

Decision 00-03-039 March 16, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of the City of Vista to Construct Main Street, a Public Street, and to Close West Broadway Grade Crossing, across the Railroad Tracks of the North San Diego County Transit Development Board in the City of Vista, County of San Diego.

Application 99-05-045
(Filed May 26, 1999)

O P I N I O N

Summary

This decision authorizes the City of Vista (City) to construct Main Street at grade across the railroad tracks of the North San Diego County Transit Development Board and to close the existing West Broadway grade crossing; and affirms the assigned Commissioner's ruling denying a motion to accept a late-filed protest.

Discussion

North San Diego County Transit Development Board, also referred to in the Application as North County Transit District, is a public agency and owner of the San Diego Northern Railway. The Board owns and operates railroad tracks through the City. Burlington Northern Santa Fe, currently the only train operator, uses those tracks for freight services and may continue to do so in the future when North County Transit District begins a planned commuter rail service.

The City has underway Vista Village Redevelopment Project, a \$50,000,000 commercial area reconstruction in downtown Vista. As part of that project, it proposes major reconfigurations of public infrastructure systems including

sewer, water, flood control, transit, roadways, and railroad grade crossings in and around the project area. During the planning phases, the Commission approved an earlier City application to construct Vista Village Drive grade crossing and close an existing crossing at West Vista Way, both on the perimeter of the project.¹ Those crossing revisions have been completed. With planning accomplished and redevelopment construction in progress, the City now seeks approval under Pub. Util. Code § 1201 *et seq.* to open a second needed crossing, at the Main Street entrance to the commercial complex, and to close the existing West Broadway grade crossing as part of the abandonment and removal of West Broadway in the project area. The proposed revisions are needed to provide improved public access and traffic circulation through downtown and the redevelopment project area.

The proposed grade crossing project will incorporate extensive safety systems including automatic gates and an interconnect system, and will upgrade safety devices being used at the grade crossings adjacent to the project area. The City will install three Standard No. 9 gate type signals and one Standard No. 8 flasher type signal. In contrast, the old West Broadway grade crossing to be closed is without automatic gates and has only Standard No. 8 flashers. The new crossing will be provided with surfaces upgraded to concrete from timber and will be constructed with adequate riding conditions and sight distances in accordance with Commission General Order (G.O.) 72-B.

The City engaged a consulting firm to develop a comprehensive traffic operation computer model, and the model shows that traffic flow through the proposed Main Street crossing will be safe. The adjacent signalized street

¹ Decision (D.) 98-01-004 in A.97-03-008.

intersections (Main Street at South Santa Fe Avenue, Olive Street at Vista Village Drive, and Vista Village Drive at North Santa Fe Avenue) will be interconnected and provided with railroad preemption to clear vehicle queues within the track area in conformance with the Manual on Uniform Traffic Control Devices and the Traffic Control Devices Handbook.

The Application suggests authorization to open Main Street grade crossing be contingent upon the City's first adopting a resolution vacating West Broadway in the vicinity of the existing grade crossing, and removing all public improvements including street pavement, curbs, gutters, sidewalks and existing grade crossing warning devices at West Broadway. In addition, the City has committed that before opening Main Street grade crossing it will construct a six-foot high, non-climbable, wrought iron fence on the southerly railroad right of way adjacent to the redevelopment project. If a bike path is later constructed, a similar fence will be installed to separate the bike path from the rail line in the project area at a location approved by North County Transit District.

Construction and maintenance costs and responsibilities will be apportioned by agreement between the City and North San Diego County Transit Development Board. Maintenance costs will be apportioned in accordance with Pub. Util. Code § 1202.2, with the City's share limited to such funds as may be set aside for allocation to the Commission pursuant to § 1231.1.

The City Planning Commission is the lead agency for the Vista Village Redevelopment Project, of which the proposed grade crossing changes are a part, under the California Environmental Quality Act (CEQA) of 1970. The California Public Utilities Commission is a responsible agency. The City has prepared and approved a Mitigated Negative Declaration, finding that the project will not have a significant effect on the environment. On February 5, 1999, the City filed with the San Diego County Clerk a Notice of Determination as required under CEQA.

The Application complies with the Commission's Rules of Practice and Procedure, Rule 38, which sets forth requirements for applications to construct public highways across railroads. Detailed drawings of the proposed improvements are included in the Application.

Rail Engineering Safety Branch of the Commission's Rail Safety and Carriers Division evaluated the proposed crossing's engineering design and found that it meets minimum requirements under G.O. 75-C, which relates to active warning devices, G.O. 72-B, which relates to surfacing materials, and G.O. 26-D, which relates to clearance requirements. Rail Engineering Safety Branch favors constructing the Main Street at-grade crossing.

Procedural Considerations

The Application was filed May 26, 1999 and noticed in the Commission's Daily Calendar of June 4, 1999. No protests were received by the July 6, 1999 due date. On August 13, 1999, Vista resident Craig Heiller filed a Motion to Accept Late-Filed Protest, Protest Attached. On October 25, 1999, the City filed a Motion to Accept Late-Filed Reply in Response to Motion to Accept Late Filed Protest, Reply to Protest Attached. Assigned Administrative Law Judge McVicar held a prehearing conference in Vista on November 5, 1999 at which only the City, Heiller, and the Commission's Rail Safety and Carriers Division appeared. Heiller's appearance was accepted as "information only" pending a ruling on whether to accept his late protest.

On January 5, 2000, assigned Commissioner Bilas issued a combined scoping ruling and ruling on the motions. The City's motion was granted, accepting its late-filed response to Heiller's motion. Heiller's Motion to Accept Late-Filed Protest was denied and he was not granted party status. The scoping ruling confirmed the Commission's preliminary determination of this as a

ratesetting proceeding not needing a hearing. Considering the reasoning the assigned Commissioner set forth, we affirm his ruling.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed. North County Transit District wrote a letter requesting the Commission approve the Application, but did not refer to the draft decision and did not file the letter or serve it on parties.

Findings of Fact

1. The City's grade crossing proposal introduces upgraded safety devices and features in the Vista Village Redevelopment Project vicinity superior to those now in place, and will not increase the number of railroad grade crossings.

2. Public safety requires the Main Street railroad grade crossing incorporate the safety systems, devices and features set forth in the Application and summarized in the Discussion section of this decision.

3. Public safety requires the existing West Broadway grade crossing be closed and all associated improvements and grade crossing warning devices removed before opening the new Main Street crossing.

4. The City of Vista Planning Commission is the lead agency for this project under CEQA.

5. The California Public Utilities Commission is a responsible agency for this project and has reviewed and considered the lead agency's Mitigated Negative Declaration and Notice of Determination.

6. The proposed crossing's engineering design meets minimum requirements under the Commission's G.O. 75-C, G.O. 72-B, and G.O. 26-D.

Conclusions of Law

1. A public hearing is not necessary.
2. The Application should be granted as set forth in the following order.
3. The order that follows should be made effective immediately to allow the City to proceed with the project without delay.

O R D E R

IT IS ORDERED that:

1. The City of Vista (City) is authorized to construct Main Street at grade across the railroad track of North San Diego County Transit Development Board (Crossing 106E-9.21).
2. As a condition of the authority granted herein, City shall permanently close the existing West Broadway railroad grade crossing (Crossing 106E-9.4) and physically remove all associated improvements and grade crossing warning devices before opening Main Street grade crossing.
3. Main Street railroad grade crossing shall incorporate the safety systems, devices and features set forth in the Application and summarized in the Discussion section of this decision, and shall conform to the applicable requirements of General Orders 75-C, 72-B, and 26-D.
4. City shall file with the Commission's Rail Safety and Carriers Division a copy of the approved, final construction plans prior to commencing construction.
5. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between City and North San Diego County Transit Development Board. City shall file a copy of the agreement with the Commission's Rail Safety and Carriers Division within 30 days of execution. Should the parties fail to reach agreement, the Commission will apportion the costs by further order.

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

7. This authorization shall expire if not exercised within two years unless extended. The Commission may revoke or modify this authorization if the public convenience, necessity or safety so require.

8. The assigned Commissioner's ruling granting City's Motion to Accept Late-Filed Reply in Response to Motion to Accept Late Filed Protest, denying Craig Heiller's Motion to Accept Late-Filed Protest, and denying Heiller party status is affirmed .

9. Application 99-05-045 is closed.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners