

MAILED 6/4/98

Decision 98-06-008 June 4, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of the SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD AND CITY OF SAN DIEGO for an order authorizing an at-grade crossing of two light rail tracks and two freight/intercity/commuter rail tracks at Vine Street in the city of San Diego, San Diego County, California.

**ORIGINAL**

Application 97-01-029  
(Filed January 21, 1997)

Paul G. Edmonson, Attorney at Law and  
Linda Marabian for City of San Diego,  
David Ragland, for Transit  
Development Board, applicants.

Hill, Farrer & Burrill, LLP, by R. Curtis  
Ballantyne, for The Burlington  
Northern and Santa Fe Railway  
Company, and Wayne P. Stafford,  
for National Railroad Passenger  
Corporation, protestants.

James P. Jones, for United Transportation  
Union, Kristen Mason, for Hertz  
Corporation, and Robert C. Rice, for  
Park and Ride, interested parties.

James T. Quinn, Attorney at Law, for Rail  
Safety/Carriers Division.

## OPINION

### Background

The San Diego Metropolitan Transit Development Board (MTDB) and the City of San Diego (jointly referred to as Applicants) filed this application requesting authority to construct an at-grade crossing of two light rail tracks and two freight/intercity/commuter rail tracks at Vine Street in the City of San Diego.

According to Applicants, the Vine Street at-grade crossing was closed<sup>1</sup> in 1994 to allow the construction of the Old Town Light Rail Transit Project. Applicants request the Commission to authorize a one-way eastbound at-grade crossing at Vine Street.

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a protest to the application stating, among other things, that there had been no adverse impact on the traffic due to the closure of the Vine Street crossing.

The National Railroad Passenger Corporation, commonly known as Amtrak, also protested the application.

### Hearings

In response to the protest, a duly noticed prehearing conference was held on August 14, 1997 in San Diego before Administrative Law Judge (ALJ) Garde.

At the prehearing conference, the ALJ scheduled evidentiary hearings which were held on November 19, 1997 in San Diego. Concurrent opening and reply briefs were filed on January 16, 1998 and January 30, 1998, respectively. The matter was submitted upon receipt of the reply briefs.

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<sup>1</sup> The authority to close the at-grade crossing was granted by Decision 91-06-042 in Application 94-03-002.

## O P I N I O N

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### **Description of Project**

The proposed Vine Street at-grade crossing will be located just east of Pacific Highway. The two nearest existing rail crossings north of Vine Street are:

- Washington Street approximately 0.2 miles from Vine Street; and
- Noell Street approximately 0.4 miles from Vine Street.

The two nearest existing rail crossings south of Vine Street are:

- Sassafras Street approximately 0.3 miles from Vine Streets, and
- Palm Street approximately 0.6 miles from Vine Street.

Vine Street is a five-block long street between Pacific Highway and Union Street. Vine Street passes under the Interstate Route 5 Freeway (I-5) between India Street and Kettner Boulevard and has no connecting on-ramps or off-ramps to I-5.

The location of the proposed at-grade crossing and detailed street layout at the proposed crossing are shown on Map 1 and 2, respectively.

### **Positions of Parties**

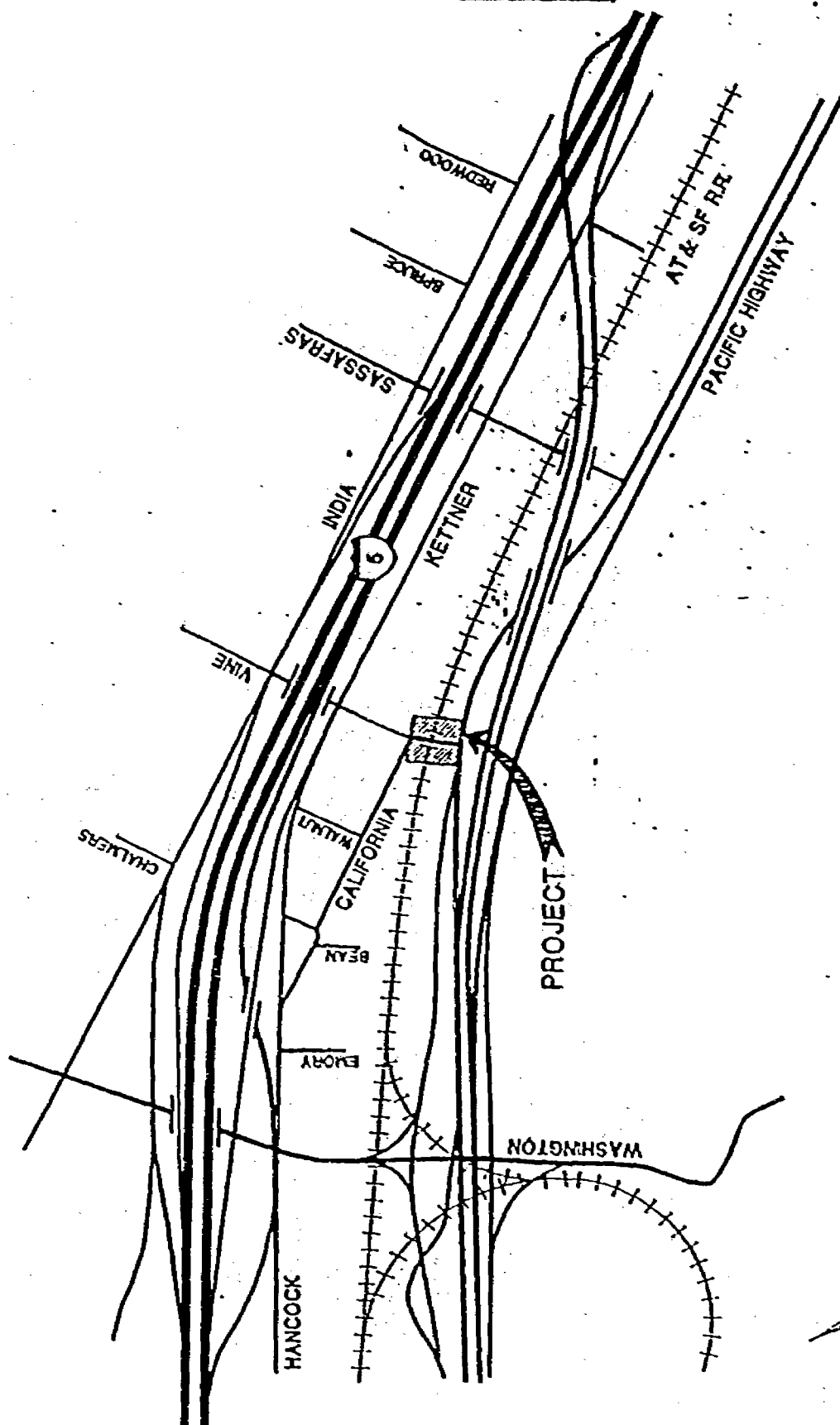
Applicants and Park & Ride provided testimony in support of the proposed at-grade crossing. While Hertz Corporation expressed its support for the crossing during the prehearing conference, it did not participate in the evidentiary hearings.

BNSF, Amtrak, and the Commission's Rail Safety and Carriers Division (RSCD) provided testimony opposing the reestablishment of the Vine Street at-grade crossing.

### **Applicants' Position**

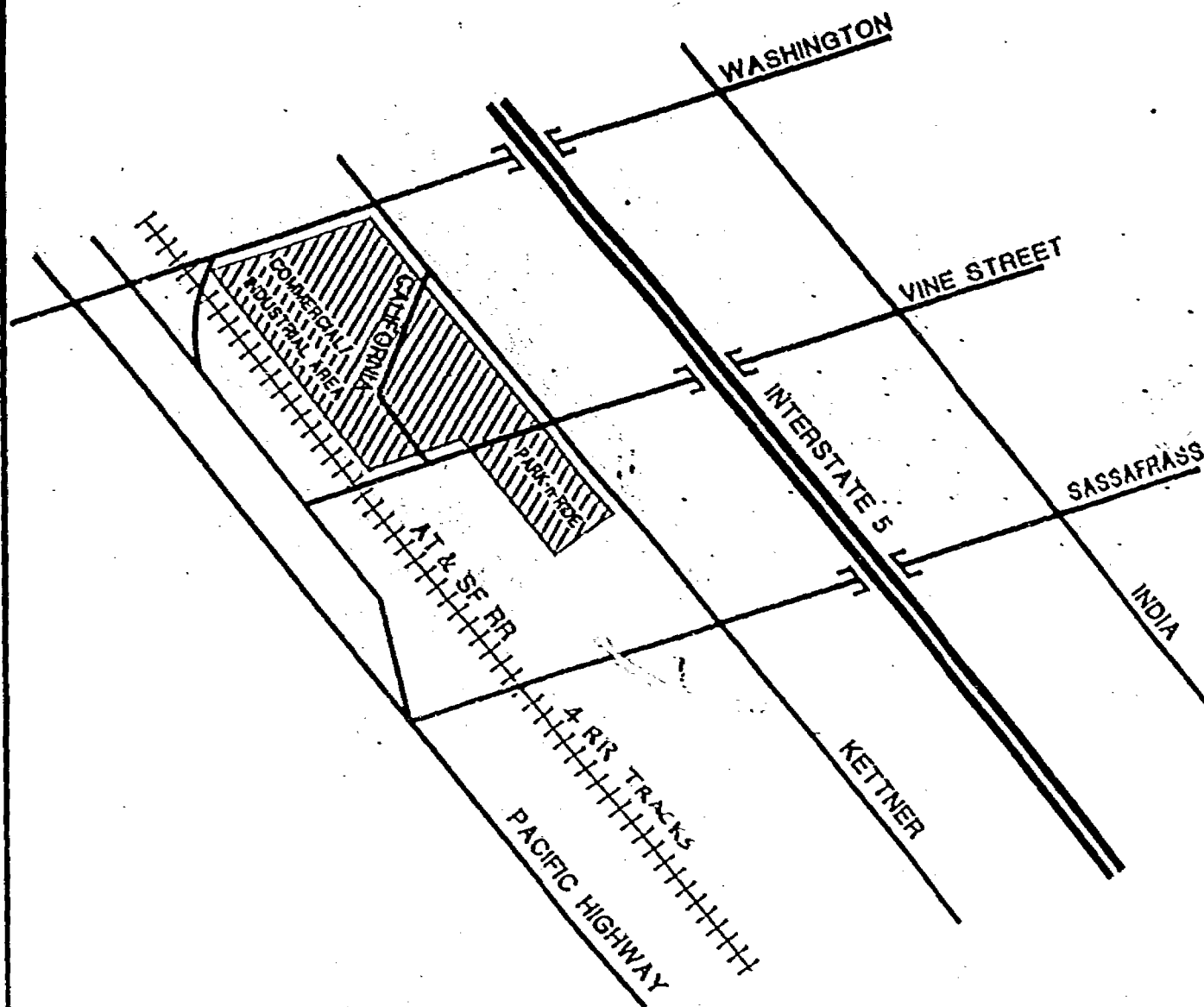
Applicants state that before the closure of the at-grade crossing, there were no accidents at the site. According to Applicants, the proposed crossing will be based on a new design which will take into consideration the Commission's requirements of safety at such crossings.

MAP-1



SPECIFIC LOCATION OF PROJECT

MAP-2  
DETAILED STREET LAYOUT



Applicants contend that a safe at-grade eastbound crossing for Vine Street can be designed with appropriate signal protection and warning devices. Applicants state that the City of San Diego would build a separate right-turn lane just south of Vine Street on Pacific Highway to avoid vehicles stacking on the highway when the eastbound traffic is stopped on Vine Street when the crossing gate is lowered.

Applicants believe that reopening Vine Street with a one-way eastbound at-grade crossing is necessary to provide access to businesses along Kettner Boulevard; and as a secondary benefit, the opening of Vine Street will provide improved access for emergency vehicles.

Applicants assert that the Strategic Plan for the Port of San Diego relies on expanding the Pacific Highway corridor, of which Vine Street is an integral part. Continued Vine Street closure would have a negative impact not only on the Strategic Plan for Port of San Diego but also on the goal of improving transportation circulation and economic viability of this underutilized commercial and industrial area, as set forth in the North Bay Redevelopment Project.

According to Applicants, the City Council of San Diego and the Board of Directors of MTDB have determined that the reopening of the Vine Street crossing is essential and accordingly, have jointly filed this application.

Finally, Applicants maintain that it is the municipality not the Commission which must decide whether to close, abandon or vacate a public street. According to Applicants, the San Diego City Council has found that the public interest and convenience requires the reopening of Vine Street. The Commission should not use its authority to override the decision made by the San Diego City Council.

### **Park & Ride's Position**

Park & Ride supports the reopening of Vine Street proposed in the application.

Park & Ride's position is essentially the same as Applicants' position. In addition Park & Ride contends that the closure of Vine Street has had a significant negative impact on its business.

### **RSCD's Position**

RSCD opposes the reopening of the Vine Street at-grade crossing. According to RSCD, the proposed at-grade crossing would traverse what is probably the busiest high-speed rail corridor in California. RSCD states that the daily train movement at the proposed site will be approximately 250 trains which is well in excess of the train movement before the construction of light rail track at Vine Street.

RSCD states that the existence of four grade crossings in close proximity to Vine Street greatly diminishes the need for the proposed crossing. RSCD believes that the curvature along the railroad track alignment between Sassafras and Vine Streets and Washington and Vine Streets causes sight obstructions and thus poses unwarranted safety hazards at the site of the proposed crossing.

RSCD points out that access to the proposed crossing would be via an abrupt turn off northbound Pacific Highway. RSCD is also concerned about the limited storage space for vehicles stopped on Vine Street between Pacific Highway and the crossing. RSCD believes that only one car can be stopped in this space, creating a potential for back-up onto the through lanes of Pacific Highway. RSCD also believes that space for vehicles stopped east of the crossing at California Street creates a likelihood of vehicles being stranded on the railroad tracks.



RSCD points out that the May 1993 study (Exhibit 2) conducted for the City of San Diego to analyze the impact on traffic of the potential closure of Vine Street concludes that there would be no major adverse impact on the traffic due to the closure of Vine Street

RSCD maintains that it is the policy of the Commission to avoid authorizing at-grade crossings of railroad whenever it is practical and possible to do so. RSCD states that a departure from this policy is only permitted when the public need and interest so dictates. According to RSCD, Applicants have not demonstrated that a public need exists for the crossing. RSCD cites several decisions of the Commission which articulate Commission's policy on this issue.

RSCD contends that its position regarding safety of at-grade crossings is consistent with the policy promoted by the Association of American Railroads, the California Department of Transportation, as well as the United States Department of Transportation Federal Highway Administration. These entities promote the policy of eliminating railroad crossings at-grade by (a) closing existing crossings; (b) constructing grade separations; (c) relocating highways and/or railroads; and (d) establishing no new at-grade crossings.

The positions of BNSF and Amtrak are essentially the same as the position of RSCD.

### **Discussions**

It has been recognized that it is the Commission's policy not to grant applications for at-grade crossings where there is heavy movement of trains, unless public convenience and necessity demand such a crossing. (Mayfield v.

S.P.Co. (1913) 3 CRC474).<sup>1</sup> The advantages which might accrue by way of added convenience and financial benefits are outweighed by the dangers and hazards attendant upon a crossing at-grade. Accident incidents are related to the number of crossings; therefore, at-grade crossings should be avoided whenever it is possible to do so (Kern County Bd. of Supervisors (1951) 51 CPUC317).

The evidence presented in this proceeding indicates that on weekdays, there are in excess of 200 daily train movements at the proposed crossing. Accordingly, we must consider if public convenience and necessity demand the construction of the proposed crossing.

There are four railroad crossings within a one-mile segment north and south of the proposed crossing, which cross the same four tracks that the proposed crossing would cross. We have to consider if the closure of the Vine Street at-grade crossing since 1993 increased congestion at the four existing crossings.

The following traffic count data provided in Exhibit 11 by MTDB for two of the four at-grade crossings shows that the traffic count after the closure was lower than the traffic count before the closure of Vine Street.

Traffic Counts Before And After Closure of Vine Street

- Washington Street between Hancock Street and Pacific Highway.
  - Before closure (1987) = 19,600 vehicles per day
  - (1992) = 20,400 vehicles per day
  - After closure (1996) = 18,400 vehicles per day.

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<sup>1</sup> While the Commission stated this policy in an old decision, it has affirmed this policy in several of its subsequent decisions, e.g. City of San Mateo, SoPac Transp. Co.(1982) 8 CPUC2d 573.

- Vine Street between California Street and Pacific Highway
  - Before closure (1987) = 1,900 vehicles per day  
(1990) = 2,100 vehicles per day
  - After closure = no data available
- Sassafras Street between Kettner Boulevard and Pacific Highway
  - Before closure (1987) = 3,600 vehicles per day  
(1990) = 5,000 vehicles per day
  - After closure = (1996) = 3,700 vehicles per day

We recognize MTDB's claim that the closure of Vine Street was not the only factor affecting the traffic count at these crossings and that the closure of the General Dynamics plant in the vicinity also had an impact on the traffic. In spite of that assertion we note that, even before the closure of the crossing, traffic on Vine Street was less than one-tenth of the traffic on Washington Street and less than one-half of the traffic on Sassafras Street. It is therefore not surprising that the study conducted for the City of San Diego to analyze the impact of the potential closure of Vine Street concluded that the closure would not have an adverse impact on traffic. We do not believe that Applicants have provided any information that would lead us to conclude that this fifth at-grade crossing within a distance of approximately one-mile is needed.

In addition, we believe that the reopening of the Vine Street crossing as requested by Applicants gives rise to a number of safety concerns which have been brought forth by RSCD. Significant among the safety concerns raised by RSCD are: (a) high train volume at the crossing; (b) obstructed line-of-sight; and (c) the possibility of vehicles being stranded on the railroad tracks. While Applicants state that the City of San Diego can design a safe crossing, they have not provided any such study in their showing.

We believe that Applicants have neither established the need for the proposed crossing nor have they adequately responded to concerns of safety raised by RSCD. We will deny the application.

Finally, we note that Applicants assert that it is the municipality not the Commission which must decide whether to close, abandon or vacate a public street. We will not get into a discussion of the Commission's jurisdiction over such matter. However, we conclude that Public Utilities (PU) Code §§ 1201 et seq., provide ample jurisdiction for the Commission to consider and decide matters pertaining to the construction of at-grade crossings of railroads.

#### **Comments on ALJ's Proposed Decision**

ALJ's proposed decision was filed and mailed to the parties on April 29, 1998. No party has filed comments on the proposed decision. Accordingly, we are issuing the decision as proposed after correcting certain errors from the proposed decision.

#### **Findings of Fact**

1. The Vine Street at-grade crossing was closed in 1994 to allow the construction of the Old Town Light Rail Transit Project.
2. Applicants request the Commission to authorize a one-way eastbound at-grade crossing at Vine Street.
3. It is the Commission's policy not to grant applications for at-grade crossings where there is a heavy movements of trains, unless public convenience and necessity demand such a crossing.
4. There are in excess of 200 train movements per day at the proposed crossing.
5. There are four railroad crossings within a one-mile segment north and south of the proposed crossing.

6. Applicants have not provided any information which justifies the construction of a fifth crossing within a distance of approximately one mile.

7. RSCD has raised several valid safety concerns regarding the construction of the proposed crossing. Significant among the concerns raised by RSCD are: (a) high volume of train traffic at the crossing; (b) impaired line-of-sight; (c) the possibility of vehicles being stranded on the railroad tracks.

### **Conclusions of Law**

1. Applicants' request to construct an at-grade crossing at Vine Street should be denied.

2. PU Code §§ 1201 et seq. provide Commission jurisdiction over at-grade crossing railroads.

### **O R D E R**

#### **IT IS ORDERED that:**

1. The request by the City of San Diego and the San Diego Metropolitan Transit Development Board to construct an at-grade crossing of rail tracks at Vine Street in the City of San Diego is denied.

2. Since all issues raised in this proceeding have been addressed, this proceeding is closed.

This order is effective 30 days from today.

Dated June 4, 1998, at San Francisco, California.

**RICHARD A. BILAS**

**President**

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

**Commissioners**