

Decision 06-10-005 October 5, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the State of California, Department of Transportation for authority to remove and reconstruct an overhead grade separation of Fifth Street, CPUC Crossing No. 002-80.75-A, DOT No. 026114M, within the City of San Bernardino, County of San Bernardino, California, over tracks owned by the BNSF Railway known as the Cajon Subdivision.

Application 06-02-021  
(Filed February 23, 2006)

**O P I N I O N**

**Summary**

This decision authorizes the State of California, Department of Transportation (Caltrans) to remove and reconstruct the existing Fifth Street overhead grade-separated highway-rail crossing (grade separation), over BNSF Railway Company's (BNSF) Cajon Subdivision Main Line, in the City and County of San Bernardino.

**Discussion**

Proposed Project

Caltrans proposes to remove and reconstruct the Fifth Street overhead grade separation as part of the Interstate 215 (I-215) freeway widening and improvements project. The I-215 project consists of adding one traffic lane in each direction of I-215 and reconfiguring the on- and off-ramps.

The public will benefit from the proposed widening project, which will improve the I-215 level of service as well as the transportation system within the

local City of San Bernardino area by providing for the more efficient movement of people, goods, and services. Southbound on- and off-ramps currently are on the left side of the southbound I-215 lanes. The widening project will reconfigure these ramps as right-side on- and off-ramps. The reconfigured ramp system will result in improved accessibility to the business community and the neighborhoods east and west of I-215. The additional traffic lanes will relieve peak hour traffic on I-215.

The reconstructed Fifth Street grade-separation bridge structure will consist of a cast-in-place concrete bridge deck on cast-in-place concrete columns with driven-steel "H" piling abutments. Structure and embankment will support the I-215 on- and off-ramps. The BNSF tracks beneath the proposed bridge structure consist of three Cajon Subdivision main line tracks and a switching yard lead track on the westerly side of the main tracks. The reconstructed bridge will span over BNSF's entire right-of-way and will eliminate a bridge pier currently existing between the main line tracks and the switching yard lead track.

The reconstructed bridge structure will have a permanent minimum overhead (vertical) clearance of 25 feet 9 inches above the top of the highest rail. The permanent minimum side (horizontal) clearance will be 12 feet 10 inches from the bridge column to the nearest track centerline and 11 feet 10 inches from the bridge footing to the nearest track centerline. During the reconstruction of the bridge structure, Caltrans requests a temporary minimum vertical clearance of 21 feet 6 inches above the top of the highest rail and a temporary minimum horizontal clearance of 10 feet 0 inches from the nearest track centerline to a temporary construction fence.

General Order (GO) 26-D, Section 2.1 requires a minimum vertical clearance above railroad tracks used for transporting freight cars of 22 feet 6 inches. Since Caltrans' proposed temporary minimum vertical clearance is less than the minimum vertical clearance stated in GO 26-D, Section 2.1, Caltrans' request requires, pursuant to GO 26-D, Section 16.2, a temporary deviation from GO 26-D, Section 2.1. Caltrans' requested horizontal clearance during reconstruction exceeds the minimum horizontal clearance of 8 feet 6 inches stated in GO 26-D, Section 3.2. Therefore, Caltrans' requested horizontal clearance during reconstruction does not require a temporary deviation from GO 26-D, Section 3.2.

BNSF filed a protest and request for hearing to the application on March 29, 2006. As Caltrans' grade-separation reconstruction project will involve construction activities over, upon, and in close proximity to an active rail corridor consisting of three main line tracks and a switching yard lead track, BNSF stated that that it is imperative that the parties to the reconstruction project reach agreement with respect to the proposed construction to ensure the safety of BNSF's employees, property, and rail operations during construction. At the time of BNSF's protest, the parties had not reached agreement.

Due to the BNSF protest, Chief Administrative Law Judge (ALJ) Angela K. Minkin reassigned the application from Examiner Richard Clark to Commissioner John Bohn and ALJ Victor D. Ryerson on April 27, 2006. ALJ Ryerson conducted a prehearing conference on this matter on May 19, 2006. Commissioner Bohn, on May 25, 2006, issued a Scoping Memo and Ruling upon the matters required by Rules 6 and 6.3 of the Commission's Rules of Practice and Procedure. On June 9, 2006, Caltrans and BNSF filed a Joint Case Management Statement, pursuant to Rule 49, subdivision (c), indicating that an

agreement had been reached and that BNSF would be withdrawing its protest. BNSF withdrew its protest on July 7, 2006 and requested that the Commission refer the application back to the Commission staff for processing as an uncontested matter, which was done on July 25, 2006.

### Environmental Review

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources (PR) 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 must 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 the public agency with the greatest responsibility for supervising or approving the project as a whole.<sup>1</sup> Here, Caltrans is the lead agency for this project and the Commission is a responsible agency. 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.<sup>2</sup>

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<sup>1</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

<sup>2</sup> CEQA Guidelines, Sections 15050(b) and 15096.

Caltrans prepared a Final Environmental Impact Statement (Final EIS) and Final Environmental Impact Report (Final EIR), assigned State Clearinghouse (SCH) Number 90021032, for the "Interstate 215 Improvements Between Interstate 10 and State Route 30" project in September 1999. On September 27, 1999, in compliance with PR Code Section 21108 or 21152, Caltrans filed a Notice of Determination (NOD) with the State Clearinghouse. The NOD is attached to Appendix A of this order. The NOD concluded that the I-215 project will have a significant effect on the environment. Mitigation measures were made a condition of approval of the project. However, not all impacts could be reduced to a "less-than-significant level." Caltrans adopted a Statement of Overriding Considerations (SOC) for the project. Findings were made pursuant to the provisions of CEQA.

The Commission reviewed the lead agency's environmental documents. The environmental documents contain statements pertaining to the potential environmental impacts, mitigation measures, methodology, findings, beneficial and adverse major environmental impacts, unavoidable adverse environmental effects, and cumulative impacts. We find the documents adequate for our decision-making purposes. Safety, transportation, and noise are within the scope of the Commission's permitting process. Caltrans identified environmental impacts related to safety, transportation, and noise.

The environmental documents identified potential environmental impacts during construction related to safety and transportation. The environmental documents identified potential major adverse environmental impacts related to noise during and after the I-215 project construction. We note, however, that the impacts are only marginally related to replacement of the grade-separation structure and pertain to the overall I-215 widening project.

The implementation of mitigation measures stated in the environmental documents would reduce the potential impacts related to safety and traffic patterns during construction and to noise, after I-215 project completion, to less-than-significant levels. Also, the implementation of mitigation measures stated in the environmental documents would reduce the potential impacts related to noise during construction, but not to less-than-significant levels. Caltrans adopted an SOC with respect to significant unavoidable adverse environmental impacts, including impacts related to noise during construction.

Caltrans found that the benefits of the proposed I-215 project outweigh the significant unavoidable adverse environmental impacts. Caltrans determined that each of the separate benefits identified in the SOC, in itself and independent of other project benefits, is a basis for overriding all unavoidable adverse impacts identified in the environmental documents.

In reviewing the environmental documents, we find that with respect to issues within the scope of our permitting process, Caltrans, where possible, adopted feasible mitigation measures to lessen the significant environmental impacts to less-than-significant levels. We will adopt Caltrans findings and mitigations for purposes of our approval.

With respect to the SOC, we find that Caltrans enumerated several significant benefits associated with the proposed I-215 project. These benefits appeared, on balance, to reasonably justify approval of the project despite certain significant and unavoidable impacts. Therefore, we accept and adopt the findings of the SOC for purposes of our approval.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) inspected the site of the proposed project to remove and reconstruct the Fifth Street overhead grade separation. After

reviewing the need for and the safety of the proposed reconstructed grade separation, RCES recommends that the Commission grant Caltrans' request.

The application is in compliance with the Commission's filing requirements, including Rule 39 of Rules of Practice and Procedure, which relates to the widening or relocation of an existing crossing. A site map and detailed drawings of the proposed reconstructed grade separation are shown in Appendix B attached to the order.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3168, dated March 2, 2006, and published in the Commission Daily Calendar on March 3, 2006, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. A protest to the application was filed by BNSF and subsequently withdrawn. No other protests were received. Given this status, a public hearing is not necessary, and there is no reason to disturb the determinations made in Resolution ALJ 176-3168.

### **Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. The Commission published notice of the application in the Commission Daily Calendar on February 27, 2006. BNSF filed its protest on March 29, 2006.

BNSF withdrew its protest on July 7, 2006. There are no unresolved matters or protests; a public hearing is not necessary.

2. Caltrans requests authority, under Public Utilities Code Sections 1201-1205, to remove and reconstruct the existing Fifth Street overhead grade separation over BNSF's Cajon Subdivision Main Line in the City and County of San Bernardino.

3. The removal and reconstruction of the existing Fifth Street overhead grade separation is necessary to accommodate the I-215 freeway widening project, which will improve the level of service on I-215 as well as the transportation system within the local area by providing for the more efficient movement of people, goods, and services.

4. Public convenience, necessity, and safety require the removal and reconstruction of the existing Fifth Street overhead grade separation.

5. Caltrans is the lead agency for this project under CEQA, as amended.

6. In approving the I-215 project, on September 27, 1999, Caltrans adopted the I-215 project NOD and certified the Final EIR. Caltrans found that "The project will have a significant effect on the environment." Caltrans identified environmental impacts related to safety, transportation, and noise. Mitigation measures were made a condition of the approval of the I-215 project, however not all impacts could be mitigated to less-than-significant levels. Therefore, Caltrans adopted an SOC for the I-215 project. Findings were made pursuant to the provisions of CEQA.

7. Safety, transportation, and noise as they relate to the proposed Fifth Street overhead grade separation removal and reconstruction project are within the scope the Commission's permitting process.

8. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Final EIS/EIR, NOD, and SOC. We find these documents adequate for our decision-making purposes.

**Conclusions of Law**

1. The Final EIS/EIR, NOD and SOC adopted by Caltrans as the documentation required by CEQA for the Fifth Street overhead grade-separation removal and reconstruction project are adequate for our decision-making purposes.

2. We adopt Caltrans' NOD and SOC. With respect to significant impacts from safety, transportation, and noise related to the proposed Fifth Street overhead grade-separation removal and reconstruction project, we find that the lead agency adopted feasible mitigation measures to substantially lessen the environmental impacts to a less-than-significant level. For those impacts that could not be reduced to a less-than-significant level, we find that Caltrans enumerated several significant benefits of the project that reasonably justify approval. We adopt these findings for purposes of our approval.

3. The application should be granted as set forth in the following order.

**O R D E R**

**IT IS ORDERED** that:

1. The State of California, Department of Transportation (Caltrans) is authorized to remove and reconstruct the existing Fifth Street overhead grade-separated highway-rail crossing (grade separation), identified as CPUC Crossing No. 002-80.75-A, over BNSF Railway Company's (BNSF) Cajon Subdivision Main Line, in the City and County of San Bernardino, at the location and substantially

as shown by the plans attached to the application and Appendix B attached to this order.

2. Clearances shall conform to General Order 26-D, except that during the period of reconstruction the Commission authorizes a temporary overhead clearance of not less than 21 feet 6 inches above the top of the highest rail.

3. BNSF shall issue instructions to operating employees of the temporary reduced overhead clearance of 21 feet 6 inches beneath the Fifth Street overhead bridge structure. BNSF shall submit the instructions in advance of the date when Caltrans will create the temporary overhead clearance, to the Los Angeles office of the Commission's Consumer Protection and Safety Division - Rail Operations Safety Branch (ROSB) and Rail Crossings Engineering Section (RCES).

4. Caltrans shall notify BNSF and the Los Angeles office of ROSB and RCES at least 15 days but not more than 30 days in advance of the date when Caltrans will create the temporary overhead clearance.

5. BNSF shall provide flagging upon 30 days written request by Caltrans. Caltrans shall reimburse BNSF for all flagging costs.

6. Caltrans and BNSF (parties) shall bear construction and maintenance costs in accordance with an agreement between the parties. Should the parties fail to agree, the Commission will apportion such costs by further order.

7. Within 30 days after completion of the work under this order, BNSF shall notify RCES in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work.

8. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. The

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

9. 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.

10. The application is granted as set forth above.

11. Application 06-02-021 is closed.

This order becomes effective 30 days from today.

Dated October 5, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

APPENDIX A
ENVIRONMENTAL DOCUMENTS

NOTICE OF DETERMINATION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: California Department of Transportation
District 8
464 West 4th Street, 6th Floor
San Bernardino, CA 92401-1400

Subject: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Interstate 215 Improvements Between Interstate 10 and State Route 30

Project Title

90021032 Sumner Baker (909) 383-4079
State Clearinghouse Number Lead Agency Contact Person Area Code/Telephone

Project Location (include county): I-215, Post Miles 4.1 to 10.1, City of San Bernardino, San Bernardino Co.

Project Description: Replace, reconfigure or modify interchanges and crossings, realign freeway, construct collector-distributor roads, add additional lanes and other associated work.

This is to advise that the California Department of Transportation has approved the above-described project on September 27, 1999 and has made the following determinations regarding the above described project:

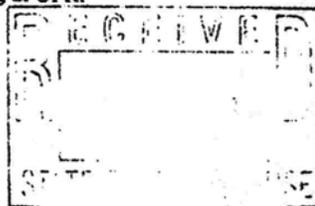
- 1. The project ( X will/ \_\_ will not) have a significant effect on the environment.
2. X An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ( X were/ \_\_ were not) made a condition of the approval of the project.
4. A Statement of Overriding Considerations ( X was/ \_\_ was not) adopted for this project.
5. Findings ( X were/ \_\_ were not) made pursuant to the provisions of CEQA.

The above-identified document with comments and responses and record of project approval is available to the general public at: Caltrans District 8, Environmental Planning and Management, 8th Floor, 464 West Fourth Street, San Bernardino, California.

Handwritten signature of Sumner Baker

December 29, 1999 Chief, Environmental Planning and Management
Signature Date Title

Date received for filing at OPR:



Report Number: FHWA-CA-EIS-93-02-F

SCH Number: 90021032  
08-SBd-215-4.1/10.1  
08104-007130

INTERSTATE 215 IMPROVEMENTS BETWEEN INTERSTATE 10 AND STATE ROUTE 30  
CITY OF SAN BERNARDINO, SAN BERNARDINO COUNTY, CALIFORNIA

FINAL ENVIRONMENTAL IMPACT STATEMENT / FINAL ENVIRONMENTAL IMPACT REPORT

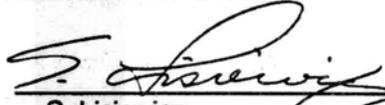
Submitted Pursuant to (Federal) 42 U.S.C. 4332(2)(C)  
(State) Division 13, Public Resources Code

U.S. DEPARTMENT OF TRANSPORTATION  
Federal Highway Administration

THE STATE OF CALIFORNIA  
Department of Transportation

San Bernardino Associated Governments

27 Sept 1999  
Date

  
S. Lisiewicz  
Director, District 8  
California Department of Transportation

12/6/99  
Date

  
Jeffrey A. Lindley  
Division Administrator  
Federal Highway Administration

The following persons may be contacted for additional information:

Mr. Gary Moon  
Director, Program Management  
SANBAG  
472 N. Arrowhead Avenue  
San Bernardino, CA 92401  
(909) 884-8276

Mr. Sumner Baker – MS 823  
Chief, Environmental Planning  
and Management  
Caltrans, District 8  
464 W. 4<sup>th</sup> Street, 6<sup>th</sup> Floor  
San Bernardino, CA 92401  
(909) 383-4079

Mr. C. Glenn Clinton  
Program Delivery South  
Team Leader  
FHWA  
980 9<sup>th</sup> Street, Ste. 400  
Sacramento, CA 95814  
(916) 498-5037

Abstract

It is proposed to widen Interstate 215 between Interstate 10 and State Route 30 in the City of San Bernardino. The widening would include reconstruction of nearly all interchanges and crossings. Three (3) alternatives were examined, each providing a different combination of ramp connections and frontage roads. Two options were considered for each alternative; one would add general-purpose lanes ("Mixed Flow Option") and a second would add High Occupancy Vehicle (HOV) lanes ("Base Option"). Alternative 3, Base Option is preferred because its frontage road system spans nearly the length of the project, providing the greatest improvement to safety and overall traffic circulation. Substantive issues include residential and commercial displacement, traffic circulation, noise, reduction of visual quality and temporary construction impacts. Mitigation measures will reduce or eliminate negative impacts.

Send comments to Sumner Baker at the above address by February 25, 2000.





