

OCT. 7 1992

Decision 92-10-021 October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Mission Viejo for an Order Authorizing Construction of a New Public Road Across the Railroad Tracks of the Atchison, Topeka & Santa Fe Railway Company.

ORIGINAL

Application 91-11-040 (Filed November 20, 1991)

OPINION

The City of Mission Viejo requests authority to construct a grade separation of El Paseo road over the tracks of The Atchison, Topeka, and Santa Fe Railway Company's (Santa Fe) San Diego subdivision main line, in Mission Viejo, Orange County. The El Paseo overpass would connect Planning Area 87 of the Mission Viejo Planned Community with Cabot Road and the City of Laguna Hills west of the track. (A diagram is attached as Appendix A.)

The City of Laguna Hills protested the application on the grounds that an environmental review of the project was required by the California Environmental Quality Act (CEQA) and that applicant had not shown a need for the project. Mission Viejo responded to the protest by asserting that CEQA had been complied with and that not only had need been shown by Mission Viejo but Laguna Hills has admitted the need for the overpass.

In April 1992, the presiding administrative law judge (ALJ) issued a Ruling requesting the parties to brief a variety of environmental issues, all directed at the adequacy of prior environmental documentation and the need for further environmental documentation. Both Mission Viejo and Laguna Hills have filed briefs and reply briefs in response to the ALJ Ruling. We have considered the protest of Laguna Hills, the response to the protest

by Mission Viejo, and the briefs of both parties and conclude that Laguna Hills has not raised an issue of fact which could result in the denial of the application (Rules of Practice and Procedure, Rule 8.4(c)). A public hearing is not necessary; the application should be granted.

The Project

In 1985, prior to the incorporation of the City of Mission Viejo (incorporated 1988) and prior to the incorporation of the City of Laguna Hills (incorporated 1991), the Mission Viejo Company sought to develop the parcel known as Planning Area 87 (PA 87). The document which described the improvements sought in PA 87 is Tentative Parcel Map (TPM) 85-432. An Initial Study (IS) 85-229 was prepared for the TPM 85-432 project. The El Paseo overpass is included in the improvements described in TPM 85-432 and is required to be constructed as a condition of approval of TPM 85-432.

As a result of IS 85-229, a Negative Declaration was approved on March 13, 1986 by the County of Orange, TPM 85-432 was approved on August 6, 1986, and a Notice of Determination was filed with the Orange County Clerk on August 20, 1986. The time period for challenging the Negative Declaration expired over five years ago.

The final TPM 85-432 report (Appendix B to Mission Viejo's response to Laguna Hills' protest) states that Negative Declaration/IS 85-229 has been reviewed and considered prior to action on the project; and it describes the Highways/Streets/Access portion of the project: "Entry to the property is off Cabot Road (designated a Secondary Arterial Highway at this point) by way of a proposed bridge over the AT & SF Railroad Right-of-Way connecting the site to Cabot Road." Approval of the final TPM 85-432 was conditioned on, among other things: "17. Prior to recordation of a final parcel map, subdivider shall design and construct the

interior street and extend it to Cabot Road (including bridge crossing of railroad tracks)..."

The Negative Declaration described the project as "Title: Area Plan 85-34P/Screen Check Parcel Map 85-432, Site Plan SP 86-34P; File No. IS 85-229." (Application, Exhibit C.) Attached to the Negative Declaration were environmental documents which constitute the Initial Study. Among those Initial Study documents were those which described in detail the proposed overpass.

Argument of Laguna Hills

Laguna Hills argues that the construction of the overpass is a new project under CEQA because it was not evaluated in the 1986 Initial Study/Negative Declaration. It contends that the project described in the original environmental documentation determines whether the grade separation is a new project under CEQA. It maintains that "what is relevant is whether the Initial Study/Negative Declaration on which the applicant relies examined the direct and indirect environmental impacts of the construction of the grade separation." Laguna Hills believes that the direct and indirect impacts of the construction of the grade separation have not been subjected to environmental review under CEQA. Laguna Hills points out that although the Initial Study projected that with 9,000 vehicles trips per day, "significant traffic and circulation impacts could occur," it deferred an environmental analysis of those impacts. This analysis was to occur "prior to Area Plan approval," when:

"The applicant shall submit a traffic study meeting the approval of the manager, EMA/Transportation Planning. The study shall direct special attention towards the assessment of potential traffic related impacts associated with access to and from the site. Said study shall also recommend appropriate measures to mitigate all impacts." (See Application, Exhibit C, p. 7 of 8.)

Laguna Hills asserts that even if 9,000 vehicle trips per day was a worst case scenario under the County's zoning in 1986, there is no evidence in the record that this is in fact a worst case scenario for 1992 under Mission Viejo's zoning for the site and under its projections of buildable square footage. Even then, projecting vehicle trips per day is only the beginning of the environmental analysis. An assessment must be made of the circulation impacts of those vehicle trips accessing Cabot at the proposed location, in close proximity to Pacific Park Drive/Oso Parkway and the effect of those trips on peak hour traffic volumes at intersections, as well as the effect on the level of service on Cabot. This analysis should include the cumulative impacts of other projects, such as the construction of the "missing link" on Cabot south of Pacific Park/Oso that will route more through traffic along Cabot. A full and complete environmental review also contemplates that if significant effects are identified that feasible mitigation measures will also be identified. As evidenced by the 1986 Initial Study/Negative Declaration, such mitigation measures were to be identified in the future; they were not identified in 1986. Accordingly, at most, in the opinion of Laguna Hills, the County set the stage for an environmental review of the grade separation which never occurred in 1986 and which has since never occurred.

Laguna Hills argues that the environmental effects of the construction of the overpass must be examined in accordance with CEQA in the Commission's consideration of the application. The Commission was a responsible agency when Orange County prepared the Negative Declaration for TPM 85-432. The responsible agency responds to consultation by the lead agency before the Negative Declaration or Environmental Impact Report (EIR) is prepared. The responsible agency is required to designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of an environmental review. Finally,

a responsible agency "should review and comment" on draft EIR's and proposed Negative Declarations for projects which the responsible agency would later be asked to approve. Laguna Hills believes this process was not followed here; it says there is no evidence that the Commission was asked to comment on the 1986 Negative Declaration or even received a copy of that document.

Laguna Hills submits that as the applicant failed to prepare any environmental documents for the project or, at best, prepared inadequate environmental documents without consulting the Commission, the Commission should assume the lead agency role or defer action until the applicant complies with CEQA. Where the environmental analysis is missing or inadequate and the responsible agency has not been previously consulted, the public policy embodied by CEQA demands that the responsible agency defer action until it obtains the environmental information it needs to exercise its discretion under the law. CEQA Guidelines require the Commission to assume the lead agency role. (CEQA Guidelines Sections 10596(e)(4) and 15052(a)(3).) In the view of Laguna Hills, it would be consistent with CEQA for the Commission to deny the application or defer taking action on the application until the applicant prepares an EIR on the direct and indirect impacts of the grade separation in the context of the project as a whole. The Commission would participate in that process, along with members of the public and other agencies, such as Laguna Hills.

Argument of Mission Viejo

Mission Viejo argues that the success of Laguna Hills' protest depends upon its ability to persuade the Commission that the grade separation is a "new" project under CEQA and that, in reviewing the application for CEQA compliance, the Commission is not entitled to rely on the Negative Declaration which the County adopted in approving TPM 85-432. Unless Laguna Hills can cut the grade separation loose from TPM 85-432 and fashion it into some new, stand-alone project, then the Commission is required to rely

on the Negative Declaration in approving the application because Laguna Hills cannot present any credible evidence that any of the factors listed in CEQA Section 21166 and CEQA Guidelines Section 15162 are present in this case so as to require the preparation of a subsequent EIR.

Mission Viejo states that Laguna Hills has tried to put blinders on the Commission and to limit its focus solely to the Negative Declaration and the Notice of Determination for TPM 85-432. Laguna Hills has argued in its brief that because those two documents did not specifically refer to the grade separation, the overpass could not possibly have been reviewed and considered as part of TPM 85-432. Mission Viejo points out that cover page of the Negative Declaration explicitly states that it will be addressing: "Area Plan AP 85-22P/Screen Check Parcel Map 85-432/ Site Plan SP 86-34P." (Emphasis added.) The Screen Check Parcel Map (SCPM),¹ which was received by the County as early as December 27, 1985, clearly depicts the grade separation as an off-site improvement that is part of the subdivision project.

Mission Viejo observes that the Negative Declaration does not specifically call out many of the improvements detailed on the Screen Check Parcel Map. However, that does not mean that such improvements were not part of the subdivision project. For example, storm drains, sewer lines, and other erosion control and utility structures, as well as the clearly-defined access road from Cabot Road ending in a cul-de-sac at the northern end of the property, are all depicted on the Screen Check Parcel Map, but they are not specifically identified in the Negative Declaration.

1 A certified copy of the Screen Check Parcel Map referred to in the Negative Declaration is attached at p. 4 of Exhibit A to the Declaration of Thomas W. McCabe (Exhibit 1 of Mission Viejo's Reply Brief).

Mission Viejo refers to page 6 of Laguna Hills brief, which states that:

" . . . The grade separation is an integral part of the access road from the TPM 85-432 site, in the City of Mission Viejo, to Cabot Road in the City of Laguna Hills." (Emphasis added.)

In order to state that the grade separation is an "integral part" of the proposed access road, Laguna Hills must, by necessity, have examined the Tentative Parcel Map to see that the grade separation is shown as a 200-foot span of the road that will provide access to PA 87 from Cabot Road. Mission Viejo maintains that one look at the map is all that it takes to conclude that the grade separation is part of the same subdivision project that the County approved six years ago.

Mission Viejo offered documents obtained from the State Clearinghouse to show that, pursuant to CEQA Guidelines Section 15073(c), the County transmitted a copy of the Negative Declaration to the State Clearinghouse.² Under CEQA Guidelines Section 15023(c), the State Clearinghouse is responsible for distributing environmental documents to State agencies for review and comment. In this case, the State Clearinghouse distributed the Negative Declaration on or about April 11, 1986.³ CEQA

2 Certified copies of the relevant State Clearinghouse documents are collectively attached to Mission Viejo's Reply Brief as Exhibit 3. Among these documents is a letter, dated April 18, 1986, from John B. Ohanian, Chief Deputy Director, Office of Planning and Research, State of California, to George Feliz of the County EMA confirming the fact that the County did submit the Negative Declaration to the State Clearinghouse.

3 Among the documents attached as Exhibit 3 is a copy of the Notice of Completion and Environmental Document Transmittal Form for the Negative Declaration. Near the bottom of that form, the dot next to the agency name "PUC," as well as the fact that the

(Footnote continues on next page)

Guidelines Section 15106 allows the State Clearinghouse to set the review period for EIRs and Negative Declarations. Since the Commission did not comment on the Negative Declaration within the period set by the State Clearinghouse,⁴ the Commission is not authorized to challenge the adequacy of the Negative Declaration and to assume the role of lead agency for the project.

Discussion

We take official notice of the Negative Declaration prepared for PA-87; TPM 85-432; Screen Check Parcel Map 85-432 (and the fact that TPM 85-432 and SCPM 85-432 are the same document); and Office of Planning and Research letter dated April 18, 1986 re SCPM 85-432 Negative Declaration with attachment. From those documents we find that the project in question was the development of a landlocked parcel known as PA-87; that a part of the project was the El Paseo overpass; that a Negative Declaration was prepared for the project; that the Public Utilities Commission (PUC) was a responsible agency authorized to comment on the Negative Declaration; that the State Clearinghouse served a copy of the Negative Declaration on the PUC; that the PUC did not comment on the Negative Declaration; and that the Negative Declaration became

(Footnote continued from previous page)

agency name "PUC" is not crossed-out, indicates that the Commission was among the agencies to which the Negative Declaration was distributed for comment. See also, Exhibit 3, p. 1.

4 Exhibit 3 of Mission Viejo's Reply Brief. The letter from the State Clearinghouse to the EMA states that the agencies that commented on the Negative Declaration were checked on the Notice of Completion and that any comments were attached thereto. The Commission is not checked as having commented on the Negative Declaration, nor were any comments from the Commission attached to the letter.

final and was not challenged according to law prior to the filing of this application.

Laguna Hills has mounted a broad attack on the adequacy of the Negative Declaration in regard to the environmental impacts of the proposed grade separation, in apparent disregard of the limited authority granted a responsible agency in environmental matters. Our environmental inquiry is limited by CEQA and the Guidelines. We have recently explored those limitations in the leading case of Re WGT-West, Inc. (1990) 37 CPUC2d 85 (Abstract), D.90-07-058. In WGT-West applicant WGT-West sought a certificate of public convenience and necessity to construct fiber optic telecommunications facilities in California. An EIR for the project had been prepared by the lead agency California State Lands Commission (CSLC); the PUC was a responsible agency which had received copies of the draft EIR but had not commented. The WGT-West application was challenged by Monterey County and some landowners along the proposed right-of-way on the ground that the EIR was inadequate. The Commission dismissed the protest, finding that the EIR complied with CEQA and that no facts were shown which would require a subsequent EIR. In WGT-West we articulated the review procedure that a responsible agency under CEQA must follow. We said: "Except for very limited purposes, a responsible agency must accept the EIR prepared by the lead agency. This is established by CEQA (Pub. Res. C. § 21166) and implemented by the Guidelines (G. §§ 15050(c), 15052, 15096(e), 15162, and 15163). Clearly, we do not sit as an appellate court to review the manner in which the lead agency performed its functions."

Public Res. C. § 21166 provides:

"When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

"(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

"(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

"(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available."

The Guidelines in their implementation of CEQA, set forth the process by which a responsible agency uses the EIR. (G. § 15096.) The responsible agency does not need to state that the EIR or Negative Declaration complies with CEQA. The responsible agency should state that it considered the EIR or Negative Declaration as prepared by a lead agency (§ 15096(i).)

Laguna Hills desires us to find that the final EIR is inadequate. Were we to make that finding, the remedy is restricted to the standards of § 15096(e).

"(e) Decision on Adequacy of EIR or Negative Declaration. If a Responsible Agency believes that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, the Responsible Agency must either:

- (1) Take the issue to court within 30 days after the Lead Agency files a Notice of Determination;
- (2) Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration;
- (3) Prepare a subsequent EIR if permissible under Section 15162; or
- (4) Assume the Lead Agency role as provided in Section 15052(a)(3)."

As there was no appeal of Orange County's Negative Declaration, subsections (e)1 and (e)2 are inapplicable. Nor is subsection (e)4 applicable, as its prerequisite, meeting the conditions of section 15052(a)(3) did not occur.

Section 15052(a)(3) states:

"(a) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall assume the role of the Lead Agency when any of the following conditions occur:

* * *

"(3) The Lead Agency prepared inadequate environmental documents without consulting with the Responsible Agency as required by Sections 15072 and 15082, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency."

Orange County did consult with the PUC.

The remaining corrective measure permitted the responsible agency is to prepare a subsequent EIR if permissible under Section 15162 which provides, in part, "Where an EIR or Negative Declaration has been prepared, no additional EIR need be prepared unless:

"(1) Subsequent changes are proposed...which will (have)...new significant environmental impacts....

"(2) Substantial changes occur....

"(3) New information of substantial importance to the project becomes available...."
(G. § 15162(a)(1), (2), (3).)

Our inquiry now turns to whether Laguna Hills has alleged any facts which are new, substantive, and will have significant environmental impacts. We have reviewed the pleadings and have found nothing of substance.

In its brief, Laguna Hills acknowledges that CEQA Guidelines Section 15162 requires the preparation of a subsequent EIR following preparation of a Negative Declaration when changes in the project, changes in circumstances or new information indicate the involvement of "new significant environmental impacts" that were "not considered," "not covered" or "not discussed" in the previous Negative Declaration. It states that in this case the project examined in the 1986 Negative Declaration was the subdivision of land into two commercial lots and one landscape lot. It claims that neither the direct nor indirect impacts of the grade separation and access road to Cabot were included in the environmental review; an examination of the secondary traffic and circulation impacts was deferred. Since then, the city engineer of Mission Viejo has signed design and construction plans for the grade separation and access road to Cabot. This, in the opinion of Laguna Hills, is a change in the project from one involving the creation of lots, clearing, grading, and site preparation to one involving construction of structures that will directly facilitate the development of the site and lead to actual traffic impacts and, therefore, triggers the preparation of a subsequent EIR. Constructing the link to Cabot means that the impacts on traffic and circulation of 9,000 vehicle trips per day must now be examined.

Laguna Hills believes that a further substantial change in circumstances has occurred that involves new significant environmental impacts not covered in the 1986 Negative Declaration. The application states that Cabot "does not carry a large volume of traffic at peak periods" and that "Cabot Road south of Pacific Park Drive is not a through street, contributing to its minimal use." (Application, page 3, Section 10.) This same circumstance existed in 1986, but Laguna Hills asserts that the County of Orange now contemplates construction to connect Cabot south of Pacific Park Drive. This connection is anticipated to increase through traffic

on Cabot within the City of Laguna Hills. When added to the acknowledged, previously identified significant traffic impacts of the development of TPM 85-432, the cumulative effects on Cabot should be examined in a subsequent EIR. No traffic impacts, much less cumulative impacts, were addressed in the 1986 Initial Study/Negative Declaration.

Mission Viejo responds that there has been no change in the project. The design and construction plans signed by the city engineer are consistent with the plans for the grade separation that existed at the time TPM 85-432 was approved in 1986. Furthermore, the approval of the design and construction plans by the city engineer is not a discretionary act that requires CEQA review, rather it is a ministerial act that is exempt from CEQA compliance. (CEQA Guidelines Section 15357.) The only other change or new information alleged by Laguna Hills is that the County now contemplates that Cabot Road will be connected to Crown Valley Parkway, south of Pacific Park Drive. What Laguna Hills fails to disclose to the Commission is that this connection was also contemplated in 1986 when TPM 85-432 was approved. The County's Master Plan of Arterial Highways (MPAH) has shown the planned connection of Cabot Road with Crown Valley Parkway since 1969. Contrary to the assertions of Laguna Hills, Mission Viejo states that the County did not confine its review of the potential traffic impacts of the project to the circulation system as it physically existed in 1986. The traffic studies projected the future traffic impacts on Cabot Road assuming its ultimate buildout in accordance with the MPAH.

We agree with Mission Viejo. There are no substantial changes in its project or new information made available which would show new significant environmental impacts. The fact that the Mission Viejo city engineer signed design and construction plans for the grade separation does not show a change in the project; it shows consistency with the project. The assertion by

Laguna Hills that Cabot Road will be connected to other county roads not only was known at the time of the Negative Declaration, but was considered in traffic reports done as part of the environmental documentation which lead to the Negative Declaration.

Although "substantial changes" in a project are as varied as projects themselves, it is instructive to note what, in one case, the Supreme Court found to be a substantial change. In reference to the construction of a stadium, the Supreme Court in Concerned Citizens of Costa Mesa v 32nd Dist. Agricultural Assoc. (1986) 42 Cal.3d 929 said "Certainly, an increase from six to ten acres in the size of the project, a 200 percent increase in seating capacity, and the acoustic effects of moving the stage to face single-family dwellings north of the fairgrounds were sufficiently important to require consideration of their effects in a later EIR." (42 Cal.3d at 937.) The instructive point for the project before us is that as compared to the substantial change in Concerned Citizens of Costa Mesa the PA-87 project is not being changed. The development of PA-87 is substantially the same now as in 1986 and for our limited concern, the overpass, there is no change at all.

The purpose of Section 21166 is to provide a balance against the burdens created by the environmental review process and to accord a reasonable measure of finality and certainty to the results achieved. It is to expedite development project approval. (Bowman v City of Petaluma (1986) 185 CA3d 1065, 1074.) As Bowman pointed out, Section 21166 provides that a subsequent EIR shall not be required unless "substantial changes" necessitating "major revisions" are shown (185 CA3d at 1081). Bowman dealt with a claim that a subsequent EIR was required because traffic patterns changed after an EIR had been prepared. The court held that the changes did not require a subsequent EIR; they were not substantial (185 CA3d at 1079).

As an alternative to its theory that the Negative Declaration is inadequate, Laguna Hills argues that the overpass is a new project which requires its own EIR. It says, "What is relevant is whether the Initial Study/Negative Declaration on which the Applicant relies examined the direct and indirect environmental impacts of the construction of the grade separation." If these impacts were not considered, and Laguna Hills believes they were not, Laguna Hills contends that a new EIR is required.

We disagree. Our review of the CEQA process in a situation where the Commission is a responsible agency is first, to determine if the project before the Commission was considered in the Negative Declaration claimed to be applicable; second, to determine if we were properly served; and if so, third, to determine if there are new facts which would require a subsequent EIR. Our review of the documents which form the basis of the Negative Declaration, especially TPN 85-432, clearly shows that the overpass was an integral part of the project. There could be no project without the overpass. This Commission was timely served with the Negative Declaration and had an opportunity to comment. We did not challenge the Negative Declaration then, and we certainly cannot challenge it six years later. The overpass is not a new project.

The only issue before us is whether there have been changed circumstances since the completion of the Negative Declaration that would require a subsequent EIR. As discussed above, we find that there have been none.

Next, in a non-environmental attack on the overpass project, Laguna Hills questions the need for the project. However, it sets forth no reason why the overpass is not needed. As far as we can ascertain, this lack of need is contained in Laguna Hills' assertion that "the City of Laguna Hills has just obtained preliminary information, and will offer evidence at the public hearing to show that no development proposal has been submitted and

approved by the City of Mission Viejo for the parcel that could conceivably give rise to any public need to cross over the railroad tracks." (Protest of Laguna Hills, p. 6.)

Not only has Laguna Hills cited no facts to support its assertion, but it would have us believe that Mission Viejo has filed this application to construct and pay for an overpass that connects to a wasteland, which is to remain a wasteland. Laguna Hills has admitted that "For all practical purposes Cabot Road is the only access to this otherwise land locked site." (Protest, Appendix B, p. 3.) We are to believe that PA-87, TPM-85-432, the Negative Declaration, and this application are intellectual exercises with no basis in reality. This makes no sense.

Finally, Laguna Hills appears to contend that Mission Viejo cannot construct the separated grade crossing without Laguna Hills' consent because part of the separated grade crossing will traverse land which, although owned entirely by Mission Viejo, is within the boundaries of Laguna Hills. Mission Viejo claims that Laguna Hills' argument is wrong for two reasons. First, Mission Viejo has obtained all local authorizations and permits, including those relating to construction within land owned by Mission Viejo but located in Laguna Hills, needed in order to construct the grade crossing. Second, even if all required local governmental approvals and permits had not been obtained, Laguna Hills is bound by the agreement which its predecessor in interest, Orange County, entered into with Mission Viejo to permit the overpass.

We need not determine the accuracy of Laguna Hills' or Mission Viejo's contentions because Public Utilities Code Sections 1201 and 1202 give this Commission plenary power over grade crossings and grade separations. (Northwestern Pac. Ry. Co. v Superior Court (1949) 34 C.2d 454; Re City of Norwalk (1976) 80 CPUC 24.) The consent of a city is not required for the construction of a grade separation within its boundaries. This

Commission has exclusive jurisdiction. (Northwestern Pac. Ry. Co. v Superior Court, supra, at 458.)

We are concerned about the form of the protest of Laguna Hills. Its protest is viewed by us as a tool for obstruction and delay wielded by a party concerned more with its own narrow interest than the proper use of an environmental challenge. Its assertion that the overpass was not evaluated in the 1986 Negative Declaration shows a deliberate misrepresentation of the project definition on the face of the Negative Declaration which described the project to include Parcel Map 85-432, a map which clearly shows the overpass. Its assertion that in some way we must make up for the supposed inadequacies of the Negative Declaration disregards completely the legislative format for challenging Negative Declarations (Public Res. C. § 21166). Its assertion that a change in traffic patterns is a significant new fact that will have a substantial impact on the overpass portion of the project has not been supported by any facts and is without merit. And to argue that an overpass is not needed to connect Cabot Road to the PA-87 development is belied by Laguna Hills' own filing and is sheer fantasy. Laguna Hills has delayed construction of this overpass for over six months. We will not be a party to that delay any longer. The application should be granted. A public hearing is not necessary.

Findings of Fact

1. Mission Viejo requests authority to construct the El Paseo grade separation over the track of the Santa Fe's San Diego subdivision main line, at or near Mission Viejo, Orange County.
2. The El Paseo overpass will provide vehicle access into the development of Mission Viejo's PA-87.
3. Public convenience and necessity require the construction of the proposed grade separation.

4. The project of which the El Paseo overpass was an integral part was the subject of environmental review in 1986.

5. The project in question was the development of a landlocked parcel known as PA-87. Part of the project was the El Paseo overpass described in TPM 85-432.

6. Orange County was the lead agency for the project and prepared a Negative Declaration for the project.

7. An Initial Study, IS 85-229, was prepared for the project. The El Paseo overpass will be constructed as part of the subdivision improvements required to be constructed as a condition of approval of TPM 85-432. As a result of IS 85-229, a Negative Declaration was approved on March 13, 1986, TPM 85-432 was approved on August 6, 1986, and a Notice of Determination was filed on August 20, 1986.

8. Orange County transmitted a copy of the Negative Declaration to the State Clearinghouse in 1986.

9. The State Clearinghouse served a copy of the Negative Declaration on this Commission as a responsible agency in 1986.

10. This Commission did not comment on the Negative Declaration.

11. The Negative Declaration became final in August 1986 and the time period for challenging the Negative Declaration has expired.

12. The Negative Declaration describes the project as Area Plan AP 85-22P/Screen Check Parcel Map 85-432/Site Plan SP 86-34P.

13. Screen Check Parcel Map 85-432 and TPM 85-432 are one and the same document.

14. No substantial changes have been proposed for the project which will require major revisions of the Negative Declaration.

15. No substantial changes have occurred which will require major revisions of the Negative Declaration.

16. No new information of substantial importance has become available which would require a major revision in the Negative Declaration.

17. The Negative Declaration prepared for the project is adequate for use by this Commission.

18. Changes in traffic patterns as alleged by Laguna Hills are not of substantial importance to require a subsequent EIR.

19. We have considered the Negative Declaration prepared by the lead agency in rendering a decision on the overpass portion of the project.

Conclusions of Law

1. The protest of Laguna Hills should be denied.
2. The application should be granted.

ORDER

IT IS ORDERED that:

1. The City of Mission Viejo (City), is authorized to construct a grade separation of El Paseo over the tracks of The Atchison, Topeka, and Santa Fe Railway Company's (Santa Fe) San Diego subdivision main line, at or near Mission Viejo, Orange County, at the location and substantially as shown by plans attached to the application to be identified as Crossing 2-191.5-A.

2. Clearances shall be in conformance with General Order (GO) 26-D.

3. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

4. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement, together with plans approved by Santa Fe, shall be filed with the Commission's Safety Division

staff prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

5. Within 30 days after the completion of the work under this order, City shall notify the Commission's Safety Division staff in writing that the authorized work has been completed.

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.

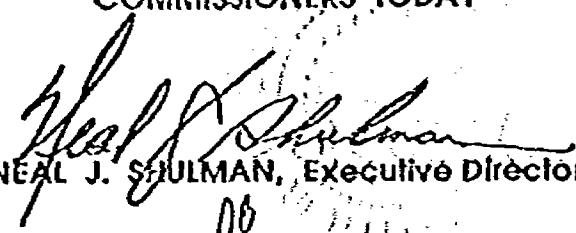
7. The Executive Director shall file a Notice of Determination pursuant to Guidelines § 15096(i).

This order is effective today.

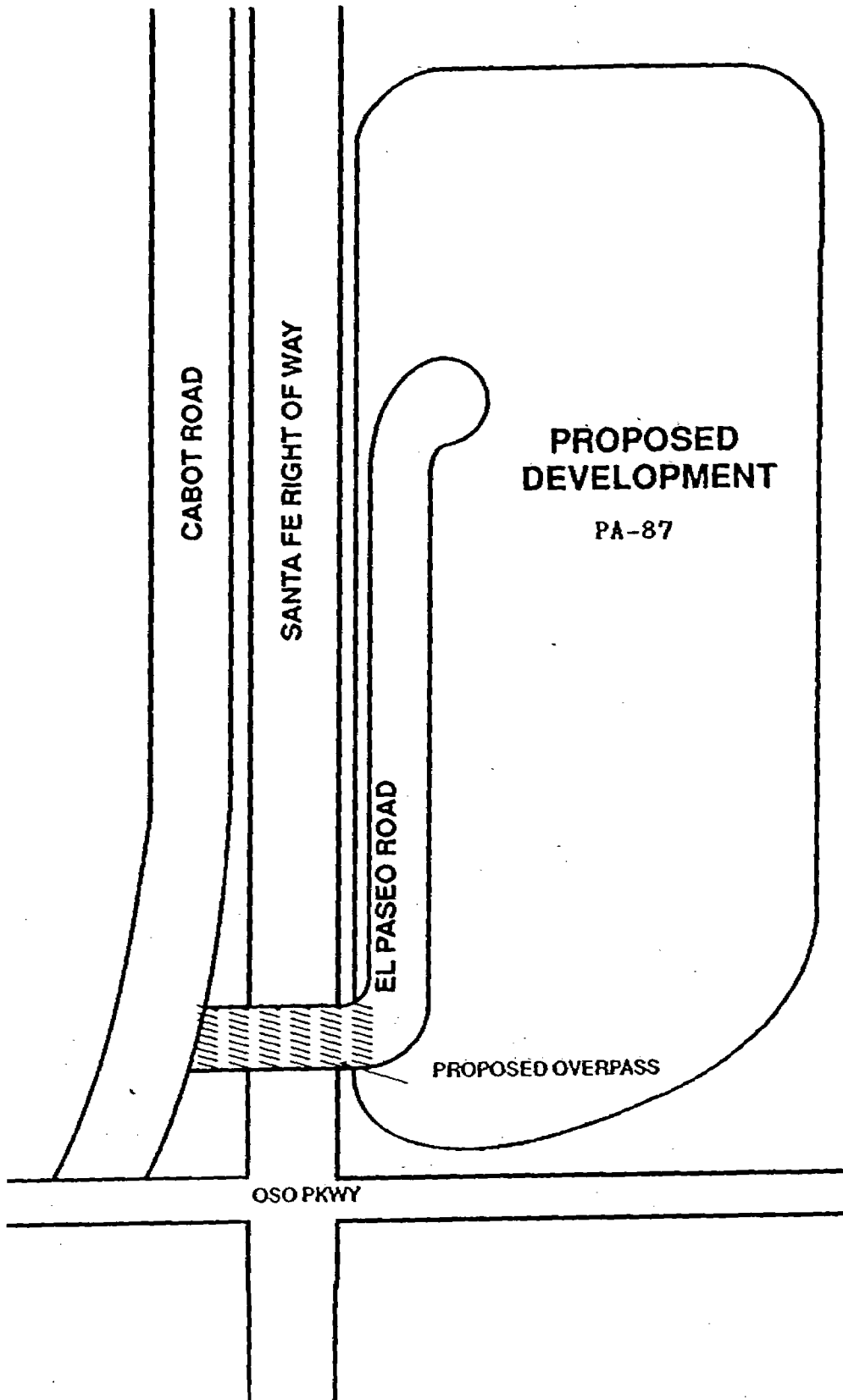
Dated October 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director

(Not to Scale)



(END OF APPENDIX A)