

**ORIGINAL**Decision 98-09-036 September 3, 1998

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

Application of the State of California, )  
Department of Transportation, for an )  
order authorizing the Department to: ) Application 98-03-056  
widen the Kelley Park Overhead, located ) (Filed March 27, 1998)  
in the City of San Jose, County of Santa )  
Clara, State of California. )  
\_\_\_\_\_ )

O P I N I O N

As part of the project to widen Interstate Route 280 (I-280) between McLaughlin Avenue and 10<sup>th</sup> Street in San Jose, the State of California, Department of Transportation (Caltrans) requests authority to widen the Kelley Park Overhead over the tracks of the Union Pacific Railroad Company (UPRR) in San Jose, Santa Clara County.

The existing structure spans both the railroad tracks and Coyote Creek, which runs through Kelley Park in this section of San Jose. It has five lanes in each direction, but with substandard lane and median shoulder widths in the westbound direction. The proposed widening will allow standard lane and shoulder widths.

Caltrans is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code (PR) Sections 21000, et seq. After preparation of a "project review and evaluation," Caltrans made a

"Categorical Exemption/Exclusion Determination" for the project on January 26, 1988. FHWA concurrence was issued August 31, 1988. The 1997 "Environmental Reevaluation" for the project found that "Since there are no new impacts associated with project changes or changes in the project surroundings, it is determined that the approved Categorical Exemption/Exclusion is still valid." The reevaluation was approved by Caltrans June 30, 1997 and by FHWA July 2, 1997.

The Commission is a responsible agency for this project under CEQA and has reviewed and considered the lead agency's categorical exemption/exclusion determination. The application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public street across a railroad track. A sketch of the project vicinity is included as Appendix A.

The site of the proposed project has been inspected by the Commission's Rail Safety and Carriers Division Traffic Engineering staff. The staff examined the need for and safety of the proposed widening of the Kelley Park Overhead, and recommends issuance of an ex parte order authorizing construction as requested.

Caltrans has requested that order be effective immediately, and that the usual 30-day waiting period on Commission decisions be waived. Funding for the project may be lost if the authorization is not granted expeditiously.

In Resolution ALJ 176-2990 dated April 9, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. The Commission's Rail Safety and Carriers Division recommends that this application be granted. Given these developments, public hearing is not necessary, and it is not necessary to disturb the preliminary determination made in Resolution ALJ 176-2990.

**Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on April 8, 1998. No protests have been filed.

2. Caltrans requests authority under Public Utilities Code Sections 1201-1205 to widen the Kelley Park overhead over the UPRR tracks in San Jose, Santa Clara County.

3. The overhead is an essential component of Interstate Highway 280.

4. Public convenience and necessity require widening of the overhead.

5. Caltrans is the lead agency for this project under CEQA, as amended.

6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's environmental evaluation and categorical exemption determination.

**Conclusions of Law**

1. The application is uncontested and a public hearing is not necessary.

2. The activity is not covered by the requirements set forth in CEQA and, therefore, the Guidelines (14 Cal. Admin. Code - Div. 6) concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

3. The application should be granted as set forth in the following order.

4. The usual 30-day effective date on an order should be waived as project funding may be lost if the authorization is not granted expeditiously.

O R D E R

IT IS ORDERED that:

1. The California Department of Transportation (Caltrans) is authorized to widen the Kelley Park Overhead over the tracks of the Union Pacific Railroad Company (UPRR) in San Jose, Santa Clara County, at the location and substantially as shown by plans attached to the application, to continue to be identified as Crossing 4G-18.1-A.

2. Clearances shall be in accordance with General Order (G.O.) 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 of the crossing approved by UPRR, shall be filed by Caltrans with the Commission's Rail Safety and Carriers Division 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 completion of the work under this order, Caltrans shall advise the Commission's Rail Safety and Carriers Division 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 application is granted as set forth above.  
Application 98-03-056 is closed.  
This order becomes effective today.  
Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

