

CSE

ORIGINAL

Decision No. 82840

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of SOUTHERN PACIFIC TRANSPORTATION)
COMPANY for an order authorizing)
construction at grade of an)
industrial drill track in, upon)
and across Shoemaker Avenue in the)
City of Cerritos, County of Los)
Angeles, State of California.)

Application No. 54438
(Filed December 18, 1973)

INTERIM OPINION

The Southern Pacific Transportation Company by this application requests the authority to construct an industrial drill track in, upon and across Shoemaker Avenue in the City of Cerritos, Los Angeles County.

By a motion filed pursuant to Rule 17.1(e) (2) (c) of the Commission's Rules of Practice and Procedure, applicant seeks an order from the Commission that the construction of this industrial drill track is a ministerial project and is exempt from the Environmental Impact Report requirements of the California Environmental Quality Act of 1970, as amended.

The motion will be denied. The construction of an industrial drill track upon or across a public street is a discretionary ^{1/} project, not a ministerial ^{2/} project.^{3/} The Commission may grant or deny this request or prescribe terms and conditions as it may deem necessary.

^{1/}
Section 1201 Public Utilities Code

CHAPTER 6. RAILROAD CROSSINGS

1201. No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes. (Former Sec. 43(a).)

^{2/}
Guidelines For Implementation of The California Environmental Quality Act of 1970, As Amended (Dec. 17, 1973).

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

^{3/} See Following Page.

3/
Guidelines For Implementation of The California Environmental
Quality Act of 1970, As Amended (Dec. 17, 1973).

15037. Project

- (a) Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:
- (1) an activity directly undertaken by any public agency including but not limited to public works construction and relative activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof pursuant to Government Code Sections 65100 - 65700.
 - (2) an activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (3) an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- (b) Project does not include:
- (1) Anything specifically exempted by state law;
 - (2) Proposals for legislation to be enacted by the state Legislature.
 - (3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.
 - (4) The submittal of proposals to a vote of the people of the State or of a particular community.
- (c) The term "project" refers to the underlying activity and not to the governmental approval process.
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In promulgating Rule 17.1 the Commission gave specific attention to the matter of grade crossings. If this motion is granted the Commission will sacrifice its requirements of compliance with the Environmental Quality Act of 1970, as amended, in regard to railroad crossings. The granting of this motion would also negate the Legislature's policy of the State on environmental quality; this the Commission may not do.

Any party may file in a proceeding before the Commission a motion to determine whether or not the proceeding involves a project within the purview of the California Environmental Quality Act.^{4/} The requirements of CEQA, the Guidelines ^{2/}, and Commission Rule 17.1 do not apply to any project where it can be seen with reasonable certainty that the project involved will not have a significant effect on the environment.^{5/}

If it appears that there may be a significant effect, an applicant is required to file an EDS (Rule 17.1 (c)) or transmit to the Commission an EIR or Negative Declaration together with evidence of adoption by the Lead Agency.

^{2/} See Page 2.

^{4/} Rule 17.1 (e) (1)

(e) Motions

(1) Any party may file in a proceeding before the Commission a motion to determine whether or not the proceeding involves a project within the purview of CEQA.

^{5/} Rule 17.1 (a) (2)

(2) The requirements of CEQA, the Guidelines, and this rule do not apply to any project where it can be seen with reasonable certainty that the project involved will not have a significant effect on the environment.

F I N D I N G S

1. A ministerial project is, by definition, an automatic response wherein an agency must act upon a given set of facts without regard to its own judgment or opinion.

2. The Commission must exercise discretion, by the employment of judgment, opinion and wisdom, in acting upon every application for the construction of any railroad crossing.

C O N C L U S I O N S

We conclude that the motion by the applicant should be denied as set forth in the following order:

I N T E R I M O R D E R

IT IS ORDERED that:

1. The motion made herein by applicant is denied.
2. The applicant will comply with the requirements of Rule 17.1 of the Commission's Rules of Practice and Procedure.
3. Applications requesting the Commission to grant authority to construct a railroad across, upon, over or under a public street, road or highway or to construct a public street, road or highway across, over or under a railroad are not ministerial but are discretionary.

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The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 7th day of MAY, 1974.

William S. Sturgeon, Jr. President

[Signature]
[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.