

Decision 10-08-006 August 12, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by McClellan Business Park, LLC to designate seven (7) highway/railroad crossings at the former McClellan Air Force Base as public crossings pursuant to Section 1701, Public Utilities Code.

Application 10-03-016
(Filed March 10, 2010)

**DECISION GRANTING AUTHORIZATION TO SACRAMENTO COUNTY,
THROUGH MCCLELLAN BUSINESS PARK, LLC TO DESIGNATE EIGHT
EXISTING AT-GRADE HIGHWAY-RAIL CROSSINGS AT THE FORMER
McCLELLAN AIR FORCE BASE AS PUBLIC CROSSINGS
IN SACRAMENTO COUNTY**

Summary

This decision grants Sacramento County, through McClellan Business Park, LLC authorization to designate eight existing highway-railroad crossings at the former McClellan Air Force Base in Sacramento County as public crossings.

The crossings will be identified as follows:

<u>CPUC Crossing No.</u>	<u>Street/Location</u>
127-5.21	Dudley Boulevard
127-7.32	Forcum Avenue, 100 feet south of Dean Street
127-7.34	Forcum Avenue, 100 feet north of Dean Street
127-7.67-C	Dean Street, 300 feet west of Forcum Avenue
127-8.80	Winters/Kilzer Road
127-10.84-C	Parker Road, 300 feet south of Dean Street
127-11.10	Dean Street, 100 feet west of Urbani Avenue

127-11.64	Parker Road, 100 feet south of Dean Street
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Discussion

In 1998, Sacramento County (the County) acquired the former McClellan Air Force Base pursuant to an “Economic Development Conveyance (EDC) Agreement” that was executed between the County and the United States Secretary of the Air Force (USAF).

The USAF transferred real property to the County under the terms of the EDC between 1998 and 2001. One item of transferred real property was 6.32 miles of railroad infrastructure that included 21 at-grade highway rail crossings. These at-grade highway-rail crossings were constructed on a United States military base and were not built under California Public Utilities Commission (CPUC) authority nor were they under the jurisdiction of the CPUC.

The County entered into an agreement with the McClellan Business Park, LLC (MBP) to redevelop the base as part of the McClellan Air Force Base reuse project under a Purchase and Sale agreement (PSA) in November 2001.

The County transferred its lease interest to MBP for the Base property including the 6.32 miles of railroad lines under the terms of the PSA. Thus, MBP as the lessee of the railroad tracks is responsible for maintaining the rail line inside MBP, including all highway-rail crossings. The County is responsible for the upkeep of all public roads identified within MBP.

With the transfer of property, eight of these crossings are now on publicly accessible County-maintained streets. In its application, MBP requests authority to designate seven crossings as public. However, Attachment 3 of the application lists two crossings on Parker Road as 5A and 5B. The two sets of tracks for the crossings are approximately 70 feet apart and therefore must be considered as two separate crossings. Furthermore, both of these crossings have

separate Department of Transportation (DOT) Numbers and will also have two separate CPUC Numbers. Hence, this decision considers the total number of crossings to be designated as public highway-rail crossings as eight instead of seven. The remaining 13 crossings are being classified as private crossings, with the private crossing user and MBP agreeing to the terms and conditions of use. All 21 crossings have been registered with the Federal Railroad Administration and assigned US DOT crossing numbers.

All of the eight crossings that are to be designated as public crossings are equipped with Commission Standard 1-R (crossbuck sign on a post) warning devices with advance warning signs and pavement markings that meet the minimum standards for public crossings as set forth in the CPUC's General Order 75-D¹ and the California Manual on Uniform Traffic Control Devices. All future changes and upgrades to these eight public crossings shall be requested and authorized through the normal CPUC formal application or General Order 88-B² processes.

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

¹ General Order 75-D details the regulations governing standards for warning devices for at-grade highway-rail crossings.

² General Order 88-B sets forth the rules for altering public highway-rail crossings.

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,³ or the one with the greatest responsibility for supervising or approving the project as a whole.⁴ Here, MBP, a non-governmental entity, is carrying out the project. Moreover, the County is the lead agency for this project because it has the greatest responsibility for supervision and approval of it. Specifically, the project is within the County jurisdiction and subject to the County review and approval. 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.⁵

In November 2002, the County filed a Final Supplemental Environmental Impact Report (SEIR) for the McClellan Air Force Base reuse project. The Commission confirmed with the County that the eight crossings in this proposed decision were within the scope of this SEIR.⁶

³ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

⁴ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

⁵ CEQA Guidelines, Sections 15050(b) and 15096.

⁶ Commission staff conversation with Director of Sacramento County Department of Environmental Review and Assessment, Joyce Horizumi, July 23, 2010.

On December 13, 2002, the County filed a Notice of Determination (NOD) with the Sacramento County Clerk. The NOD states that the McClellan Air Force Base reuse project will have a significant impact on the environment and that mitigation measures were made a condition of the approval of the project. A mitigation monitoring and reporting program and a Statement of Overriding Considerations were adopted for the project. With regard to the crossings, no significant environmental impacts that relate to safety, transportation and noise were identified.

We note, however, that this application does not seek to modify or otherwise change the existing crossings, and no construction or other physical activity relating to the crossings will occur.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements, including Rule 3.7 of the 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 eight highway-rail crossings, and recommends that the requested authority to designate the subject eight crossings as public crossings be granted.

Categorization and Need for Hearings

In Resolution ALJ 176-3251, dated April 8, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily 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 March 29, 2010. There are no unresolved matters or protests. A public hearing is not necessary.
2. The MBP requests authority, under Public Utilities Code Sections 1201-1205, to designate eight highway-railroad crossings at the former McClellan Air Force Base as public crossings in the County.
3. The County, through MBP is the lead agency for this project under CEQA.
4. The County prepared an SEIR for the base reuse project in November 2002, and issued an NOD on December 13, 2002, that stated that the McClellan Air Force Base reuse project would have a significant impact on the environment and that mitigation measures were made a condition of the approval of the project. A mitigation monitoring and reporting program and a Statement of Overriding Considerations were adopted for the project. The County confirmed the crossings were included within the scope of the SEIR. With regard to the

crossings, no significant environmental impacts that relate to safety, transportation and noise were identified.

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

6. The Commission finds that the designation of these crossings from their current private status to public crossings is categorically exempt under CEQA Guidelines, Section 15301, Existing Facilities, Title 14, Chapter 3, Article 19, California Code of Regulations.

Conclusions of Law

1. The SEIR, prepared pursuant to CEQA, is adequate for the Commission's 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. Sacramento County, through McClellan Business Park, is authorized to designate eight highway-railroad crossings at the former McClellan Air Force Base in Sacramento County as public crossings. The crossings are identified as:

<u>CPUC Crossing No.</u>	<u>Street/Location</u>
127-5.21	Dudley Boulevard
127-7.32	Forcum Avenue, 100 feet south of Dean Street
127-7.34	Forcum Avenue, 100 feet north of Dean Street
127-7.67-C	Dean Street, 300 feet west of Forcum Avenue
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127-10.84-C	Parker Road, 300 feet south of Dean Street

127-11.10	Dean Street, 100 feet west of Urbani Avenue
127-11.64	Parker Road, 100 feet south of Dean Street

2. All future changes and upgrades to these eight public crossings shall be requested and authorized through the normal California Public Utilities Commission processes.

3. In operating and maintaining the crossings, McClellan Business Park shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

4. The Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

5. The application is granted as set forth above.

6. Application 10-03-016 is closed.

This order becomes effective 30 days from today.

Dated August 12, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners