

Decision 08-11-013 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Tustin to construct a grade-separated crossing of Tustin Ranch Road over the mainline tracks of Southern California Regional Rail Authority's Orange Subdivision, in the City of Tustin, Orange County, California.

Application 08-06-032
(Filed June 25, 2008)

**DECISION GRANTING CITY OF TUSTIN AUTHORITY
TO CONSTRUCT GRADE-SEPARATED HIGHWAY-RAIL
CROSSING OF TUSTIN RANCH ROAD**

Summary

This decision grants authority to the City of Tustin (City) to construct a grade-separated crossing of Tustin Ranch Road and the mainline tracks of the Southern California Regional Rail Authority's (SCRRA) Orange Subdivision, to be identified as CPUC Crossing No. 101OR-178.90-A. The grade-separated crossing of Tustin Ranch Road and the mainline tracks of the SCRRA's Orange Subdivision is part of a larger project for the Extension of Tustin Ranch Road and the future alignment of Valencia North Loop Road at former Marine Corps Air Station MCAS Tustin.

Discussion

SCRRA is a five-county joint powers authority, created pursuant to State of California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to build, maintain and operate the

“Metrolink” commuter train system. The five-county member agencies are comprised of the following: Los Angeles County Metropolitan Transportation Authority, Ventura County Transportation Commission, Orange County Transportation Authority, San Bernardino Associated Governments, and Riverside County Transportation Commission. SCRRA builds and operates Metrolink commuter train service in the five-county areas on rail rights-of-ways owned by the member agencies. In addition to Metrolink commuter trains, the National Passenger Railroad Corporation operates Amtrak passenger trains and BNSF Railway Company operates freight trains on this rail line.

The plans attached to the application show a permanent minimum vertical clearance of 24 ft 0 in above the top of rail. However, the application states during construction period the vertical clearance will be temporarily reduced to 21 ft 6 in. Commission General Order (GO) 26-D requires a minimum vertical clearance of 22 ft 6 in. Since the vertical clearance of 21 ft 6 in during construction will be less than the minimum 22 ft 6 in required by GO 26-D, the City request permission for temporary deviation from the vertical clearance requirement during construction period. The plans show the minimum horizontal clearance requirements of GO 26-D will be met.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, as amended, 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 must approve the project pursuant to Sections 1201-1202 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.¹ Here, the City 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.²

The City prepared a Final Environmental Impact Report (FEIR) for the Disposal and Reuse of Marine Corps Air Station Tustin, which was certified on January 16, 2001 in accordance with CEQA. Subsequently, the City prepared a Supplement to the FEIR for the Extension of Tustin Ranch Road, because some of the environmental analyses in the FEIR included the area of the Tustin Ranch Road.

The Supplement to the FEIR evaluated impacts to traffic, air quality and noise because all other issues were evaluated in the initial study and determined to have no impact or less than significant impact with project. The Supplement to the FEIR identified mitigation measures and adopted a

¹ CEQA Guidelines (Title 14 of the California code of Regulations), Section 15051(b).

² CEQA Guidelines, Sections 15050(b) and 15096.

Statement of Overriding Considerations The City filed a Notice of Determination (NOD) with the Tustin City Clerk on December 23, 2004.

Traffic and noise impacts are within the scope of the Commission's permitting process. With respect to the potentially significant noise and transportation impacts identified in the FEIR, the Commission finds that the City adopted feasible mitigation measures to either eliminate or substantially lessen those impacts to less than significant levels.³ The City adopted a Statement of Overriding Considerations for those impacts that could not be mitigated to less-than-significant levels. We will adopt City's environmental findings and mitigations for purposes of our approval

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 (RCES) reviewed and analyzed the application, and recommends that the Commission grant the City's request.

Categorization and Need for Hearings

In Resolution ALJ 176-3217 dated July 10, 2008 and published in the Commission Daily Calendar on July 11, 2008, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3217.

³ See e.g. FEIR, p. 4-236

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 10, 2008.
2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct a grade separated highway-rail crossing over SCRRA-owned tracks.
3. The City is the lead agency for this project under CEQA, as amended.
4. The City prepared an FEIR and its Supplement and issued an NOD with a Statement of Overriding Considerations.
5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR and its Supplement.

Conclusions of Law

1. The FEIR and its Supplement prepared by the City as the documentation required by CEQA for the project is adequate for our decision-making purposes.
2. We adopt the City's findings.
3. The application does not require a public hearing.

ORDER

IT IS ORDERED that:

1. The City of Tustin (City) is authorized to construct a grade-separated highway-rail crossing of Tustin Ranch Road over the mainline tracks of Southern California Regional Rail Authority's (SCRRA) Orange Subdivision railroad tracks, to be identified as CPUC Crossing No. 101OR-178.90-A.

2. The City is granted permission to have temporary impaired vertical clearance of 21 ft 6 in (measured from top of rail to the lowest portion of the overhead structure) during the construction period only.

3. The City shall notify SCRRA, BNSF Railway Company, and National Passenger Railroad Corporation and the Los Angeles office of the Commission's Consumer Protection and Safety Division - Rail Operations Safety Branch (ROSB) and Rail Crossings Engineering Section (RCES) at least 15 days but not more than 30 days in advance of the date when it will create the temporary overhead clearance.

4. SCRRA, BNSF Railway Company, and National Passenger Railroad Corporation shall issue instructions to their operating employees regarding the temporary reduced overhead clearance of 21 ft 6 in beneath bridge structure. They shall submit the instructions in advance of the date when the City will create the temporary overhead clearance to the Los Angeles office of ROSB and RCES.

5. Within 30 days after completion of the grade-separated crossing, the City shall notify RCES that the authorized work is completed by submitting a completed Commission Standard Form G titled *Report of Changes at Highway Grade Crossings and Separations*.

6. This authorization shall expire if not exercised within three 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. 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. This application is granted as set forth above.

9. Application 08-06-032 is closed.

This order becomes effective 30 days from today.

Dated November 6, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners