

JUL 6 1989

Item CA-2
Agenda 7/6/89

Decision 89 07 001 JUL 6 1989

CONFIDENTIAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Port
Hueneme to remove a Pedestrian
Bridge over the Ventura County
Railway in the City of Port Hueneme,
County of Ventura.

Application 88-10-002
(Filed October 3, 1988)

John R. Veithoen and John J. Duffy, for
applicant.
Raymond Toohey, for the Transportation
Division.

OPINION

The City of Port Hueneme (City) requests authority to remove the separated grade pedestrian bridge over the Ventura County Railway (Railroad) which is located between Crossing Nos. 45-5.17 and 45-4.89. The pedestrian bridge is identified as Crossing No. 45-5.09-AD. The train traffic that proceeds across the railroad tracks at the crossings is traffic to and from Terminal No. 1 of the Oxnard Harbor District (District).

Public hearing was held before Administrative Law Judge O'Leary at Port Hueneme on February 28, 1989. The matter was submitted subject to the filing of the transcript which was filed on April 18, 1989.

The pedestrian bridge was constructed in the mid 1970's pursuant to authority granted by Decision (D.) 83206 dated July 30, 1974 in Application (A.) 54855. The pedestrian bridge serves a neighborhood in the City which is bounded on the north by Seaview Street, on the west by Surfside Drive, on the south by the railroad tracks, and on the east by Ventura Road. The neighborhood consists primarily of condominium type residences occupied by retired people. The construction of the bridge was one of the

requirements imposed upon the developer of the neighborhood by the redevelopment agency of the City.

The Public Works Director of the City testified that the neighborhood, as originally planned, was to contain 402 units. Subsequently, the number of units was reduced to 285. Residents of the neighborhood have submitted many complaints to the City. The City presented 13 letters from residents (Exhibit 1), all of which complain about the overcrossing and, for the most part, request that it be removed. One of the letters in Exhibit 1 is signed by 12 residents; in addition, it lists another 11 residents who were unable to sign the letter but have expressed their desire to the author that the overpass be removed.

Exhibit 3 is a listing of the train traffic to and from the port district during late 1988, as follows:

<u>Month</u>	<u>No. of Train Round Trips</u>	<u>No. of Railcars</u>
August	1	2
September	1	2
October	4	5
November	4	4
December	0	0

Two residents of the neighborhood testified and one resident gave a statement concerning the overcrossing. All three residents were in favor of the overcrossing being eliminated. Mr. Drew, one of the residents who testified, was the author of the letter (Exhibit 2) which contains four photographs depicting youths playing on the overcrossing. Mr. Drew testified that his residence abuts the overcrossing steps. He further testified as follows:

"As I was saying, in the eveningtime at the base of the bridge at the steps by my place, there is a congregation point for kids to sit there and drink beer, or even adults.

"It's all enclosed, no one can get to them or bother them or see them.

"After they get inebriated you should see what goes on top of the bridge.

"I couldn't take pictures at night, and I didn't want to take pictures at night because I have had my front windows shot out, one time rocks thrown at windows. I didn't want to replace the windows anymore. . . ."

The staff of the Commission's Transportation Division (TD Staff) presented evidence through three witnesses, namely, Anthony J. Taormina, the Executive Director of the Oxford Harbor District; Tom Barcelo, an associate transportation supervisor; and Roger Patel, an associate transportation engineer.

Mr. Taormina testified that the District has no objection to the removal of the overcrossing. However, the continuation of rail service to Terminal No. 1 is essential to the operations of the District. The District has agreed to assist the City in the realignment of the tracks over Surfside Drive, in the event that there is development which would require such realignment.

Mr. Taormina also indicated that he expects the rail traffic to and from Terminal No. 1 to increase in the future.

Mr. Barcelo presented Exhibit 6, which sets forth the number of cars that were received and released by Terminal No. 1 from January 1, 1988 to February 1989. The exhibit discloses that there were five round trips during January and February 1989. There was never more than one round trip per day.

Mr. Patel testified that his duties with the TD Staff require him to examine the safety aspects of at-grade crossings. With respect to this application he investigated the safety aspects of the proposal to remove the overcrossing and, based upon his investigation, recommends that:

1. In the event the Commission authorizes removal of the overcrossing, the protection at Crossing No. 45-5.17 (Surfside Drive) should be upgraded to four No. 9's similar to the protection at Crossing No. 45-4.89

(Ventura Road) before the removal of the overcrossing is undertaken.

2. In the event the Commission should not authorize the removal of the overcrossing, the City should be ordered to maintain the overcrossing.

The TD Staff did not make a recommendation with respect to a grant or denial of the application.

We normally do not authorize the removal of separated grade railroad crossings, either vehicular or pedestrian. However, in this instance, the evidence is persuasive that the overcrossing is an attractive nuisance where youths and others congregate for the purpose of playing and/or drinking alcoholic beverages, becoming rowdy and generally disrupting the peace and tranquility of the residents of the neighborhood. Therefore, we will authorize the removal of the overcrossing as set forth in the ensuing order.

Having decided that the overcrossing should be removed, we now turn to the recommendation of the TD Staff concerning the upgrading of the protection at Crossing No. 45-5.17. Crossing No. 45-5.17 was the subject of A.55038. By D.84083 as modified by D.85100 the crossing was authorized; the protection ordered for the crossing was to be two Standard No. 9-A signals (General Order No. 75-C). D.85100 further ordered the following:

"For a period not to exceed one year from the date of this order, protection at the crossing may be two Standard No. 1-R signs (General Order No. 75-C) and no on-rail vehicle shall be operated over said crossing unless it shall first be brought to a stop and traffic on the street protected by a member of the crew or other competent employee of the railroad acting as a flagman. Written instructions shall be issued by the railroad to trainmen, operating over said crossing, to comply with said flagging instructions. Copy of said instructions shall be filed with the Commission within thirty days after installation of said crossing. Flagging procedures outlined herein

shall remain in full force until the automatic protection required herein is installed."

The order was dated November 12, 1975.

The time limit for the installation of the protection was extended to March 3, 1979 (Resolutions ET-1222 and ET-1240). Since we have previously ordered that Crossing 45-5.17 be protected by two Standard No. 9-A signals, it is not necessary that we again order such protection. We are unable to determine why the City has not installed the protection previously ordered. It is apparent that the protection was to be in place over 10 years ago. A practical solution to have the City comply with our previous order would be to deny the instant application until such time as the City installs the protection ordered by D.84083 as modified by D.85100. Such a solution would not be in the best interests of the residents of the neighborhood. We hereby place the City on notice that it should immediately take the necessary action to install the protection previously ordered for Crossing No. 45-5.17. Should the protection not be installed, we intend to issue an Order to Show Cause why Crossing No. 45-5.17 should not be closed.

Findings of Fact

1. The City requests authority to remove the separated grade pedestrian bridge over the railroad, which is located between Ventura Road and Surfside Drive.

2. The pedestrian bridge serves a neighborhood which is bounded on the north by Seaview Street, on the west by Surfside Drive, on the south by the railroad tracks, and on the east by Ventura Road.

3. The neighborhood consists primarily of condominium type residences occupied by retired people.

4. The construction of the bridge was one of the requirements imposed upon the developer of the neighborhood by the redevelopment agency of the City.

5. Residents of the neighborhood have presented numerous complaints concerning the pedestrian bridge and request it be removed.

6. During the latter part of 1988 and early 1989 there was a maximum of five local trains per month on this track with a maximum speed of 20 miles per hour.

7. There are two at-grade crossings located in the immediate vicinity of the pedestrian bridge.

8. The crossing at Ventura Drive is protected by four No. 9 gates.

9. We have previously ordered the upgrading of the protection at Surfside Drive in D.84083 as modified by D.85100.

10. The protection ordered by D.84083 as modified by D.85100 has not been installed.

11. The trains must stop prior to proceeding across Surfside Drive in order to open the gate to the port facility.

Conclusions of Law

1. The application should be granted as set forth in the ensuing order.

2. The City should be ordered to immediately comply with the provisions of D.84083 as modified by D.85100.

ORDER

IT IS ORDERED that:

1. The City of Port Hueneme is authorized to remove the pedestrian bridge, Crossing No. 45-5.09-AD.

2. Prior to the commencement of the removal, barricades will be constructed so that pedestrians will not be able to cross the tracks between Ventura Road and Surfside Drive.

3. The City of Port Hueneme shall immediately comply with the provisions of D.84083 as modified by D.85100.

This order becomes effective 30 days from today.

Dated JUL 6 1989, at San Francisco, California.

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

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

Victor Weiss

Victor Weiss, Executive Director

ps

"After they get inebriated you should see what goes on top of the bridge.

"I couldn't take pictures at night, and I didn't want to take pictures at night because I have had my front windows shot out, one time rocks thrown at windows. I didn't want to replace the windows anymore. . . ."

The staff of the Commission's Transportation Division (TD Staff) presented evidence through three witnesses, namely, Anthony J. Taormina, the Executive Director of the Oxford Harbor District; Tom Barcelo, an associate transportation supervisor; and Roger Patel, an associate transportation engineer.

Mr. Taormina testified that the District has no objection to the removal of the overcrossing. However, the continuation of rail service to Terminal No. 1 is essential to the operations of the District. The District has agreed to assist the City in the realignment of the tracks over Surfside Drive, in the event that there is development which would require such realignment. Mr. Taormina also indicated that he expects the rail traffic to and from Terminal No. 1 to increase in the future.

Mr. Barcelo presented Exhibit 6, which sets forth the number of cars that were received and released by Terminal No. 1 from January 1, 1988 to February 1989. The exhibit discloses that there were five round trips during January and February 1989. There was never more than one round trip per day.

Mr. Patel testified that his duties with the TD Staff require him to examine the safety aspects of at-grade crossings. With respect to this application he investigated the safety aspects of the proposal to remove the overcrossing and, based upon his investigation, recommends that:

1. In the event the Commission authorizes removal of the overcrossing, the protection at Crossing No. 45-5.17 (Surfside Drive) should be upgraded to four No. 9's similar to the protection at Crossing No. 45-4.89