

ORIGINAL

Decision No. 92587 JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the CITY of MONTCLAIR, a municipal corporation of the State of California, for permission to construct an at-grade crossing over The Atchison, Topeka and Santa Fe Railroad [sic] Company's railroad tracks at Monte Vista Avenue in the County of San Bernardino, State of California.

Application No. 59595
(Filed April 14, 1980)

Gerald Taylor, for City of Montclair, applicant.
Leland E. Butler, Attorney at Law, for The Atchison, Topeka and Santa Fe Railway Company, protestant.
Robert W. Stich, for the Commission staff.

O P I N I O N

By this application, the city of Montclair (City) seeks an order authorizing the construction at grade of Monte Vista Avenue over the tracks of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) within its city limits in San Bernardino County.

Public hearing on the application was held before Administrative Law Judge A. E. Main on September 11, 1980 in Los Angeles. The matter was submitted with provision for the filing of concurrent opening and reply briefs. Opening briefs were filed on October 14, 1980 by Santa Fe and the Commission staff but not by the City.^{1/} As a consequence of the City's having elected not to file a timely opening brief, no reply briefs were filed. The matter now stands ready for decision.

^{1/} An opening brief was eventually received from the City. The untimely filing was made on November 10, 1980.

The Evidence

The proposed Monte Vista Avenue grade crossing is located in the northern portion of the City between Arrow Highway on the south and a projected extension of Richton Street on the north. The milepost location of the proposed crossing is 2-103.8. The crossing numbers of the nearest existing public crossing on each side of the proposed crossing are:

- a. Westerly at Claremont Boulevard: Crossing No. 2-104.18, which is approximately 2,600 feet away.
- b. Easterly at Central Avenue: Crossing No. 2-103.2, which is also approximately 2,600 feet away.

Appendix A attached to this decision is a map, reproduced from Exhibit 1 in this proceeding, showing the proposed crossing and vicinity. At present, Monte Vista Avenue dead-ends at Arrow Highway. Richton Street, starting at Central Avenue, now traverses approximately 1,000 feet of the 2,600 feet between Central Avenue and the proposed extension of Monte Vista Avenue. The proposed crossing is part of a project to extend both Monte Vista Avenue and Richton Street.

The intended purpose of the crossing is to provide additional access and improved emergency vehicle response time to a 50-acre industrial site. As delineated on Appendix A, this site is bounded by the Santa Fe right-of-way on the south, the P. E. (formerly Pacific Electric Railway but now Southern Pacific Transportation Company) right of way on the north, Central Avenue on the east, and the Zone R-1 residential area which is being developed on the west.

With the new terminus of Monte Vista Avenue to be at the P. E. right-of-way, Claremont Boulevard and Central Avenue would remain the only through streets northward in the area. Only two industries, a clothing manufacturer and a gravel company, are now on the 50-acre site. In addition to the existing access via Richton Street, there is Huntington Drive which, off Claremont Boulevard, parallels the south side of the P. E. right-of-way. This second existing access street, however, may be unsuitable for truck traffic because it adjoins the north end of the area zoned R-1.

The Montclair Fire Department Headquarters and Fire Station occupies the southeast corner of the intersection of Arrow Highway and Monte Vista Avenue. The fire department has conducted simulated fire equipment runs to the 50-acre industrial site. The results indicate that the proposed crossing could save one minute in running time.

Although a traffic circulation study has not been conducted, the City has developed, at our staff's request, certain traffic data for the area involved as follows:

- (1) Anticipated Average Daily Traffic (ADT) on Monte Vista Avenue at the proposed crossing of the Santa Fe tracks is 3,000 vehicles.
- (2) Present ADT at the Claremont Boulevard crossing of the Santa Fe tracks is 4,757 vehicles. If the crossing of Monte Vista Avenue as proposed is permitted, there should not be a significant change in the ADT at Claremont Boulevard.

- (3) Present ADT at the Central Avenue crossing of the Santa Fe tracks is 19,874 vehicles. Anticipated ADT at this crossing, if the Monte Vista Avenue crossing were authorized, would decrease by 3,000 vehicles.
- (4) Present and anticipated ADT on Richton Street is 258 vehicles and 3,000 vehicles, respectively.

The present traffic shown for Richton Street is from the gravel company operation. The anticipated ADT of 3,000 vehicles on either Richton Street or Monte Vista Avenue reflects full development of the 50-acre industrial site and the improbable assumption that all traffic to and from the area would use only the proposed Monte Vista Avenue access.

At the location of the proposed crossing, there is a single main line track which four passenger trains, traveling at a speed of 60 miles per hour, now use daily. According to Amtrak there may be two to four more passenger trains on this track daily in the near future. The frequency of freight trains varies with demand but averages 12 daily with a speed of 60 miles per hour. The City concedes that the opening of an additional grade crossing increases the overall risk of train-vehicle accidents.

The entire cost of constructing the Monte Vista Avenue extension from Arrow Highway to the projection of Richton Street is to be borne by the principal developer of the 50-acre industrial site. The City estimated that cost at \$175,000, including \$25,000 for the grade crossing together with its protective devices. However, Santa Fe's witness testified that the \$25,000 figure is too low and that a more reliable estimate places the cost of the grade crossing portion alone at \$137,500. The developer had been informed that the cost would be approximately the above-cited \$175,000, which from the foregoing appears to understate costs by at least \$100,000.

The City is the lead agency for this project pursuant to the California Environmental Quality Act of 1970 (CEQA), as amended, (Public Resources Code Section 21000, et seq.), and the Guidelines for Implementation of CEQA (Title 14, California Administrative Code, Division 6, Chapter 3). In that capacity the City prepared an Initial Study as required by Section 15080 of the Guidelines. The scope of the Initial Study, however, was limited to an assessment of the effect of the proposed grade crossing on the environment. As a result of this limitation, the Initial Study did not address the effect on the environment of the development of the 50-acre industrial site.

From an Initial Study so restricted in scope, the City determined that the project would not have a significant effect and, accordingly, a Negative Declaration would be prepared. The Negative Declaration was approved by the Montclair City Council on April 7, 1980. The Notice of Determination, together with the Negative Declaration, was filed with the San Bernardino County Clerk. The two documents were mailed to the County Clerk on April 8, 1980.

In the Negative Declaration process, the City failed (a) to consult with the Commission, as a responsible agency, before and after completing a Negative Declaration pursuant to Sections 15083(b) and 15066(f), respectively, of the Guidelines; (b) to send the Negative Declaration to the State Clearinghouse, as required by Section 15161.5(b)(2) of the Guidelines; and (c) to file a Notice of Determination with the Secretary for Resources, as required by Section 15083(f)(4) of the Guidelines.

Opposition

Santa Fe, Amtrak, and the Commission staff oppose the proposed grade crossing.

Santa Fe contends that the application must be denied because, not only has the City failed to comply with the requirements of CEQA, but it has failed to meet the basic test for determining if a new crossing should be established. In the latter regard it is Santa Fe's position that the City has failed to show that the proposed crossing is required by public health, safety, or welfare.

Amtrak takes the position that any additional grade crossings in the area will present an additional hazard to the operation of passenger trains. It is the Commission staff's position that the City has not clearly shown that a real need for the proposed crossing exists, especially when weighed against the increased hazards created by a new grade crossing. Some of the conclusions reached by the staff in formulating its opposition to the proposed grade crossing are:

1. The benefits of improved access for emergency vehicles would be minimal, i.e., an average of one minute.
2. The additional route for emergency vehicles would neither eliminate nor reduce whatever crossing blockage problems might exist. Without being grade separated, the additional crossing would not provide an uninterrupted route for emergency vehicles.
3. Traffic circulation in the area will not be substantially improved as it appears only 1/3 to 1/2 of the potential traffic generated by the proposed industrial development could use the proposed crossing to any advantage.

4. The proposed crossing would increase the potential for train-vehicle accidents and the hazards to passenger trains.
5. The issue concerning practicality of a separation of grades appears moot as no real need has been established for a Monte Vista Avenue crossing, either separated or at grade.
6. The City has not complied with CEQA.

Discussion

The City claims that the Monte Vista Avenue crossing is needed to serve the 50-acre industrial site upon its development. While there is little doubt that providing this proposed additional access would tend to enhance the site's potential for development, the City has failed to sustain its burden of proof in two essential aspects:

- (1) Will the development of the 50-acre site actually materialize? and
- (2) If it does materialize, will the necessity and convenience to the community outweigh the hazards created by a new grade crossing?

According to the City's director of public works, there are still many unknowns about developing the 50-acre site. It was his testimony that there are not specific plans for its development and that the information available is insufficient to assess the environmental impacts. Notwithstanding this, the City has filed this application. The resultant anomaly is clearly shown in the

City's reliance on the interdependence of the development of the industrial site and the proposed crossing when attempting to show need, but when addressing environmental concerns, to structure its study as if the environmental impact of the proposed crossing could be divorced from the industrial development.

Perhaps specific plans for development of the industrial site are lacking because planning thus far has not gone beyond a speculative stage. In any event, the record in this proceeding does not establish conclusively that the 50-acre industrial site will be developed. Applicant has, therefore, failed to establish a definite need for the proposed crossing.

The City's consultant testified that a grade separation at Monte Vista Avenue could not be justified from a cost-in-relation-to-use standpoint. The grade crossing alternative, as stated above, must meet a test of need outweighing inherent hazard. The need for additional access to the industrial site at full development, should that happen, has not been shown on this record to outweigh the concomitant hazard.

Findings of Fact

1. At present, the access routes to the 50-acre industrial site delineated on Appendix A to this decision are via Richton Street and, for nontruck traffic, via Huntington Drive. The access streets can be reached from the existing grade crossings on Central Avenue and Claremont Boulevard, respectively. These two grade crossings are one mile apart. The proposed Monte Vista Avenue crossing would be situated midway between them.

2. The intended purpose of the proposed Monte Vista Avenue grade crossing is to provide additional access and improved emergency vehicle response time to a proposed 50-acre industrial site.

3. There are no firm development plans for the 50-acre industrial site.

4. Public safety requires that crossings be at separated grades at railroad line main tracks whenever possible. New crossings of main line tracks must be based upon a showing that public convenience and necessity require such crossing. The evidence does not establish that the public safety, convenience, and necessity now require the proposed grade crossing.

Conclusion of Law

The application should be denied.

The Notice of Determination by the Commission as the responsible agency for the project is attached as Appendix B to this decision.

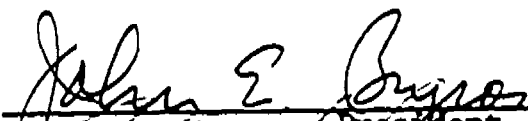
O R D E R

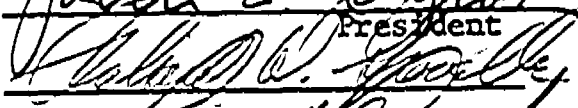
IT IS ORDERED that the request for authority to open Monte Vista Avenue across The Atchison, Topeka and Santa Fe Railway Company's tracks in the city of Montclair is denied.

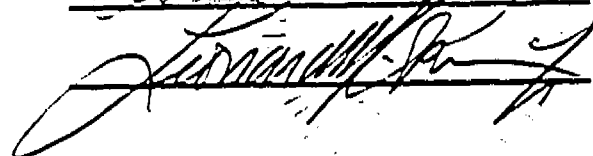
The Executive Director of the Commission is directed to file a Notice of Determination for the project as set forth in Appendix B to this decision with the Secretary for Resources.

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

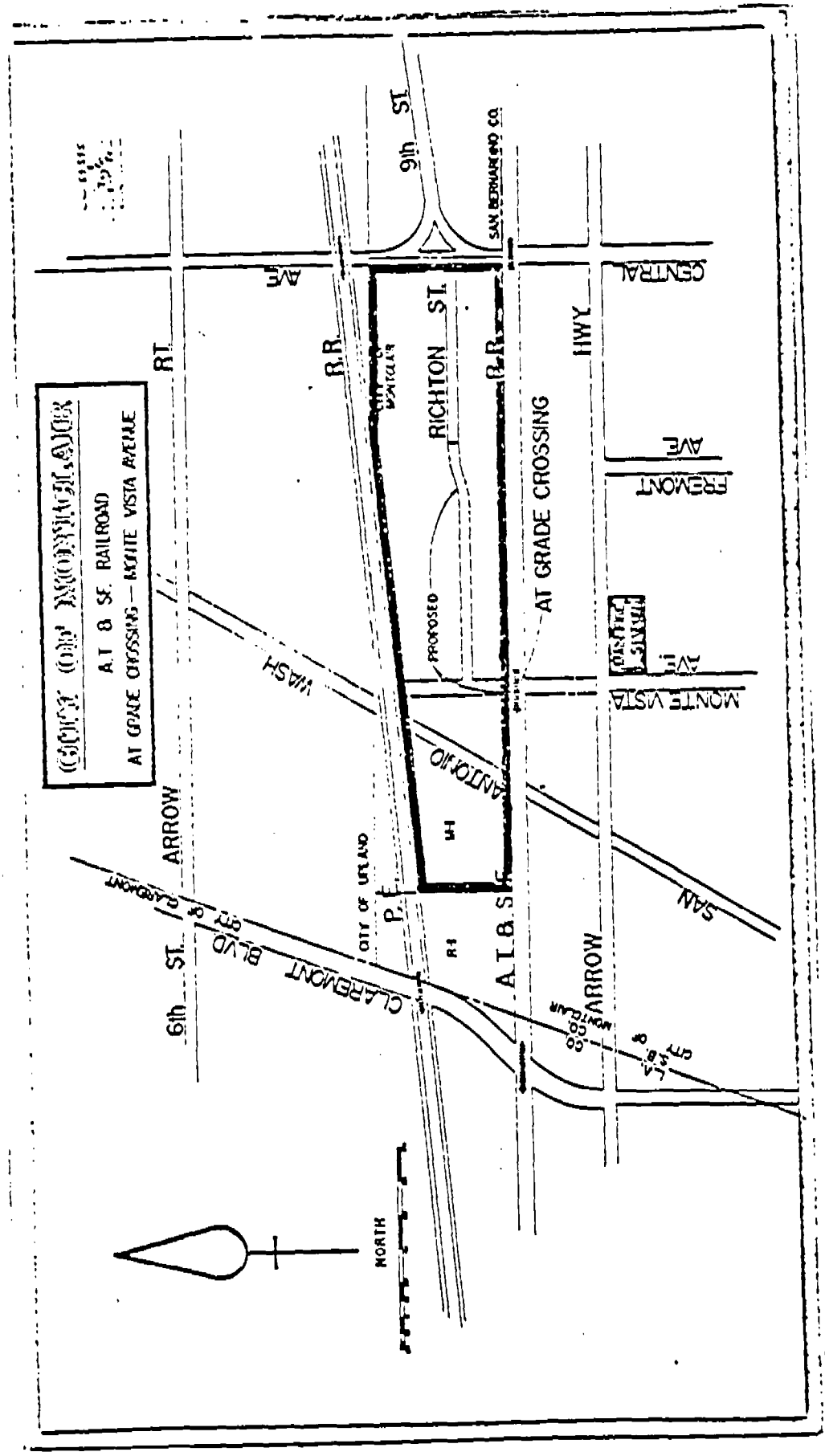
Dated JAN 6 1981, at San Francisco, California.



President




Commissioners



APPENDIX B

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Room 1312
Sacramento, California 95814

FROM: California Public
Utilities Commission
350 McAllister Street
San Francisco, Calif. 94102

SUBJECT: Filing of Notice of Determination in compliance with
Section 21108 or 21152 of the Public Resources Code.

Project Title Proposed Monte Vista Avenue Extension

State Clearinghouse Number (If submitted to State Clearinghouse)

Contact Person Telephone Number
Robert W. Stich (415) 557-2353

Project Location Monte Vista Avenue between Arrow Highway and
Richton Street, city of Montclair, San Bernar-
dino County

Project Description The aspect of the project under the Public
Utilities Commission is the at-grade crossing
of the existing railroad track

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

1. The project has been approved by the Responsible Agency.
 disapproved
2. The project will have a significant effect on the environ-
ment.
 will not
3. An Environmental Impact Report was prepared for this
project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project
by the city of Montclair as the lead agency.

Date Received for Filing

JOSEPH E. BODOVITZ
Executive Director

cc: County Clerk, San Bernardino Co.

Date _____