

Decision 09-01-025 January 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California Department of Transportation for an order authorizing the removal and reconstruction of five overhead grade separations per GO 26-D; Ninth Street, CPUC Crossing No. 002-80.20-A, USDOT No. 026113F; Baseline Street, CPUC Crossing No. 002-79.90-A, USDOT No. 026112Y; 16th Street, CPUC Crossing No. 002-79.40-A, USDOT No. 026110K; Massachusetts Avenue, CPUC Crossing No. 002-79.00-A, USDOT No. 026109R; and Highland Avenue, CPUC Crossing No. 002-78.60-A, USDOT No. 026108J, over three sets of tracks owned by the BNSF Railway Company, known as the Cajon Subdivision, within the City of San Bernardino, County of San Bernardino, California.

Application 08-09-021
(Filed September 26, 2008)

**DECISION GRANTING AUTHORITY TO THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION TO REMOVE
AND RECONSTRUCT FIVE OVERHEAD BRIDGE STRUCTURES
OVER THREE SETS OF RAILROAD TRACKS OWNED BY BNSF
RAILWAY COMPANY WITHIN THE CITY OF SAN BERNARDINO,
IN THE COUNTY OF SAN BERNARDINO**

Summary

This decision grants the California Department of Transportation (Caltrans) permission to remove and reconstruct five overhead grade-separated bridge structures over BNSF Railway Company's (BNSF) Cajon

Subdivision railroad tracks, within the City of San Bernardino, in the County of San Bernardino.

Discussion

Caltrans proposes to remove and reconstruct the existing Interstate 215 (I-215) freeway overhead structures known as: Ninth Street Overhead, CPUC Crossing No. 002-80.20-A and State Bridge Number 54-0496; Baseline Street Overhead, CPUC Crossing No. 002-79.90-A and State Bridge Number 54-0498; 16th Street Overhead, CPUC Crossing No. 002-79.40-A and State Bridge Number 54-0522; Massachusetts Avenue Overhead, CPUC Crossing No. 002-79.00-A and State Bridge Number 54-0510; and Highland Avenue Overhead, CPUC Crossing No. 002-78.60-A and State Bridge Number 54-0467. These structures are being reconstructed in order to accommodate the construction of High Occupancy Vehicle (HOV) lanes, additional mixed flow, and auxiliary lanes on the I-215 freeway from Orange Show Road to State Route 210. In addition to BNSF freight trains, the National Passenger Railroad Company (Amtrak) operates Amtrak passenger trains on this line.

The application states the following permanent minimum vertical and horizontal clearance:

- Ninth Street will have a permanent vertical clearance of 24 feet four inches above top of rail and a permanent horizontal clearance of 27 feet two inches from face of column to the centerline of the nearest adjacent track;

- Baseline Street will have a permanent vertical clearance of 25 feet seven inches above the top of rail and a horizontal clearance of 49 feet and six inches;
- 16th Street will have a permanent vertical clearance 29 feet three inches and a horizontal clearance of 16 feet and zero inches;
- Massachusetts Avenue will have a permanent vertical clearance of 26 feet zero inches and horizontal clearance of 16 feet and four and half inches; and
- Highland Avenue will have a permanent vertical clearance of 27 feet ten inches and horizontal clearance of ten feet one inches.

The application also states that during construction, the temporary vertical clearances for Ninth Street, Baseline Street, 16th Street, Massachusetts Avenue, and Baseline Avenue will be 21 feet 6 inches. Commission General Order (GO) 26-D requires a minimum vertical clearance of 22 feet 6 inches. Since the vertical clearance of 21 feet 6 inches during construction will be less than the minimum 22 feet 6 inches required by GO 26-D, Caltrans request permission for temporary deviation from GO 26-D vertical clearance requirement.

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 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 lead agency is Caltrans 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

Pursuant to CEQA and the National Environmental Policy Act (NEPA),³ Caltrans and the United States Department of Transportation's Federal Highway Administration (FHWA) adopted a Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) for the I-215 Improvement Project, including the removal and reconstruction of the Ninth Street, Baseline Street, 16th Street, Massachusetts Avenue, and Highland Avenue overhead bridge structures over the BNSF Cajon

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

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

³ 42 USC 4332 (2)(c) of 1969 as amended. Projects undertaken in California that utilize federal funds, require discretionary federal approval or are undertaken by federal agencies are subject to both NEPA and CEQA.

Subdivision railroad tracks, which are the subject of this application. Caltrans filed a Notice of Determination (NOD) in compliance with the California Public Resource Code dated December 29, 1999. The FHWA also approved a Record of Decision (ROD) for the Project on January 2, 2001.

Caltrans and FHWA prepared an Environmental Reevaluation and CEQA Addendum in November 2005 to address additional issues related to design changes to the I-215 Improvement Project. Design changes in the Environmental Reevaluation and CEQA Addendum included changes to the Massachusetts Ave. and Highland Ave. overcrossings.

The FEIR/FEIS identified noise impacts associated with the I-215 Improvement Project. Noise impacts are within the scope of the Commission's permitting process. With respect to the potential significant noise impacts identified in the FEIR/FEIS, the Commission finds that Caltrans adopted feasible mitigation measures, such as implementation of sound walls and restricting construction hours, to either eliminate or substantially lessen those impacts to less than significant levels. Caltrans adopted a Statement of Overriding Considerations for those impacts outside the Commission's purview that could not be mitigated to less-than-significant levels. We will adopt Caltrans' environmental finding and mitigations for purposes of our approval.

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, Rule 3.8 relating to alteration or relocations of an existing railroad crossing.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section has reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant Caltrans' request.

Categorization and Need for Hearings

In Resolution ALJ 176-3222 dated October 2, 2008, and published in the Commission Daily Calendar on October 3, 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 176-3222.

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 October 3, 2008. 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 five grade separated crossings of I-215 freeway and BNSF's Cajon Subdivision railroad tracks, identified as

Ninth Street, Baseline Street, 16th Street, Massachusetts Avenue, and Highland Avenue in the City and County of San Bernardino.

3. Caltrans requests permission for temporary deviation, during construction period, from the vertical clearance requirements of GO 26-D.

4. Caltrans, acting as the lead agency under CEQA, and FHWA, acting pursuant to NEPA, adopted an FEIR/FEIS for the I-215 Improvement Project to widen and improve the I-215 between I-10 and SR-30 in San Bernardino. Caltrans filed a NOD in compliance with the Public Resource Code dated December 29, 1999. FHWA approved a ROD for the Project on January 2, 2001. Caltrans and FHWA prepared an Environmental Reevaluation and CEQA Addendum in November 2005 to address additional issues related to design changes to the I-215 Improvement Project, including changes to the Massachusetts Ave. and Highland Ave. overcrossings.

5. The Commission is a responsible agency for this project, and has reviewed and considered the lead agency's FEIS/FEIR, NOD and Environmental Reevaluation and CEQA Addendum.

Conclusions of Law

1. The FEIR/FEIS prepared by Caltrans and FHWA has documentation required by CEQA for the project and is 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.

ORDER

IT IS ORDERED that:

1. The California Department of Transportation (Caltrans) is authorized to remove and reconstruct five grade-separated railroad crossings of Interstate 215 (I-215) freeway and BNSF Railway Company's (BNSF) Cajon Subdivision railroad tracks, in the City and County of San Bernardino. The five crossings are identified as Ninth Street (CPUC Crossing No. 002-80.20-A); Baseline Street (CPUC Crossing No. 002-79.90-A); 16th Street (CPUC Crossing No. 002-79.40-A); Massachusetts Avenue (CPUC Crossing No. 002-79.00-A); and Highland Avenue (CPUC Crossing No. 002-78.60-A).

2. Caltrans is granted permission to have temporary impaired vertical clearance of 21 feet 6 inches (measured from top of rail to the lowest portion of the overhead structure) at all five railroad crossings subject to this decision during the construction period only.

3. Caltrans shall notify BNSF 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. BNSF and National Passenger Railroad Company shall issue instructions to their operating employees regarding the temporary reduced overhead clearance of 21 feet 6 inches beneath the Ninth Street, Baseline Street, 16th Street, Massachusetts Avenue, and Highland Avenue Overhead bridge structures. They shall submit the instructions in advance

of the date when Caltrans will create the temporary reduced overhead clearance to ROSB and RCES.

5. Within 30 days after completion of the project, Caltrans 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 satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

7. A request for extension of the three-year authorization 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 08-09-021 is closed.

This order becomes effective 30 days from today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners