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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE CITY OF UNION CITY for authority to construct Whipple Road at-grade over and across the Southern Pacific Railroad Company track, Milepost L-24.2, in the City of Union City, County of Alameda, State of California.	Application 86-05-052 (Filed May 14, 1986)

Armour, St. John, Wilcox, Goodin & Schlotz, by James Squeri, Attorney at Law, for the City of Union City, applicant.
James P. Jones, for United Transportation Union, and Leland E. Butler, Attorney at Law, for Southern Pacific Transportation Company, protestants.
Roy Evans, for the Transportation Division.

O P I N I O N

Hearings were initially held in this matter in early 1987 for the purpose of determining whether the City of Union City (Union City) should be granted authority to construct an at-grade Whipple Road crossing of the Southern Pacific Transportation Company (SP) tracks at Milepost L-24.2 in Union City as a part of the proposed industrial development known as the Lincoln Property Company Warehouse Subdivision Project (the Lincoln Project). After the matter had been submitted an Administrative Law Judge Ruling was issued which directed that submission be set aside, that a Proponent's Environmental Assessment be filed by Union City pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Title 20, California Code of Regulations, Section 17.1), and that a Supplemental Environmental Impact Report (SEIR) or Negative Declaration be prepared for the proposed grade crossing, with the Commission as lead agency pursuant to the Guidelines

for Implementation of the California Environmental Quality Act, Title 14, California Code of Regulations, Sections 15052 and 15162. This SEIR supplements the EIR prepared by Union City, the lead agency for the underlying project.

A Draft Supplemental Environmental Impact Report (Draft SEIR) was issued on June 9, 1988 by, or at the direction of, the Commission's Staff (staff). Parties wishing to do so filed comments on the Draft SEIR, and on July 28, 1988 the staff issued a Final SEIR which responded to each of the issues raised by commenting parties. Between the issuance of the Draft SEIR and the Final SEIR SP filed a motion requesting further hearings for the purpose of addressing the adequacy and completeness of the Draft SEIR. Union City filed a pleading opposing further hearings on the ground that they were not required by the California Environmental Quality Act (CEQA).

In September, 1988 the Assigned Commissioner issued a Ruling which pointed out that while CEQA does not require further hearings after responses to comments are set forth in a final SEIR, such hearings are permitted. While no hearings were necessary on any other aspect, the Commission's mandate to safeguard the safety of railroad employees and the public requires consideration of any legitimate alternative access to the proposed development which would be safer than the one addressed in the SEIR if it would avoid the need for an at-grade crossing of SP's main line. The Ruling noted that SP's comments appeared to indicate that there might be such an alternative in the area of the Mission Laundry. Further, the Ruling found staff's response to SP's comments on this alternative inadequate and not persuasive. Further hearings were ordered limited to the more complete evaluation of this alternative than was provided in the SEIR. On November 14, 1988 a public hearing limited to addressing the feasibility of the "Mission

Laundry alternative" [1] access to the proposed Lincoln Project was held. The matter was submitted on the same date.

A. Background

Staff's Final SEIR supplements the evidence presented to this Commission in earlier hearings on this matter. In those hearings the following information was elicited from the parties.

1. Union City's Evidence

Union City presented its case through a city councilwoman, its city engineer, a firm of consulting engineers, a railroad analysis consultant, and the project manager for Lincoln Property.

The councilwoman testified that the Union City General Plan establishes the basic traffic circulation pattern for the city and coordinates the plan with the state, county, and adjacent master plans. For the past 20 years the governing policy of the region has been to extend Whipple Road across the SP tracks near the intersection of Union City Boulevard. Landowners, developers, and public agencies have made long-term plans in reliance on the fact that the street patterns in the General Plan will come into existence. As development has been proposed, the city has performed its lead-agency responsibilities and has prepared environmental impact reports which reaffirm that the Whipple Road at-grade crossing is a requirement to mitigate and manage city and regional traffic concerns.

The decision by Union City to seek approval of this at-grade crossing was based on providing emergency police and fire access, as well as addressing the traffic circulation needs of the

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1 Attached to this decision as Appendix B is a map, reproduced from Exhibit 100, which shows as shaded areas the three Mission Laundry alternatives discussed herein. These alternative roadways converge at the Mission Laundry property and terminate at Union City Boulevard.

city. The proposed at-grade crossing is an integral element of the Lincoln Property warehouse project. The Whipple Road crossing, in turn, is an essential part of the traffic circulation plan which calls for a north-south major arterial access from Whipple Road to the Horner Street industrial area to the south. The Whipple Road crossing will serve proposed and future industrial development.

Traffic flow studies indicate that completion of Whipple Road from Union City Boulevard to Horner Street is necessary to provide secondary emergency vehicle access to the Lincoln Property development. The extension will also provide a direct route for truck traffic to the new project. It will result in significant reductions of truck traffic on Union City Boulevard, reduce congestion at the Union City Boulevard crossing of the railroad and at the Bettencourt Way-Union City Boulevard intersection, and will redirect a large amount of traffic away from the residential central Alvarado District and, correspondingly, away from the currently existing at-grade crossing of Union City Boulevard.

She asserted that development of the area served by the Whipple Road crossing will contribute to the widening of the existing bridge on Union City Boulevard at the northerly city limit line and in so doing will alleviate the blockage that presently occurs at the Union City Boulevard railroad crossing. Currently, northbound traffic on Union City Boulevard travels into Hayward at a point where the 4-lane road narrows to a 2-lane bridge. Southbound traffic on Hesperian Boulevard heading toward Union City must likewise move from a 4-lane road across the 2-lane bridge. As a consequence of this bottleneck at the Hayward-Union City border, traffic tends to back up on Union City Boulevard often extending across the existing at-grade crossing of the SP tracks. As a condition to proceeding with its development, Lincoln Property has agreed to participate in a Bridge Benefit District to allow the existing 2-lane bridge at the Union City-Hayward border to be expanded to 4 lanes and alleviate the bottleneck.

She said that completion of the Whipple Road extension and grade crossing will result in the following benefits: (1) direct truck access, from the Nimitz Freeway (Route 880), to the 150+ acres of industrial lands westerly of Union City Boulevard; (2) secondary emergency access and enhanced emergency vehicle response to these industrial lands; (3) relief from potential traffic congestion at the Bettencourt Way-Union City Boulevard intersection that will result from these industrial lands; (4) relief from potential truck traffic congestion at the at-grade crossing of the SP tracks on Union City Boulevard and its subsequent impact on the Union City Boulevard-Whipple Road intersection; (5) alleviation of the bottleneck which currently results in vehicles queuing up over the existing at-grade crossing near the Union City-Hayward bridge; (6) allowance of additional development in the project area because Union City has conditioned future development on the construction of such a crossing; and (7) encouragement of additional development in other industrial areas of Union City that will, in turn, provide local job opportunities.

The witness testified that prior to making its decision to seek approval of an at-grade crossing at Whipple Road, Union City reviewed the possibility of constructing an overhead crossing at the Whipple Road location. Aside from the technical infeasibility associated with construction of such a separated grade, and considerations relating to preservation of wetlands, the costs associated with construction of an overhead crossing were found to be prohibitive and far in excess of any development that the city could economically support. Union City's economic priorities include such things as: police services and equipment, fire services and equipment, maintenance of existing streets, maintenance of park and playgrounds in safe condition, maintenance of public buildings, provision of library facilities, provision of senior citizen services and other human services, and all other

normal city services, all of which prevent Union City from contributing to a grade separation.

The city engineer testified that the Lincoln Property development will be a principal generator of vehicle trips. Traffic studies performed in conjunction with Union City's draft and final environmental impact reports provided information on projected traffic levels for the Whipple Road crossing. The original traffic study projected a daily traffic volume of 7,567 vehicle trips to be generated by the Lincoln Property development. Subsequent studies, in partial response to concerns from Caltrans that the traffic counts as originally projected were extremely high, developed projected traffic volumes for the Lincoln Property development of about 3,500 vehicles per day. Of these 3,500 vehicles, 75% will move through the Whipple Road access and 25% through the Bettencourt Way access. Based upon the information generated by such studies, the ultimate traffic volume to be anticipated across the Whipple Road crossing will range from 2,625 to 5,670 vehicle trips per day. The amount of traffic generated from the Lincoln Property development is relatively small and is comparable to a residential street volume.

He noted that the above-referenced traffic figures are representative only for the Lincoln Property development itself and do not take into account traffic generated from neighboring property. Any additional traffic which might cross the Whipple Road crossing in the future would be generated by development of 25 acres to the north of the Horner Street industrial area. As the Horner Street industrial area is developed, Union City anticipates a 40% increase over the projected Lincoln Property traffic. The best estimate of traffic volume to be expected at the Whipple Road crossing, therefore, ranges from between 3,782-7,940 vehicles per day.

He concluded by reporting that Union City has prepared and completed all environmental reports required by CEQA and noting

that the provision of a second access point to the Lincoln Property development was a necessary mitigation measure in the environmental impact report for this project. This second access will be provided through the at-grade crossing. The mitigation was necessary to provide adequate police and fire services to this area.

The project engineer for Lincoln Property, whose company prepared the planning and development of the warehouse project, also prepared a study of the design cost of a separated grade crossing at Whipple Road. Based on that study he concluded that a separation of grade is not practical. As part of his study he prepared preliminary geometric layout, structural engineering, and associated cost estimates for an overpass alternative to an at-grade crossing. The proposed overpass would carry Whipple Road over the main line and a proposed run-around track. An underpass was also considered but not investigated in detail due to higher costs. His total estimated cost for an overpass was $3.2 million.

He said that his preliminary design for a grade separation represented the best physical layout that could be accomplished at the proposed location. The design for a grade separation by necessity includes steep approach grades, tight horizontal curves, high liability risks, and a comparatively high capital cost. In his opinion, those features exceed good engineering practice. While it is technically feasible to construct an overpass, it was his recommendation that this site is not a suitable location for construction of such an overpass, principally because the maximum grade of the roadway would be 8.22%, which is excessive in light of the roadway's intended use.

A railroad analysis consultant for Union City testified that he evaluated the impacts on railroad operations of the proposed at-grade crossing. His evaluation was the result of field inspections of the crossing site; visual observation of SP operations; monitoring SP radio transmissions; review of SP

timetable, special instructions, and operating rules; review of aerial photographs, engineering drawings, and other documents describing the proposed project; review of the proposed SP - Santa Fe merger operating plan; and review of a survey by Lincoln Property of rail carload service usage by its warehouse tenants in the Bay Area. He said that in the general vicinity of the site, several spur tracks diverge from the main line, providing access for carload rail service to local industries. The proposed street would not cross any of the existing spurs. However, a run-around track parallel to the main track at the proposed site has been planned in connection with the industrial warehousing complex. Two new spurs and a drill track serving the complex would diverge from the run-around to serve industrial sites in the complex. Maximum train speeds over the crossing site are 50 mph for passenger trains and 40 mph for freight trains, except 30 mph for freight trains carrying hazardous materials.

He then discussed the routing of trains between Oakland-San Jose-Los Angeles. The proposed crossing is on the Mulford Line section of the route. He said that Amtrak operates one train per day in each direction over the crossing; there are two to six through freight trains per day over the crossing. In his opinion only one freight train crosses between 6:00 a.m. and 8:00 p.m. He believes that if SP and Santa Fe merge there will be even less traffic over the crossing.

In regard to local freight switching movements he testified that switching activity in the vicinity of the crossing is very light, as only two rail customers use freight service with any significant frequency. And in those instances the actual spotting and pulling of freight cars does not involve movements over the crossing. He expects some increased switching activity at the proposed crossing site from the additional users of rail carload service who may be attracted to the new warehousing complex. Those warehouses, comprising 932,616 square feet, will

have rail spurs along the rear as well as dock-high truck loading along the front. However, he believes that, as a general trend in the Bay Area as well as nation-wide, rail carload service for warehoused goods is declining in market share relative to truck service and rail intermodal service. (Rail intermodal service involves customer pick-up and delivery via truck.)

He referred to a survey regarding frequency and volume of rail carload service use by typical warehouse tenants in the Bay Area. Nine warehouse parks in cities ranging from Oakland to San Jose and Sunnyvale were surveyed, totaling 68 tenants occupying 2,296,000 square feet of warehouse space. The buildings included in the survey are of the same type as the subject property, i.e., high-cube warehouse and distribution facilities with 20 to 24 feet clear height, grade level and dock-high truck loading along the front with a rail spur along the rear. Of the 68 tenants in the survey, only 8 use their rail spur with any significant frequency. On a square footage basis, the 8 users occupied 16.8% of the total warehouse space in the survey. Significantly, among the rail carload service users, the use of carload service is not very frequent and does not consist of high car volumes. In fact, the heaviest user in the survey, a beer distributor, received about two cars a week; most other rail users were using about one car a month.

Extrapolating the survey results to the Lincoln Property project, he predicted that 3-4 tenants, occupying 150,000-160,000 square feet of space, would be rail carload service users, with an aggregate demand of 3-4 cars monthly or a maximum of 3 cars per week. Although carload service usage could be higher or lower than this forecast, depending on the ultimate tenants, in his opinion the forecast should be viewed as the most likely future scenario.

He concluded by summarizing train traffic across the proposed crossing. He expects that on a typical day there would be 1 Amtrak passenger train and 1-2 through freight trains in daylight

hours across the proposed crossing. There would be 1 Amtrak passenger train and 1-4 through freight trains during night hours across the proposed crossing. None of these trains have occasion to stop, rather, they simply pass by at speed (50 mph for passenger trains, 30-40 mph for freight trains). Assuming the crossing is equipped with gates and flashing-light signals properly timed, it should not present any significant impact on these operations. On a typical night there could be up to 7 switching moves triggering the gates across the proposed crossing, ranging from light engine movements to movements involving an engine pulling up to 10 cars. None of these movements involve freight cars left standing within 150 feet of the proposed crossing, and none of these movements would involve gate-down time approaching 10 minutes. For the carload traffic volumes that are foreseeable, efficient switching of the local industries can be carried out at the proposed crossing without any significant impact on switching operations or vehicle traffic.

The project manager of Lincoln Property testified that his company cannot absorb the additional cost of constructing a separated grade crossing at Whipple Road, even if the additional cost were as low as $900,000. The economics of the project cannot support the cost of a separated grade crossing. Further, a separated grade crossing would take more space than planned for an at-grade crossing and would cause the project to lose from 50,000 to 100,000 square feet of warehouse space, virtually one building. He said that Lincoln Property budgeted $275,000 for the construction of an at-grade crossing.

He pointed out that the original plan for the development did not provide for a secondary access; it had a cul-de-sac that ended just short of the railroad tracks. Failure to provide secondary access to the development will not impair its economics. The project includes seven warehouses on rail, which he believes is a desirable feature for prospective tenants. But the project was

developed and built without any prospective tenants in mind, nor were any projections made regarding the number of tenants who might require rail service. However, he believes the potential for rail service is one of the amenities that makes the development attractive. The total project has a budget of approximately $45 million.

2. SP's Evidence

SP's terminal superintendent at Oakland testified that he is familiar with the schedules of all trains operating in his area, which includes the location of the proposed crossing. He said that 7 to 12 through freight trains daily cross the crossing. Trains are from 5 to 140 cars; 300 feet to 8000 plus feet, moving at about 40 mph. The crossing could be closed for up to 5 minutes just to let a train pass. He said that depending on business conditions shippers take more or less train service. High fuel prices cause a switch to trains; low fuel prices to trucks. He said that at present two companies in the vicinity of the proposed crossing have substantial rail delivery: Brannon Cross Lumber uses 500 cars a year and Bemis Co. uses between 75-100 cars per year. Because of the Lincoln Property development SP will have to store freight cars away from the project, on a new run-around to be built just east of the main track. He reviewed the analysis of Union City's transportation expert and found it inaccurate in regard to the availability of present trackage to accommodate switching. He said that in his experience a development like Phase I of the Lincoln Property development should generate two or three cars a day. As Phase II and III opened more cars would be required. He pointed out that the more tenants shipping and receiving, the more switching movements are required for the same number of freight cars; and each warehouse could have more than one tenant, thereby requiring multiple switching moves to properly spot and sequence freight cars. Because of the potential for increased traffic SP plans to build a storage track parallel to the main line and the

run-around track. This will be done whether or not an at-grade crossing is built. At present two local trains are used to switch cars in the area. One is used every day while the other is used three times a week. He described a potential switching movement of one car to spot and one car to pull as requiring eight movements across the proposed grade crossing. More freight cars would increase the gate down time to as much as 50 minutes. This kind of an increase in time could cause train crews to work overtime, at additional cost to SP. He said that at today's level of traffic (i.e., without Lincoln Property) there are about 24 switching movements a work week (5 days) plus through train movements.

SP presented a consulting engineer who prepared preliminary engineering studies for an overpass. He said a two-lane overpass was feasible and would cost approximately $1,950,000, compared to the cost of construction of an at-grade crossing of approximately $1,086,000, including $350,000 for signals and railroad work.

The witness is the chief engineer of De Leuw, Cather & Co., a company which specializes in constructing railroad grade separations and freeway designs. He has supervised the construction of more than 70 grade separations in the Western states, including 20 in the Bay Area. He reviewed applicant's plans and estimates for a grade separation and disagreed with applicant's conclusion that a grade separation at the proposed crossing would not be compatible with good engineering design and would cost $3.2 million. The witness testified that his company prepared, under his supervision, preliminary plans which show that an overpass can be constructed at the site with satisfactory grades and alignment, incorporating design features and criteria entirely consistent with numerous other railroad grade separations constructed in recent years on major urban arterials throughout California, and at a reasonable cost. In his opinion a two-lane overpass would adequately meet the expected needs of vehicles after

the crossing is built, but he also prepared preliminary plans for a four-lane overpass should the applicant choose to build one. His cost estimate for the two-lane separated grade overpass was $1,950,000 which is only $864,000 more than the cost of an at-grade crossing. He estimated the at-grade crossing cost at $350,000 for railroad work, i.e., automatic gates, flashing lights, crossing pass, trackwork, etc., plus approximately $736,000 for those costs which are common to either the at-grade crossing or the overpass alternative, i.e., roadway lighting, asphalt paving and base, curbs and gutters, sidewalks, etc.

3. Staff's Evidence

An associate transportation engineer on the Commission staff testified that in his opinion the application to construct a public at-grade crossing at the proposed site should be denied. Any crossing should be either at separated grade or a restricted at-grade crossing with locked gates to accommodate emergency vehicles. He said that at the existing Union City Boulevard crossing, only a few hundred feet away, blocking of the crossing by switching operations is not a problem and would not be a problem after development of the warehouse project. Local switching on the adjacent spurs does not require repetitive shuttling over the Union City Boulevard crossing since the orientation of the spur tracks requires trains to approach the spurs from the direction away from that crossing. While minimizing switching across Union City Boulevard, the existing track layout concentrates switching activities at the location of the proposed Whipple Road crossing. The additional spur and drill tracks proposed for the Lincoln Property project would only aggravate the problem if an at-grade crossing were built. Switching at the proposed site would close the crossing for a minimum of 30 minutes a day, and more as the area became more industrialized. Further, even if blocking of the proposed crossing were not a problem, for safety reasons he would question the need for the crossing. The proximity to the Union

City Boulevard crossing, the high train speeds, the proposed design of Whipple Road with a horizontal curve at the crossing, and the expected use of the crossing by large trucks (estimated at 804 per day), all create safety concerns.

If the crossing were not built, access to the Lincoln Property project would be through the Bettencourt Way - Union City Boulevard intersection. He analyzed the traffic flow at that intersection and determined that with the Lincoln Property development completed the traffic flow would be at Level of Service B as rated by the "Highway Capacity Manual," (Special Report No. 87, Highway Research Board, 1965). Level B predicts a stable flow of traffic with slight delays on occasion, which, in the witness's opinion, is far better than the operational and safety problems which would be created by an at-grade crossing at Whipple Road.

He concluded that construction of the proposed crossing was not justified by projected Lincoln Property development traffic volumes; an analysis of traffic flow at the Bettencourt Way - Union City Boulevard intersection does not justify construction of the proposed crossing; excessive blocking of the proposed crossing would create safety problems as motorists would be tempted to violate the warning device indications; and the skew angle and the horizontal curve at the proposed crossing create a potential safety hazard.

B. The Mission Laundry Alternative

At the further hearing on the Mission Laundry Alternative held after the receipt of staff's SEIR, Union City presented two witnesses, Lynn Bowers, the project engineer for the Lincoln Project, and Marvin Rose, City Engineer for Union City. These witnesses were cross-examined by representatives for SP and the Commission's Transportation Division. No other witnesses were presented.

Mr. Bowers offered Exhibit 100, a report he prepared which analyzes three alternative designs for accessing the Lincoln

Project through the Mission Laundry Property from Union City Boulevard to a street which is designated as Lincoln Way on some exhibits and as an extension of Whipple Road on others. Exhibit 100 shows that none of the three Mission Laundry alternatives would cross SP's main line, but each would cross either two or three spurs and/or drill tracks. Bowers asserted that none of the Mission Laundry alternatives conform to the Union City General Plan, and his report indicates that all have greater rail operation problems, safety problems and emergency response times than the at-grade crossing of SP's main line proposed by Union City just west of the intersection of Whipple Road and Union City Boulevard. His report also indicates that the alternatives would cost two to three times more than a separated crossing at the proposed site and 30 to 50 times more than the proposed at-grade crossing. These costs include costs of acquisition, demolition and toxic cleanup of underground tanks, building of a right of way, diminished land and building values, street and railroad improvement costs, and various costs for processing these changes.

Exhibit 100 states that all the alternatives would create some problems for traffic turning off Union City Boulevard to access either Bemis Company or CFS Continental. Bowers also testified that these access changes would "create additional traffic safety hazards and unreasonably reduce Union City Boulevard's roadway capacity." These conclusions apparently have to do with the need to add a left-turn lane to Union City Boulevard to enter the new access road.

Regarding the safety issue, Bowers testified that each of the alternatives would require more crossings of railroad tracks than Union City's proposed crossing and he added that testimony in previous portions of this hearing describing use of spur tracks indicated that SP considers their use as critical to its operations as use of the main line. He concluded that SP would rigorously litigate the implementation of a plan which permitted such spur

crossings. Bowers did not explain his conclusion about relative emergency response times. Presumably it is based upon the probability of encountering rail traffic at more than one location under either of the Mission Laundry alternatives.

Union City also presented its City Engineer, Marvin Rose. Rose testified that the general plan contemplates Whipple Road crossing Union City Boulevard and then extending as a four-lane divided roadway through the Lincoln Project site. He further testified that since neither of the Mission Laundry alternatives provide access to the Whipple Road-Union City Boulevard intersection they do not comply with Union City's general plan. He went on to explain that the Union City general plan sets out the Whipple Road extension as a second access to this site necessary for sufficient traffic circulation and access once the 70 acres south of the Lincoln Project is developed. Rose also testified that public safety access, that is access for police and fire departments, is a separate issue from the issue of traffic circulation and is the issue that initially prompted Union City to seek at least an emergency secondary access into this project.

Union City's presentation has addressed well the concerns expressed in the Assigned Commissioner's Ruling. No information was elicited on cross-examination of the witnesses to cast doubt on the accuracy of their conclusions. Union City's evidence convincingly shows that access to the Lincoln Project via the Mission Laundry property should be rejected as a possible alternative as the Commission's Staff recommended in its Final SEIR "for reasons of design and economic feasibility, effect on emergency response time and effect on rail service operations."

C. The Alternatives Studied in Staff's SEIR

We now turn to the Final SEIR. The alternatives studied by staff in the Final SEIR are: (1) the separated grade alternative, which is described in the Final SEIR as the "environmentally preferred alternative" and also staff's preferred

alternative (the Final SEIR explains that regardless of other considerations such as cost this alternative most reduces adverse impacts); (2) the full service at-grade alternative, which is Union City's preferred alternative; (3) the emergency at-grade alternative, which is a variation of the full-service at-grade crossing which limits access to emergency vehicles; and (4) the no project alternative, which would provide no additional access to the Lincoln Project in the vicinity of the Union City Boulevard-Whipple Road intersection.

Staff asserts that if the mitigation measures proposed by Union City and the additional mitigation measures described in the SEIR are implemented the effect on traffic, circulation and public safety of the emergency at-grade alternative or the full service at-grade alternative, "would be mitigated to less than a significant level", and that neither of these alternatives would have a significant impact on railroad operations at their present level, but that the full service alternative proposed by Union City would have a significant impact on railroad operations if rail traffic increases to the amount predicted by SP.

The SEIR also states that the no project alternative would have a significant effect on the provision of emergency services.

Aside from noting that Union City has asserted that the cost of a separated grade crossing makes that alternative infeasible, and that such a crossing would have no effect on railroad operations and that potential train accidents would be eliminated, the SEIR also indicates that "[q]uestions remain as to whether a separated grade crossing can be designed to meet safety standards within the bounds of technical and economic feasibility."

The SEIR explains that there are two types of impact on predicted rail traffic operations for the at-grade crossing alternatives. The first is the amount of rail service which SP can provide due to the reduced track footage available for storing cars

long-term and during switching which would result from compliance with SP's rules prohibiting storage of cars within 250 feet of a grade crossing. The amount of service available would also be affected in that SP's potential for constructing additional storage tracks, which could probably only be constructed in a rather confined area to the north of the Lincoln project, would likewise be limited by proximity to the at-grade crossing.

Since SP states that the 250-foot rule applies to either emergency or full-service grade crossings, both alternatives would impose this limitation on future rail traffic operations. This impact would be somewhat mitigated by reducing the crossing width for the emergency crossing from 64 to 30 feet as staff proposes based on comments to the draft SEIR it received. Staff also suggests that it might be reasonable to store cars within the 250 feet of the emergency crossing, though not over the crossing itself, if an adequate emergency communications system is established between Union City and SP or if train-activated automatic warning devices are installed to alert emergency response vehicles that the track is in use.

The second impact on future rail traffic operations is on efficiency of railroad service. The SEIR points out that time for switching operations would be increased if it were necessary to respond to the SP 250-foot limitation on stopping or storing train cars, and CPUC General Order 135 which prohibits blocking of traffic for longer than 10 minutes and requires frequent clearing of at-grade crossings during switching. The SEIR also describes the potential additional time needed for switching operations due to provisions for ensuring crossing protection, such as slowdowns of trains to accommodate automatic gate-lowering devices or vehicles on the track. Clearly these impacts would be greater for the full service at-grade crossing than for the emergency at-grade crossing alternative.

Discussion

Considering the findings of staff's Final SEIR, in light of the added information elicited at the November 14th hearing and the evidence presented at the earlier hearing, it is clear that a full-service at-grade crossing may significantly interfere with future railroad operations and unreasonably increase the danger to public safety. While we agree with Union City that the need for ready fire and police access to this site demonstrate a need for secondary emergency access to the Lincoln Project we do not find that the showing regarding projected traffic circulation difficulties justifies the level of interference with projected railroad operations or the added risk to public safety that the full-service at-grade crossing would likely cause. On the other hand, an emergency at-grade crossing, with the mitigation measures described by the Final SEIR, will provide needed secondary emergency access to the Lincoln project with an acceptable level of impact on railroad operations and no public safety problems. We therefore conclude that Union City should be permitted to implement either a grade separation or an emergency at-grade crossing. We arrive at this determination based on our historic recognition of the superior safety protection inherent in separated grades at railroad main tracks (see, e.g., Decision 92587), and on the importance of considering the impact of frequent train switching movements on public safety.

Because the Lincoln Property development includes new spur tracks and will generate increased rail traffic, SP plans to build a run-around track and a storage track adjacent to its main line track, thereby creating a crossing over three tracks, rather than the one track now in place. Switching movements are taking place now at the proposed site and will increase significantly as the industrial area is developed. Our concern is different and greater than if this were a crossing where through trains were the only traffic.

The testimony of SP's superintendent regarding train operations persuades us that the proposed at-grade crossing will cause interference with SP's operations. Today there are from 7 to 12 through freight trains and two passenger trains each day over the crossing plus about 6 switching moves four or five days a week. He expects an additional 4 or 5 cars per day to be switched in or out of the Lincoln Project raising the gate down time for switching movements to 50 minutes. When that is added to the down time for the through train operations the total causes us concern.

The testimony of the witnesses from Union City was frank and helpful. Traffic patterns and industrial development would be aided by a crossing at the proposed site. But it is just that potential increase in traffic and use of the crossing that lends weight to the need for a separated grade crossing rather than an at-grade crossing. The Lincoln Project development can thrive without the at-grade crossing; it was originally planned without it. Union City, in its permit to Lincoln Property, recognized that an at-grade crossing might not be authorized by us, yet issued the permit regardless of that.

While we recognize that Union City finds it economically burdensome at the present time, and has decided that such a project stands behind many others in the City's budget priorities, we have no doubt that a grade separation at the proposed site is feasible from an engineering viewpoint and feasible in terms of relative cost. Although the engineering experts of applicant and of SP differed in their estimate of the difficulty in construction and in cost of a grade separation, this Commission is well equipped to understand and resolve those differences. Our experience in this area goes back to the beginnings of the Commission. We have reviewed the evidence and note that the separation proposed by SP is comparable to many throughout the state which were built to overcome problems similar to those at the proposed crossing. SP's consulting engineers have built similar separated crossings in

Livermore, Fresno, Pittsburg, and other locations. The estimated cost of a 2-lane overpass is $1,950,000, which is about $864,000 more than the total cost of the proposed grade crossing, and is reasonable. The incremental cost of the overpass when compared with the obvious benefit of a separated grade - increased safety, better traffic flow, and noninterference with railroad operations - is reasonable.

Failure to build the at-grade crossing will not cause an abnormal increase in vehicular traffic at the Bettencourt Way - Union City Boulevard intersection. The staff witness analysed the routing of traffic to be generated by the warehouse project and concluded that the additional traffic over the present crossing would not create an undue burden on either the public or the railroad. The "intolerable delay" situation arises at this intersection only if an adjacent parcel of land is also developed as an industrial site. No switching movements are now done over the present crossing and none are expected after the Lincoln Project is complete.

For all of these reasons we will authorize either a separated crossing or an emergency at-grade crossing.

The Commission's Executive Director should file the Notice of Approval attached to this decision as Appendix A, notifying the Office of Planning and Research of this decision, pursuant to Section 21108 of the Public Resources Code.

An Administrative Law Judge's Proposed Decision was mailed to the parties on January 23, 1989. Both Union City and SP filed comments. The comments do not convince us that there was any substantive error in the Proposed Decision.

Findings of Fact

1. The development of the Lincoln Project will generate about 3500 daily vehicle trips.

2. The present Bettencourt Way-Union City Boulevard intersection can absorb those additional trips with acceptable delays on occasion.

3. The inconvenience caused by the traffic levels at the Bettencourt Way-Union City Boulevard intersection is minimal when compared with the safety problems and railroad operational problems which would be created by a grade crossing at Whipple Road.

4. The present at-grade crossing just south of the proposed crossing can absorb the additional trips generated by the Lincoln Project with slight delays on occasion.

5. Current train operations in the vicinity of the proposed crossing operate at 50 mph for passenger trains and 40 mph for most freight trains. Switching trains operate at about 5 mph.

6. Seven to 12 through freight trains daily cross the crossing plus two Amtrak trains. There are about 24 switching moves a work week (5 days) at the current level of freight traffic

7. After full development of the Lincoln Project it is reasonable to expect an increase in freight cars to be switched and an increase in switching movements over the crossing. Because of the mix of tenants and freight cars, an increase in tenant shipments will generate more than the same increase in switching moves.

8. SP plans to construct a run-around track and a storage track parallel to the main track at the site of the proposed crossing.

9. After the warehouse project is completed gate down time at an at-grade crossing at the proposed site is reasonably expected to be 50 minutes per day.

10. Adverse safety factors would be caused by the construction of an at-grade crossing at the proposed site. These include the proximity to the present Union City Boulevard crossing, the high train speeds, the proposed design of Whipple Road with a

horizontal curve at the crossing, and the expected use of the crossing by large trucks.

11. The Mission Laundry alternative access proposal would require traffic to cross two or three spur or drill tracks.

12. The Mission Laundry alternative would create turning problems for traffic entering and leaving portions of the Lincoln Project development.

13. The Mission Laundry alternative would prohibit the use of some warehouse space in the Lincoln Property, and would require a different, less economic use of other warehouse space.

14. The Mission Laundry alternative would interfere with SP operations over the spurs and drill tracks it would cross.

15. The evidence does not establish that public convenience and necessity require the proposed at-grade crossing or the alternative Mission Laundry crossing.

Conclusions of Law

1. The application of Union City to construct an at-grade crossing at the proposed site should be granted only to the extent that it remain an emergency-use only crossing.

2. The Mission Laundry crossing is not a feasible alternative to the proposed crossing.

3. Authority to construct a crossing at separated grades at the proposed site should be granted.

O R D E R

IT IS ORDERED that:

1. The request of the City of Union City (Union City) for authority to construct a Whipple Road at-grade crossing of the Southern Pacific Transportation Company tracks at Milepost L.24.2 in Union City is granted to the extent that it may construct an emergency crossing as described in this opinion, conforming with all mitigation measures described in the Final Supplemental

Environmental Impact Report issued by the Commission's staff on July 28, 1988 and conforming to the requirements of General Order 75-C and all other relevant Commission rules and General Orders. The request is otherwise denied.

2. At its option, Union City may apply for authority to construct a separated grade crossing at the proposed site, consistent with the preceding discussion, and Commission requirements for the construction of separated grade crossings.

3. The Executive Director of the Commission is directed to file a Notice of Approval for the project described in this opinion as set forth in Appendix A to this decision with the Office of Planning and Research.

This order becomes effective 30 days from today.

Dated FEB 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

APPENDIX A

Notice of Approval

To: Director
Office of Planning
and Research
1400 Tenth Street
Sacramento, CA 95814

From: California Public
Utilities Commission
505 S. Van Ness Ave.
San Francisco, CA 94102

SUBJECT: Filing of Notice of Approval in compliance with Section 21108 of the Public Resources Code.

Project Title Union City's Proposed Milepost L-24.2 Crossing
Not submitted to State Clearinghouse

Contact Person
George Hersh

Telephone Number
8-597-1375

Project Location Southern Pacific Transportation Co. railroad tracks at milepost L-24.2, City of Union City, Alameda County.

Project Description The emergency at-grade crossing of existing railroad tracks at the above location

This is to advise that the California Public Utilities Commission, as lead agency, has made the following determination regarding the above-described project:

1. The project has been _x_ approved by the Lead Agency.
___ disapproved

2. The project ___ will have a significant effect on the environment.
_x_ will not

3. _x_ An Environmental Impact Report was prepared for this project by the Public Utilities Commission as lead agency pursuant to the provisions of CEQA.

___ A Negative Declaration was prepared for this project.

Date Received for Filing

Executive Director

Date FEB 24 1989

THE NEXT 1 DOCUMENTS ARE POOR ORIGINALS

MICROFILMING SERVICES

will not assume responsibility

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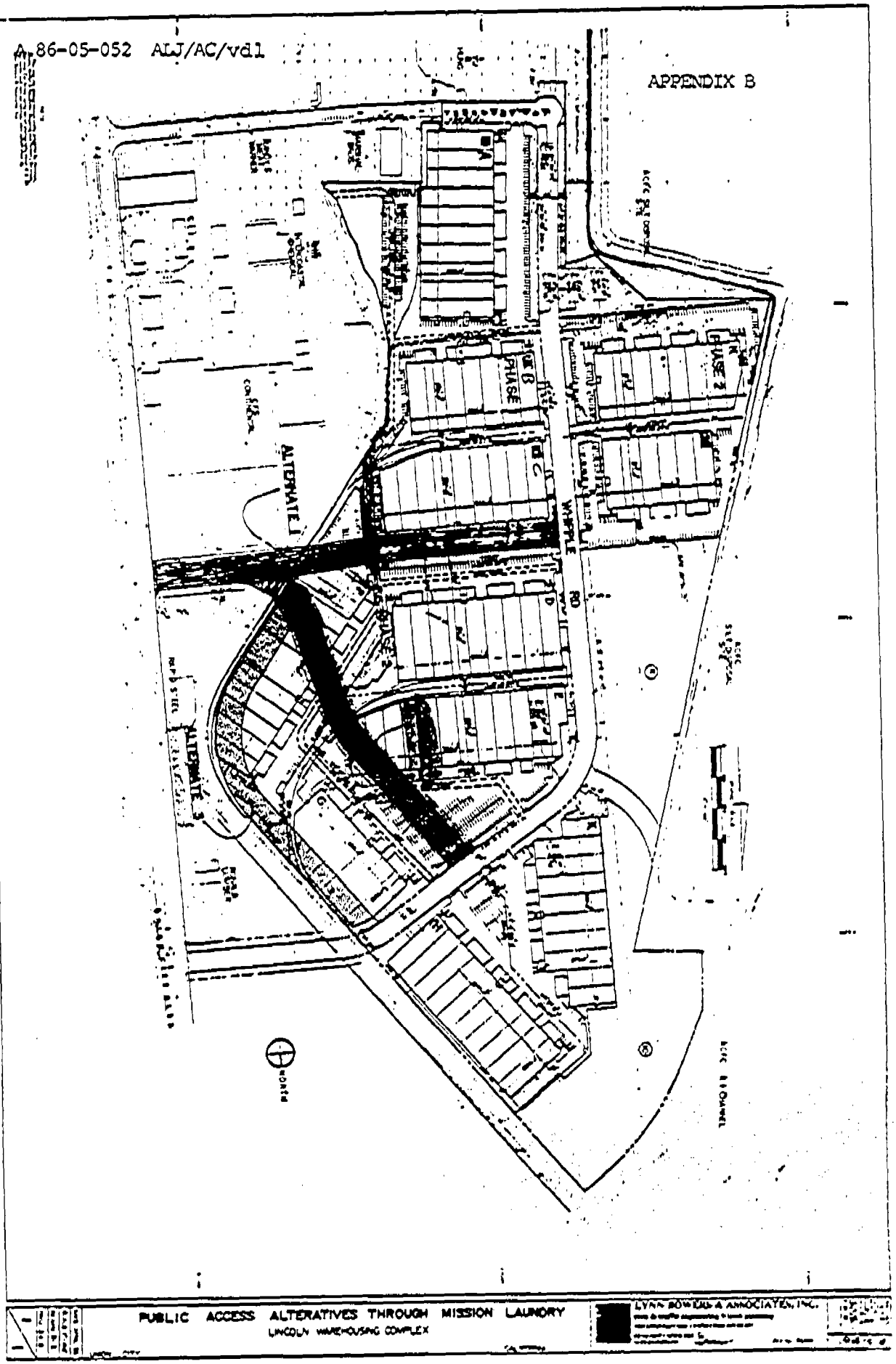
APPENDIX B


PHASE 2
PHASE B
PHASE C
ALTERNATE 1
ALTERNATE 2
WHIPPLE RD
NORTH
PUBLIC ACCESS ALTERATIVES THROUGH MISSION LAUNDRY
LINCOLN WAREHOUSING COMPLEX
LYNN BOWERS & ANNOCIATES, INC.

Livermore, Fresno, Pittsburg, and other locations. The estimated cost of a 2-lane overpass is $1,950,000, which is about $864,000 more than the total cost of the proposed grade crossing, and is reasonable. The incremental cost of the overpass when compared with the obvious benefit of a separated grade - increased safety, better traffic flow, and noninterference with railroad operations - is reasonable.

Failure to build the at-grade crossing will not cause an abnormal increase in vehicular traffic at the Bettencourt Way - Union City Boulevard intersection. The staff witness analysed the routing of traffic to be generated by the warehouse project and concluded that the additional traffic over the present crossing would not create an undue burden on either the public or the railroad. The "intolerable delay" situation arises at this intersection only if an adjacent parcel of land is also developed as an industrial site. No switching movements are now done over the present crossing and none are expected after the Lincoln Project is complete.

For all of these reasons we will authorize either a separated crossing or an emergency at-grade crossing.

The Commission's Executive Director should file the Notice of Approval attached to this decision as Appendix A, notifying the Office of Planning and Research of this decision, pursuant to Section 21108 of the Public Resources Code.

Findings of Fact

1. The development of the Lincoln Project will generate about 3500 daily vehicle trips.

2. The present Bettencourt Way-Union City Boulevard intersection can absorb those additional trips with acceptable delays on occasion.

3. The inconvenience caused by the traffic levels at the Bettencourt Way-Union City Boulevard intersection is minimal when

compared with the safety problems and railroad operational problems which would be created by a grade crossing at Whipple Road.

4. The present at-grade crossing just south of the proposed crossing can absorb the additional trips generated by the Lincoln Project with slight delays on occasion.

5. Current train operations in the vicinity of the proposed crossing operate at 50 mph for passenger trains and 40 mph for most freight trains. Switching trains operate at about 5 mph.

6. Seven to 12 through freight trains daily cross the crossing plus two Amtrak trains. There are about 24 switching moves a work week (5 days) at the current level of freight traffic

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14. The Mission Laundry alternative would interfere with SP operations over the spurs and drill tracks it would cross.

15. The evidence does not establish that public convenience and necessity require the proposed at-grade crossing or the alternative Mission Laundry crossing.

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O R D E R

IT IS ORDERED that:

1. The request of the City of Union City (Union City) for authority to construct a Whipple Road at-grade crossing of the Southern Pacific Transportation Company tracks at Milepost L.24.2 in Union City is granted to the extent that it may construct an emergency crossing as described in this opinion, conforming with all mitigation measures described in the Final Supplemental Environmental Impact Report issued by the Commission's staff on July 28, 1988. The request is otherwise denied.

2. At its option, Union City may construct a separated grade crossing at the proposed site, consistent with the preceding discussion.

3. The Executive Director of the Commission is directed to file a Notice of Approval for the project described in this opinion as set forth in Appendix A to this decision with the Office of Planning and Research.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.