

Decision 11-05-013 May 5, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California Department of Water Resources to construct a new grade-separated undercrossing for the Brad B. Freeman Bike Trail, in the vicinity of Mile Post No. 210.65 of the Union Pacific Railroad in an unincorporated area of the County of Butte, State of California.

Application 10-07-026
(Filed July 28, 2010)

DECISION GRANTING AUTHORIZATION TO CALIFORNIA DEPARTMENT OF WATER RESOURCES TO CONSTRUCT A NEW GRADE-SEPARATED PEDESTRIAN UNDERCROSSING UNDER THE TRACKS OF THE UNION PACIFIC RAILROAD IN AN UNINCORPORATED AREA, COUNTY OF BUTTE

Summary

This decision grants the California Department of Water Resources authorization to construct a new grade-separated pedestrian undercrossing for the Brad B. Freeman Bike Trail in the vicinity of Mile Post No. 210.65 of the Union Pacific Railroad Company Canyon Subdivision tracks, in an unincorporated area, County of Butte. The new grade-separated crossing will be identified as CPUC Crossing No. 004- 210.65-B-D, DOT No. 440492W.

Discussion

The California Department of Water Resources (DWR) proposes to construct a grade-separated pedestrian undercrossing to provide access under the tracks for the Brad B. Freeman Bike Trail. The new grade-separated pedestrian undercrossing is necessary for the functional operation of the Brad B.

Freeman Bike Trail to keep bicyclists, equestrian users, and pedestrians from needing to cross the Union Pacific Railroad (UPRR) tracks at-grade.

The subject UPRR tracks are the mainline tracks on the UPRR's Canyon Subdivision. Currently, there are approximately 10 freight train movements per a day, at 45 miles per hour over this location. There is no passenger service on this line.

The new grade-separated pedestrian undercrossing structure will be constructed by the DWR under the requirements, regulations, and review of the DWR. The design and construction of the grade-separated pedestrian undercrossing structure will comply with all minimum clearance requirements set forth in California Public Utilities Commission General Order 26-D, as well as all UPRR design standards. After construction, the DWR will maintain the grade-separated pedestrian undercrossing and appurtenances, including its approaches.

The new grade-separated pedestrian undercrossing will include covered metal decking and fencing throughout its length, extending twenty five feet on either side of the grade-separated pedestrian undercrossing, to keep the public from encroaching on the UPRR right-of-way and to protect trail users from any debris falling from the railroad tracks. The design also incorporates an additional 138-feet of uncovered fencing along the trail north of the grade-separated pedestrian undercrossing and 75-feet of uncovered fencing along the trail to the south of the grade-separated pedestrian undercrossing. Additionally, 232-feet of fencing will be installed along the UPRR property line in the vicinity of the crossing, as an additional treatment to keep pedestrians away from the railroad tracks. The existing "No Trespassing" signage will be replaced and supplemented with new signage to keep trail users on the Brad B. Freeman Bike Trail and off of the UPRR right-of-way.

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 DWR is the lead agency for this project because the project is being constructed by them, 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

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.

The DWR prepared an Initial Study and Proposed Mitigated Negative Declaration titled *Brad B. Freeman Bike Trail Realignment*, issued on July 6, 2009, finding that the project, with mitigations, would not have a significant effect on the environment. A mitigation monitoring plan was proposed. On November 18, 2009, DWR adopted the *Brad B. Freeman Bike Trail Realignment Final Mitigated Negative Declaration*, which identified environmental impacts due to the project, but which adopted mitigations to address them. The DWR approved the project and adopted a Notice of Determination (NOD), dated December 3, 2009, finding that the project, with mitigations, will not have a significant effect on the environment, and adopting a Mitigation Monitoring and Reporting Program.

Environmental impacts related to transportation/traffic and noise are within the scope of the Commission's permitting process. In the Initial Study and Proposed Mitigated Negative Declaration, the DWR identified a number of potential significant impacts, including several related to transportation/traffic and noise, as a result of the project. Significant impacts on transportation/traffic were identified, pertaining to the transportation of materials, equipment, and personnel to the project site, which would result in a temporary increase of traffic levels on the surrounding roadways during project construction. Additionally, mitigations were identified to address potential significant impacts on noise, pertaining to noise during project construction, which would result in a temporary increase in noise levels within the project area. DWR adopted reasonable mitigations to reduce all identified impacts to less-than-significant levels.

The Commission reviewed and considered the Initial Study and Proposed Mitigated Negative Declaration, the Final Mitigated Negative Declaration and the adopted NOD and Mitigation Monitoring and Reporting 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.

Categorization and Need for Hearings

In Resolution ALJ 176-3259, dated August 12, 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 July 30, 2010. There are no unresolved matters or protests. A public hearing is not necessary.

2. The DWR requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated pedestrian undercrossing for the Brad B. Freeman Bike Trail, under the track of Union Pacific Railroad Company in an unincorporated area, County of Butte. The new grade-separated crossing will be identified as CPUC Crossing No. 004-210.65-B-D.

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

4. The DWR prepared an Initial Study and Proposed Mitigated Negative Declaration, titled *Brad B. Freeman Bike Trail Realignment*, dated July 2009, for this project. On November 18, 2009, a Final Mitigated Negative Declaration was prepared and adopted and on December 7, 2009, DWR issued a Notice of Determination for the project, finding with mitigations, the project will not have an effect on the environment.

5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Initial Study and Proposed Mitigated Negative Declaration, Final Mitigated Negative Declaration and Notice of Determination.

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

Conclusions of Law

1. The Initial Study and Proposed Mitigated Negative Declaration, titled *Brad B. Freeman Bike Trail Realignment*, dated July 2009, and Notice of Determination, signed on December 3, 2009, prepared by the DWR 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. California Department of Water Resources is authorized to construct a new grade-separated pedestrian undercrossing for the Brad B. Freeman Bike Trail in the vicinity of Mile Post No. 210.65 in the unincorporated area of the County of Butte. The new grade-separated crossing will be identified as CPUC Crossing No. 004-210.65-B-D.

2. The City 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 for public use. Notification should be made to rces@cpuc.ca.gov.

3. Within 30 days after completion of the work under this order, the California Department of Water Resources shall notify the Commission's Consumer Protection and Safety Division – 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. Within 30 days after completion of the work under this order, Union Pacific Railroad Company shall notify the Federal Railroad Administration of the existence of the crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. A copy is to be provided concurrently to the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@cpuc.ca.gov.

5. The California Department of Water Resources shall comply with all applicable rules, including Commission General Orders.

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 RCES 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 10-07-026 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