

Decision 03-10-076 October 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Oakland, acting by and through its Board of Port Commissioners for an order authorizing the construction of an at-grade highway-rail crossing at Middle Harbor Road in the City of Oakland, Alameda County, State of California.

Application 03-06-007
(Filed June 6, 2003)

O P I N I O N

Summary

The City of Oakland (City) requests authority to construct a new at-grade highway-rail crossing across Middle Harbor Road in the City in Alameda County. The City is constructing a new joint intermodal terminal for the Port of Oakland (Port) as part of the Port's Vision 2000 Maritime Development Program. The new terminal will allow for additional ship to rail cargo distribution and provide more efficient cargo throughput by consolidating interspersed intermodal local rail yards into one large near-dock terminal. The proposed at-grade highway-rail crossing will replace two existing at-grade crossings (CPUC Crossing Nos. 001A-3.69 and 001A-3.78-C) and will allow the retirement and removal of two other at-grade crossings in the Port (CPUC Crossing Nos. 004-5.15 and 004-5.40). The proposed crossing will provide access for Union Pacific Railroad and Burlington Northern Santa Fe Railroad to handle oversize and overweight cargo to the tenant at Berth 57/59 marine terminal. The new

crossing will henceforth be referred to as Middle Harbor Road and will be given CPUC Crossing No. 001A-5.30-C. A map of the vicinity is set forth as Exhibit A.

Discussion

The Vision 2000 Maritime Development Program encompasses a wide variety of projects with a goal of increasing the capacity of the Port by building new shipping terminals and berths. The proposed crossing is approximately 213 feet long and curves across Middle Harbor Road at an approximate 40-degree angle. The crossing will be controlled by two CPUC Standard #8A flashing lights with cantilever type warning devices. Advance warning signs, including W10-1 signs and skewed bicycle/motorcycle crossing signs, will be posted for each direction on Middle Harbor Road. In addition to the westbound direction, W10-1, a flashing yellow advance warning signal, will be installed approximately 200 feet east of the crossing to provide additional warning as vehicles approach the horizontal curve. A temporary W10-1 and W10-4 signs will be placed at K Street and the entrance to Building D-851. Both K Street and the Building D-851 entrance will be closed as part of this project. The new entrance to Building D-851 will be relocated approximately 120 feet east of the new crossing.

The new proposed at-grade highway-rail crossing will replace two existing at-grade crossings, CPUC Crossing Nos. 001A-3.69 and 001A-3.78-C. The City will also abolish two additional at-grade crossings, CPUC Crossing Nos. 004-5.15 and 004-5.40 as part of the on-going marine terminal reconstruction projects. These crossings will be abolished in early 2004 with service on the track terminating in January 2004.

The City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resource Code Section 21000 et seq.

The Commission is a responsible agency for this project under CEQA (Public Resources Code Section 21000 et seq.). CEQA Guideline Section 15050(b) requires that a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project. The specific activities, which must be conducted by the responsible agency, are contained in CEQA Guideline Section 15096.

On April 22, 1999, after preparation and review of an Environmental Impact Report (EIR) for the entire Vision 2000 project, the City filed a CEQA Notice of Determination (NOD) with the County of Alameda County Clerk. The project was found to have significant effect on the environment and mitigation measures were made as a condition for approval. However, there were no potential environmental impacts or mitigation measures found that related directly to the rail crossing portion of the project. This EIR and NOD were used in Decision 00-04-021 for a similar highway-rail crossing within the Port.

We have reviewed the City's environmental documents and find them adequate for our decision-making purposes. Safety, security and transportation are within the scope of the Commission's permitting process.

The Commission's Consumer Protection and Safety Division-Rail Crossings Engineering staff (RCES) inspected the site and examined the need for and safety of the proposed crossing. RCES recommends that the authority to construct the crossing be granted.

Application 03-06-007 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 40, which relates to building a railroad track across a public roadway.

In Resolution ALJ 176-3115 dated June 19, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3115.

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. Notice of the application was published in the Commission's Daily Calendar on June 12, 2003. No protests have been filed.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a highway-rail crossing at-grade across Middle Harbor Road in the Port of Oakland. It will be given CPUC Crossing Number 001A-5.30-C.
3. The proposed new at-grade highway-rail crossing shall replace two existing at-grade crossings, CPUC Crossing Nos. 001A-3.69 and 001A-3.78-C.
4. The City shall abolish two additional at-grade highway-rail crossings, CPUC Crossing Nos. 004-5.15 and 004-5.40 as part of the on-going marine terminal reconstruction projects.

5. Public convenience and necessity require the construction of Middle Harbor Road at-grade in Alameda County.

6. The City is the lead agency for this project under CEQA, as amended.

7. On April 22, 1999, the City filed an NOD with the County of Alameda. Mitigation measures were a condition of project approval.

8. The EIR did not identify any potential environmental impacts related to the rail crossing portion of the project.

9. The Commission is a responsible agency for this project, has reviewed the City's environmental documents and finds them adequate for our decision-making purposes.

10. Safety, security, transportation and noise are within the scope of the Commission's permitting process.

11. The NOD did not identify any potential environmental impacts related to safety, security, transportation and noise.

Conclusions of Law

1. The application is uncontested and a public hearing is not necessary.
2. 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 Oakland (City) is authorized to construct a highway-rail crossing across Middle Harbor Road in the Port of Oakland (Port) at the location as shown on the plans attached to the application, to be identified as CPUC Crossing No. 001A-5.30-C.

2. Upon completion of the new Middle Harbor Road crossing (CPUC Crossing No. 001A-5.30-C), the City shall close and physically remove the two existing at-grade crossings, CPUC Crossing Nos. 001A-3.69 and 001A-3.78-C.

3. The City shall close and physically remove the two existing at-grade crossings, CPUC Crossing Nos. 004-5.15 and 004-5.40, upon termination of service on the track.

4. Construction and maintenance costs shall be borne by the Port. The City shall file approved final construction plans with the Commission's Consumer Protection and Safety Division-Rail Crossing Engineering Section staff (RCES) prior to commencing construction.

5. Within 30 days after completion of this project, the City shall notify the RCES in writing by submitting a Standard CPUC Form G (Report of Changes at Highway Grade Crossings and Separations) that the authorized work is completed.

6. This authorization shall expire if not exercised within two (2) 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.

7. This application is granted as set forth above.

8. Application 03-06-007 is closed.

This order becomes effective 30 days from today.

Dated October 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH

GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

EXHIBIT A

