

Decision 11-05-012 May 5, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the San Diego Association of Governments for Authority to construct a pedestrian-rail crossing of the North County Transit District tracks in the City of Encinitas, County of San Diego, California.

Application 11-01-005
(Filed January 03, 2011)

DECISION GRANTING AUTHORIZATION TO THE SAN DIEGO ASSOCIATION OF GOVERNMENTS TO CONSTRUCT A PEDESTRIAN-RAIL CROSSING UNDER THE NORTH COUNTY TRANSIT DISTRICT TRACKS IN THE CITY OF ENCINITAS, COUNTY OF SAN DIEGO

Summary

This decision grants the San Diego Association of Governments authorization to construct a new pedestrian-rail crossing under the North County Transit District train tracks in the City of Encinitas, County of San Diego. The new crossing is to be identified by CPUC Crossing No. 106-238.6-BD and DOT No. 935917D.

Discussion

The San Diego Association of Governments (SANDAG) proposes to construct a pedestrian-rail crossing under the North County Transit District (NCTD) mainline tracks. The pedestrian crossing is part of City of Encinitas' future improvements contemplated by the Coastal Rail Trail Project. The City seeks the crossing now to address a serious trespass problem in the area, and has been working with SANDAG and NCTD to design and fund the crossings in the

near term. In addition to NCTD passenger trains, the BNSF Railway (BNSF) and National Passenger Railroad Corporation (Amtrak) operate freight and passenger trains, respectively, over this line. Approximately forty-four (44) passenger trains per day at a maximum speed of 90 MPH and seven (7) freight trains per day at a maximum speed of at 55 MPH operate over these tracks.

The crossing is adjacent to the intersection of Santa Fe Avenue and South Vulcan Avenue (which parallels the NCTD tracks in this area) at mile post 238.6, under NCTD's two mainline tracks. The proposed new CPUC Crossing Number will be 106-238.6-BD. The crossing will allow access under the NCTD tracks, providing a legitimate pedestrian route within the City to the Pacific Coast Highway and beach areas on the west side of the tracks. Currently pedestrians frequently trespass on NCTD right-of-way crossing the tracks illegally at-grade. The construction of the pedestrian crossing and fencing improvements will limit the existing trespassing hazard and provide for safe pedestrian movement under the tracks in the area. The nearest crossing to the north is the highway-rail crossing of East E Street (CPUC Crossing No. 106-237.35 and DOT No. 026830D) and the nearest crossing to the south is the crossing of Chesterfield Drive (CPUC Crossing No 106-239.80 and DOT No. 026849V).

The proposed pedestrian-rail crossing will consist of a 7 (seven) foot wide walkway under the two sets of NCTD railroad tracks located on a bridge structure , with a minimum vertical clearance of 8 (eight) feet to the pathway surface below.

Americans with Disabilities Act (ADA) compliant walkways will be installed on both approaches. West of the crossing, the walkway will lead up to South Coast Highway 101, where a crosswalk will be painted across South Coast Highway 101. Pedestrian movement across South Coast Highway 101 will be

protected by a proposed mid-block, pedestrian-activated crosswalk signal. East of the crossing, the walkway will fork into two paths. One path curves north from the fork to a series of stairs that lead up approximately 22 feet to the crosswalk located at the intersection of Santa Fe Avenue and South Vulcan Street.

The other path is ADA compliant and extends from the pathway fork on the east side of the crossing to the south for approximately 180 feet, where it will connect to a section of the future Coastal Rail Trail, leading back to the north to the intersection of Santa Fe Avenue and South Vulcan Street. That short section of the future Coastal Rail Trail will be constructed as part of this project, and will allow for a continuous ADA compliant pathway from the proposed railroad underpass to the intersection of Santa Fe Avenue and South Vulcan Street, where a crosswalk will be painted across the intersection.

Retaining walls will be constructed along the pedestrian ramp and stairs on the east side of bridge underpass. In addition, 6-foot-high, welded mesh fencing will be installed on the west side of the tracks, extending a distance of approximately 90 feet north and 200 feet south of the underpass crossing, to channel and direct pedestrians to the legitimate crossing.

For safety and security purposes, lighting will be installed on bollards near the underpass entrances and mounted underneath the bridge structure. Additional lights will be mounted to the pathway railings.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, 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 of Encinitas is the lead agency for this project, as it has sought the crossings within its borders and has worked with SANDAG and NCTD to secure permitting, funding and design of the 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

The City of Encinitas prepared an initial study for the proposed project and found that potentially significant impacts could result from the project, but any potential impacts would be reduced to less-than-significant levels with implementation of identified mitigation measures. Therefore, the City adopted a Mitigated Negative Declaration (MND) for the project and a Mitigation

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.

Monitoring and Reporting Program (MMRP) was made a condition of approval for the project.

Safety, traffic/transportation and noise impacts are within the scope of the Commission's permitting process. However, none of the potentially significant impacts identified in the MND or MMRP are under the Commission's jurisdiction. Potentially significant impacts relating to possible discovery of cultural resources (fossils) or soil contamination within the rail corridor during excavation are mitigated via testing and monitoring during excavation activities. Potential impacts from loss of a very small amount (less than one acre) of native plants are mitigated through established environmental methodologies. The City's MND and MMRP were approved and adopted by them on December 18, 2008.

The Commission reviewed and considered the City's MND and MMRP and finds the documents 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 176-3267 dated January 13, 2011, and published in the Commission Daily Calendar on January 11, 2011, 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, 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 January 11, 2011. There are no unresolved matters or protests. A public hearing is not necessary.
2. The San Diego Association of Governments (SANDAG) requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated pedestrian-rail crossing, to be identified as CPUC Crossing No. 106-238.6-BD and DOT No. 935917D, under the NCTD's two mainline tracks.
3. The City is the lead agency for this project under CEQA.
4. The City prepared a Mitigated Negative Declaration for this project, and found that potentially significant impacts could result from the project, but would be reduced to less-than-significant levels with implemented mitigation measures.
5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, adopted on December 18, 2008.

6. The project, with mitigations, will not have a significant effect on the environment.

Conclusions of Law

1. The Mitigated Negative Declaration prepared by the City 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 San Diego Association of Governments is authorized to construct a grade-separated pedestrian-rail crossing to be identified by CPUC Crossing No. 106E-238.6-BD and DOT No. 935917D, in the City of Encinitas, County of San Diego.
2. San Diego Association of Governments shall notify North County Transit District and the Los Angeles office of Commission's Consumer Protection and Safety Division - Rail Crossing Engineering Section at least five (5) business days prior to opening the crossing for public use. Notification should be made to rces@cpuc.ca.gov .
3. Within 30 days after completion of the work under this order, San Diego Association of Governments 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.

4. Within 30 days after completion of the work under this order, the North County Transit District shall notify the Federal Railroad Administration of the existence of the new grade-separated crossing by submitting a completed U.S.DOT CROSSING INVENTORY FORM, form FRA F6180.71, for the new grade-separation structure. A copy of that submittal is to be provided concurrently to the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section. The form may be submitted electronically to rces@cpuc.ca.gov.

5. San Diego Association of Governments 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 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.

8. The application is granted as set forth above.
9. Application 11-01-005 is closed.

This order becomes effective 30 days from today.

Date May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners