

Decision 08-09-032 September 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of San Marcos for an order authorizing construction of an at-grade pedestrian crossing in San Marcos, California, crossing North County Transit District owned railroad in the vicinity of Marcos Street, County of San Diego at Milepost 106E-115.89.

Application 07-09-021
(Filed September 27, 2007)

**DECISION AUTHORIZING THE CITY OF SAN MARCOS TO
CONSTRUCT AN AT-GRADE PEDESTRIAN RAIL CROSSING IN THE
VICINITY OF MARCOS STREET**

1. Summary

The City of San Marcos is authorized to construct an at-grade pedestrian crossing, in the vicinity of Marcos Street, across tracks owned by the North County Transit District.¹ The crossing shall be identified as California Public Utilities Commission No. 106E-115.89. This proceeding is closed.

2. Background

The North County Transit District (NCTD) operates the 22-mile Oceanside to Escondido "Sprinter" light-rail transit system along the State Highway

¹ The North San Diego County Transit Development Board was created by legislation in 1975. The agency uses North County Transit District as its common name. The NCTD oversees the operation of the San Diego Northern Railway, Inc. (the "Coaster" commuter railroad between Oceanside and San Diego, the "Sprinter" rail transit line between Oceanside and Escondido (described herein), and various bus lines in north San Diego County.

78 Corridor in San Diego County. The NCTD began revenue service along this line in March 2008. This line is the former Escondido Branch of the Atchison, Topeka & Santa Fe Railroad. NCTD has owned the line since 1992. The Sprinter trains provide service to/from various points in San Marcos, including the California State University San Marcos campus. The subject crossing will provide a needed pedestrian-only crossing site over the NCTD line.

Sprinter trains are made-up of diesel-multiple-unit (DMU) light-rail vehicles. The DMU is a self-propelled diesel-electric or diesel-hydraulic rail vehicle, reaching maximum speeds of 50 miles per hour. The DMU cars can be coupled together for train consists of up to three vehicles, with each train capable of transporting a maximum of 300 passengers. NCTD now operates approximately 64 daily Sprinter trains.

Pursuant to an agreement with NCTD, the Burlington Northern and Santa Fe Railway Company (BNSF) also shares the right-of-way with the Sprinter trains. BNSF now operates up to eight weekly freight trains on the line. Operation of the Sprinter transit service and the BNSF freight service is completely separate as the freight service only operates at night and early morning hours, after completion of all daily Sprinter service.

3. The Consumer Protection and Safety Division's (CPSD) Protest

The Commission's CPSD filed a timely protest to the City of San Marcos's (City) application on October 26, 2007.² No other protests were filed. In its protest, CPSD asserted the application failed to provide the necessary and/or

² Filed pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure (Rules).

specific information regarding pedestrian traffic volumes, crossing design information, types of crossing warning devices, pathway configuration, and related safety treatments.

A prehearing conference (PHC) in this matter was held on March 13, 2008 in Oceanside to determine the necessity of an evidentiary hearing (EH). At the PHC, the City and CPSD both advised they expected to settle the issues in dispute as a result of many meetings between the two parties, and that if settlement was reached an EH likely would be unnecessary. The City further advised it soon planned to file an amended application, in consultation with CPSD, addressing the issues in dispute.

The City filed its amended application on March 19, 2008, and CPSD withdrew its protest on March 27, 2008. In its withdrawal, CPSD stated that the amendment resolved the matters set forth in its protest, and that it supports and concurs with the changes contained in therein. The subject application, therefore, now is an uncontested matter and we find that an EH is unnecessary.

4. Discussion

The various issues we considered in authorizing this crossing are discussed below.

4.1. Need for Crossing

The proposed crossing will provide additional, safer and more efficient access to the Paseo Del Oro Village Center, a new commercial development near the crossing site that draws patronage from both sides of the tracks, as well as to residential and recreational areas. The crossing also will serve two nearby schools whose students will use the crossing daily to access bus stops and travel to/from school. Some pedestrians, including students, now trespass across the

tracks (cross illegally) at the crossing site as it is the most convenient relative to the residential, commercial and school locations.

4.2. Practicability

Pursuant to Rules 3.7 and 3.11, any application for an at-grade crossing must show why a grade-separated crossing is not practicable. A grade-separated crossing is not practicable here primarily due to the lack of available space to construct a pedestrian bridge or tunnel within the configuration of the rail right-of-way and adjacent roadways. The rail right-of-way is approximately 100 feet wide. Public roadways run parallel to the track on both sides, and the available land to construct a grade-separated crossing (bridge or tunnel) is approximately 6 feet, insufficient space for such construction. The City also considered constructing a longer bridge over the rail line and both roadways, but found that the space for the bridge “footprint” (the available land between the outside limits of the roadway right-of-way and the commercial buildings of the Paseo del Oro development) also was insufficient. Other physical factors to overcome at this location relative to a possible grade separation include underground fiber-optic communication lines and railroad signal conductors along the rail right-of-way, as well as a wayside drainage.

In addition to physical constraints, the City also reports in its application that the area near the crossing is one of high crime and gang activity. In this regard, the City found that potential users of the crossing would prefer to cross the tracks at-grade, as a grade-separated crossing (especially a tunnel crossing) would pose a higher risk to possible threats or crime activities.

Lastly, in determining practicability we also consider the recommendations of our staff. As noted earlier in this discussion, CPSD staff has

reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the City's request.

In view of the above, we find it is not practicable to construct a grade separation at the proposed crossing site.

4.3. Crossing Design/ Warning Devices

In its application, the City provided the necessary detailed drawings, plans and maps of the proposed crossing. The crossing surface panels will be pre-cast concrete, and additional fencing will be constructed near the crossing to channelize pedestrian flow. The crossing will be constructed at a 90-degree angle to the track to provide the highest level of safety. Commission Standard #9 crossing warning devices will be installed, along with automatic swing exit gates, electronic warning bells, and flashing lights.

Also relative to crossing safety, the City reports a high number of Spanish-speaking residents in the area of the proposed crossing. In this regard, the City will install warning signage and pavement markings in both English and Spanish.

The City otherwise shall comply with all applicable rules, General Orders, and the Manual on Uniform Traffic Control Devices, including the California Supplement, regarding crossing safety.

4.4. Environmental Review

The California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources (PR) Code Sections 21000, et seq., requires that the Commission consider the environmental consequences before acting upon or approving a

project.³ Under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.⁴ The Responsible Agency must consider the Lead Agency's environmental review and make its own findings that the Lead Agency complied with the requirements of CEQA before acting on or approving a project. Here, the City is the Lead Agency and the Commission is the Responsible Agency.

The PR Code exempts from the provisions of CEQA any new, small facilities, limited in numbers.⁵ The City determined that the subject proposed crossing is such a project, and therefore qualifies as a Categorical Exemption to CEQA and the preparation of an Environmental Impact Report. On September 20, 2007, the City filed a Notice of Exemption (NOE) regarding this project with the State Office of Planning and Research, and separately with the office of the San Diego County Clerk/Recorder. No objections or opposition to the NOE were filed.

We have reviewed and considered the City's Categorical Exemption. The site of the proposed crossing has been inspected in the field and the proposed plans have been reviewed by CPSD staff. We agree with the City that the proposed project is exempt from the requirements of CEQA, and overall find that the City has complied with the requirements of CEQA.

³ Title 14, California Code of Regulations, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA Guidelines), Section 15050(b).

⁴ CEQA Guidelines, Section 15051(b).

⁵ CEQA Guidelines Section 15303.

4.5. Crossing Identification Number

The new crossing is assigned the following Commission identification number: California Public Utilities Commission Crossing No. 106E-115.89.

4.6. Post-Construction Report and Monitoring

Within 30 days after completion of the work under this decision, the City shall notify CPSD Staff in writing by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations).

In addition to submitting the Form G, and as a result of meetings and consultations with CPSD and NCTD staff, the City agreed to perform a post-construction crossing monitoring plan with respect to rail right-of-way trespassing and other safety and security issues. The monitoring plan will be in place for three months after the City submits its Form G to CPSD, and calls for the City to monitor and conduct on-site observations of the crossing on certain school days and week-end days. The City will document its findings, including any safety warning device problems and trespassing/illegal activity enforcement, and at the end of the three-month period will report the results to CPSD and NCTD. If deemed necessary, the City, NCTD and CPSD jointly will develop a corrective action to be implemented by the City.

5. Categorization and Need for Hearings

In Resolution ALJ-3200, dated October 4, 2007, the Commission preliminarily categorized this proceeding as ratesetting, and determined that hearings would not be necessary. We find that this proceeding is categorized appropriately. In light of CPSD withdrawing its protest, we also find that a hearing is not necessary. No party has objected to this categorization or need for hearing.

6. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner, and Kenneth Koss is the assigned Administrative Law Judge in this proceeding.

7. Waiver of Comment Period

This is an uncontested matter where the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, and Rule 14.6(c)(2), the 30-day period for public review and comment is waived.

Findings of Fact

1. The City requests authority to construct an at-grade pedestrian crossing in the vicinity of Marcos Street across tracks owned by the NCTD.
2. Notice of the application was published in the Commission's Daily Calendar on September 27, 2007.
3. Public convenience, necessity, and safety require construction of the crossing.
4. It is not practicable to construct a grade-separated crossing at the proposed crossing site.
5. The City agreed to comply with the post-construction crossing safety monitoring plan, described herein and detailed in its application, in conjunction with NCTD and CPSD staff.
6. There are no unresolved matters or protests.
7. The City is the lead agency and the Commission is the responsible agency for this project under CEQA.
8. The City determined the subject project qualifies as a Categorical Exemption from the requirements of CEQA.

9. As the responsible agency, the Commission has reviewed and considered the City's CEQA review process.

Conclusions of Law

1. The City's environmental review is adequate for our decision-making purposes.
2. The City reasonably concluded that the subject project qualifies as a Categorical Exemption from the requirements of CEQA.
3. This application is uncontested and a public hearing is not necessary.
4. 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 San Marcos (City) is authorized to construct an at-grade pedestrian crossing across the tracks of the North County Transit District (NCTD), in the vicinity of Marcos Street.
2. The crossing shall be identified as Crossing No. 106E-115.89.
3. Safety measures installed at the crossing shall include:
Commission Standard No. 9 (flashing light signal assembly)
warning devices, including electronic warning bells;
Swing exit gates;
Fencing to channelize pedestrians to the designated crossing; and
Warning signage and pavement markings at the crossing in both English and Spanish.
4. The City shall comply with all applicable General Orders and the Manual on Uniform Traffic Control Devices, including the California Supplement, with regard to crossing safety.

5. The City and NCTD shall bear construction and maintenance costs in accordance with a written agreement between the parties. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Within 30 days after completion of the crossing, the City shall notify the Commission's Consumer Protection and Safety Division staff that the authorized work is completed by submitting a completed Commission Standard Form G titled Report of Changes at Highway Grade Crossings and Separations.

7. The City shall comply with the post-construction crossing safety monitoring plan described herein.

8. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. This application is granted as set forth above.

10. Application 07-09-021 is closed.

This order is effective today.

Dated September 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners