trains per day at a maximum speed of 60 mph.

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 within their jurisdiction and subject to their review and approval, 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

On July 2, 2004 a Mitigated Negative Declaration (MND) was prepared and adopted for the single-family residential development projects known as the Riverbend and West Riverbend subdivisions, of which this proposed crossing is part. The MND stated that the whole project would not result in significant environmental effects if identified mitigation measures are implemented. The MND identified several mitigation measures to reduce potentially significant construction noise and significant railroad noise impacts to less than significant levels. For example, construction noise will be minimized by restricting hours of operation by noise generating equipment to 7:00 a.m. to 10:00 p.m. Monday through Friday, and to 7:00 a.m. to 6:00 p.m. on Saturday and Sunday. As another example, railroad noise will be minimized by the construction of a 10-foot high wall along the western project site boundary and an 8-foot high noise barrier along the eastern property boundaries. A mitigation monitoring and

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.

reporting program was also adopted for the project. No additional impacts were identified for the construction of the pathway or crossing.

No safety impacts were identified for the entire project. No transportation impacts were identified that related specifically to the proposed crossing. Cumulative impacts associated with the whole project were mitigated to less-than-significant levels.

On September 27, 2004 the City filed a Notice of Determination (NOD) with the San Joaquin County Clerk. The NOD states that the Riverbend and Riverbend West project would not have a significant impact on the environment and that mitigation measures were made a condition of the approval of the project.

The Commission reviewed and considered the City's NOD and MND as they relate to the grade-separated crossing 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 3.7 of Rules of Practice and Procedure, which relates to the construction of a public road 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 176-3245, dated December 3, 2009, the Commission preliminary categorized this application as ratesetting, and preliminary determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

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 November 25, 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 Riverbend and Riverbend West bike and pedestrian path under tracks owned by UPRR.
3. The City is the lead agency for this project under CEQA, as amended.
4. The City prepared an MND for this project on July 2, 2004, and issued an NOD on September 27, 2004.
5. The MND stated that the Riverbend and Riverbend West projects would not have a significant impact on the environment with mitigation measures that

it prescribed. In particular, noise from construction of the railroad was identified as having a potentially significant impact on the environment, and noise from operation of the railroad was identified as having a significant impact on the environment. However, prescribed mitigation measures bring these impacts to less-than-significant levels. Also, there were no impacts identified that relate to transportation in the grade-separated crossing requested in this application, and no safety impacts of the project were identified at all. Moreover, all cumulative transportation impacts of the proposed project were mitigated to less than significant levels.

6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's NOD and MND.

7. The Riverbend and Riverbend West bike and pedestrian path grade separation, with mitigations in place for noise, will not have a significant effect on the environment.

Conclusions of Law

1. The NOD and MND prepared by the City 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 City of Stockton is authorized to construct a new grade-separated Riverbend and Riverbend West bike and pedestrian path under the tracks owned by Union Pacific Railroad. The crossing will be identified as CPUC Crossing No. 001BEL-81.30-BD in the City of Stockton, County of San Joaquin.

2. The City of Stockton shall notify the Commission's Consumer Protection and Safety Division – Rail Crossings 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 Union Pacific Railroad 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 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. The City of Stockton shall comply with all applicable rules, including Commission General Orders.

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 09-11-018 is closed.

This order becomes effective 30 days from today.

Dated April 8, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners