

Decision 00-06-072 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alameda Corridor Transportation Authority (ACTA), for an order authorizing the Alteration of the Downey Road grade separation Structure CPUC number 2-144.5-B, in the City of Vernon, California.

Application 99-11-012
(Filed November 5, 1999)

**OPINION AUTHORIZING ALTERATION
OF DOWNEY ROAD GRADE SEPARATION**

The Alameda Corridor Transportation Authority (ACTA, applicant) requests authority under Pub. Util. Code §§ 1201-1205 to widen the Downey Road grade separation structure, CPUC No. 2-144.5-B, to carry five Burlington Northern Santa Fe Railway (BNSF) tracks in place of the existing four tracks in the City of Vernon (City), California.

Applicant's principal place of business is located at One Civic Plaza, Suite 650, Carson, California 90745.

ACTA was created in 1989 as a Joint Power Authority after studies and planning activities showed the need for a consolidated railroad link between the Ports of Los Angeles and Long Beach (Ports), on one hand, and the regional and national railroad systems, on the other hand. ACTA oversees construction of a 20-mile, two-track railroad link planned within the San Pedro Branch right of way of the former Southern Pacific Transportation Company that ACTA has acquired. This project is called the Alameda Corridor Program (Corridor).

The fundamental purpose of the Corridor is to provide a route free of grade crossings for improved goods movement. Increased future freight rail

traffic is also anticipated to sustain economic growth in this region and throughout the country to which the Corridor connects. In addition to facilitating access to the Ports and accommodating the Ports' growth, the planned rail corridor will benefit surrounding residential areas by reducing highway congestion, air pollution and noise. It will also reduce delays at railroad crossings and enhance vehicle and pedestrian safety.

Through-train operations within 90 miles of the existing trackage will be consolidated into the new Corridor, which will be entirely grade separated. These grade separations with the train tracks overhead will greatly reduce the present ground level railroad crossing delays along this existing trackage.

The entire Corridor has 40 railroad highway crossings along its three major sections which are called: the North End, Mid Corridor and South End Corridor.

The North End consists of numerous segments and 10 public crossings. The Redondo Junction Grade Separation is one of these segments. It extends from a point south of Olympic Boulevard along the west bank of the Los Angeles River, then continues southeasterly to the intersection of BNSF's right-of-way, east of Soto Street. The Commission granted authority for construction of the Redondo Junction Grade Separation in Decision (D.) 98-10-015 dated October 8, 1998, Application (A.) 98-04-047.

A second segment of the North End consists of the connection of the railroad tracks from the Ports to the BNSF San Bernardino Subdivision and to the Union Pacific Railroad (UP) tracks. The Commission granted authority for construction of this connection in D.99-07-042, dated July 22, 1999, A.99-01-027.

A third segment of the North End consists of the connection of the railroad tracks from the Ports to the UP tracks located on the east side of the Los Angeles River, which is the subject of an application to be filed with the Commission in the future.

A fourth segment of the North End consists of alteration of the existing Downey Road Grade Separation, which is the request in this proceeding.

The realignment of the east to west connecting track between the BNSF San Bernardino Subdivision tracks, ACTA's San Pedro Branch track across 26th Street (No. 2-144.72-C) and the realignment of two BNSF spurs across 26th Street (PUC Nos. 2-144.40-C and 2-144.38-C) is also the subject of an application to be filed with the Commission in the future.

The Mid Corridor extends from Los Angeles through the Cities of Los Angeles, Vernon, Huntington Park, South Gate, Lynwood, Compton, and the unincorporated County of Los Angeles. The Mid Corridor along Alameda Street between Santa Fe Avenue in Los Angeles and State Highway 91 in Compton will be a 10-mile, 33-foot deep, 50-foot wide, depressed, double-track railroad. It will have a total of 29 road crossings and three railroad crossings above and across the depressed railroad. Included in this Mid Corridor will be a 5.6 mile, at grade UP bypass track parallel to the depressed railroad along the east side of the ACTA right of way. This at-grade connection has 17 grade crossings and two grade separations and one separated railroad crossing between the existing tracks at the State Highway 91 overpass and the track's connection to the UP Santa Ana Branch north of Firestone Boulevard. The Commission granted authority for construction of this bypass track in D.99-04-019 dated April 1, 1999, A.98-11-010.

The South End Corridor trackage extends at grade along Alameda Street through the unincorporated County of Los Angeles, Carson and Los Angeles to the ports. It serves Dolores yard, an intermodal facility, and various industries. Planning is ongoing to grade separate the existing at-grade crossings, which may result in the filing of additional applications at the Commission in the future.

ACTA filed A.99-02-013 for the construction of a two-track grade separation above the reconstructed intersection of Henry Ford Avenue with the on and off ramps of State Route 47 Freeway, along with related grade crossing construction and relocation in the immediate area in the City of Los Angeles. The Commission granted authority for this construction in D.99-06-014, dated June 3, 1999.

The County of Los Angeles filed A.99-01-022 seeking authorization to construct a four-track grade separation above Alameda Street in the County of Los Angeles in the Rancho Dominguez area. The Commission granted this authority in D.99-09-010, dated September 2, 1999.

In conjunction with Corridor projects, the Commission has also approved the following applications:

Del Amo grade separation	A.97-07-006, D.98-01-039
Sepulveda grade separation	A.97-04-048, D.98-01-038
Carson Street grade separation	A.86-12-029, D.87-09-058

ACTA is the lead agency for the Corridor construction under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources (PR) Code Sections 21000, et seq. ACTA prepared an Environmental Impact Report (EIR) in January 1993 and an Environmental Impact Statement (EIS) in February 1996. In its environmental review, ACTA concluded that this project will have adverse impacts on traffic and noise in some surrounding areas; however, mitigation is ordered for potentially substantive environmental impacts. ACTA concludes that the benefits of the entire project outweigh any non-substantive impacts in isolated areas.

Applicant indicates that on May 28, 1996, pursuant to the United States Transportation Board Certificate and Decision, Finance Docket No. 32830, the surface Transportation Board, acting as a cooperating agency with the United

States Department of Transportation, approved and authorized the Alameda Corridor Construction Application.

In addition, on June 27, 1997, the State of California Clearinghouse advised ACTA that it had complied with State Clearinghouse review requirements for draft environmental documents, pursuant to CEQA. A copy of this correspondence is attached to the application (Exh. D).

The Commission is a responsible agency for the Corridor under CEQA. We have reviewed and considered ACTA's environmental documents. In addition, the Commission Rail Safety and Carriers Division-Rail Crossings Engineering Section (Staff) has inspected the site of the project to evaluate the need for and the safety of the proposed alteration. Staff recommends that the application be granted.

On December 3, 1999, BNSF filed a timely protest and request for hearing. BNSF alleged it could not evaluate the impact of the maintenance agreement for the proposed alteration because the parties to the agreement were undetermined. The Downey Road Grade Separation maintenance agreement dated August 14, 1964 was between the Atchison, Topeka & Santa Fe Railway (Santa Fe) and Los Angeles County (County). (See D.66418 in A.44086, issued December 3, 1963, authorizing construction of the Downey Road Grade Separation.) After the signing of the 1964 maintenance agreement, Santa Fe granted the County an easement for access to street underpasses in the grade separation. Santa Fe transferred its interest in the maintenance agreement to BNSF. Subsequently, in September 1988, the County contended it had authority over any seismic retrofitting of the separation. The City challenged the County's assertion, alleging it was the successor of the County's interest. However, at the time of the protest, the City could not provide written proof of this contention. BNSF attempted to resolve any issues regarding the maintenance agreement with the

County and City prior to and after filing the protest. BNSF, County and City failed to reach any agreement regarding future maintenance of the modified grade separation. Thus, BNSF in its protest indicated this ownership dispute between County and City must be resolved in order to comprehend the impact of any future maintenance on the Downey grade separation.

A prehearing conference (PHC) was held on April 21, 2000 and the parties reported changed circumstances regarding the maintenance agreement. ACTA had entered into a blanket franchise agreement with the City and represented that under this agreement, it could acquire any land needed for the Corridor project, leaving as the sole unresolved issues, the cost of acquisitions and maintenance terms. However, BNSF was reluctant to withdraw its protest until the cost and maintenance terms were resolved. BNSF had still been unable to conduct any meaningful negotiations with the City, which alleged it was now a legal party to the maintenance agreement. Even though notice of the PHC was mailed to the City, it did not appear.¹ Thus, at the PHC, no party challenged the terms of the 1964 maintenance agreement on the existing structure. ACTA, BNSF and Staff indicated they desired to negotiate a formal Settlement Agreement resolving the maintenance issue according to the current Commission policy of accepting the terms of any existing agreement for an altered structure. The parties requested that this Settlement Agreement be placed in the record of this proceeding in order to avoid any future delay in coordinating the construction in this proceeding with the numerous Corridor projects.

¹ City called the assigned Administrative Law Judge after the PHC and was given a further opportunity to participate as a party but declined.

On May 8, 2000, BNSF filed a Motion to Withdraw Protest attaching its protest and the Settlement Agreement between all parties, namely: applicant, protestant and Staff. BNSF gave the City seven days' written notice of the Settlement Conference; however, no other interested parties attended. The Settlement Agreement provides that maintenance of the widened separation be subject to the terms of the original 1964 agreement for the grade separation, which BNSF submitted in this proceeding. BNSF indicates that the City has abided by these terms since its succession to the County's interest, which is now proven by legal documents. Parties to such maintenance agreements typically accept the same terms when a grade separation is altered and later file this agreement with the Commission.

In its motion to withdraw, BNSF represents that ACTA made minor modifications to the exhibits attached to its application as part of the Settlement Agreement. BNSF served a copy of its motion on all parties and the City. No opposition to the motion was filed.

The application is in compliance with the Commission's filing requirements for such applications, including Rules 38 and 39 of our Rules of Practice and Procedure, which relate to the widening of a grade separation. A site map and detailed drawing of the proposed alteration is shown in Appendix A to the application.

In Resolution ALJ 176-3010, dated February 18, 1999 and published in the Commission's Daily Calendar dated February 23, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no hearings were held, this preliminary determination remains accurate.

We herein grant BNSF's motion to withdraw its protest, leaving no disputed issues in this proceeding. We also grant the request to authorize the proposed alteration, as modified, of the Downey Road Grade Separation.

This is a contested matter which has been resolved prior to any hearing and the decision herein grants the relief requested. Pursuant to Pub. Util. Code § 311(g)(2), the parties have waived the otherwise applicable 30-day period for public review and comment in order to expedite a decision in this application.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on February 16, 1999.
2. BNSF has requested to withdraw its timely protest and request for hearing at the PHC held on April 21, 2000. Therefore, a public hearing is not necessary.
3. ACTA requests authority under Pub. Util. Code §§ 1201-1205, (1) to widen the Downey Road grade separation to accommodate five rather than the existing four BNSF railroad tracks, as set forth in Appendices A to C and as more fully described and indicated by text and plans attached to the application.
4. ACTA made minor modifications to the application pursuant to BNSF's request.
5. ACTA was created in 1989 as a Joint Power Authority to oversee construction of a consolidated railroad Corridor between the Ports of Los Angeles and Long Beach (Ports), on one hand, and the regional and national railroad systems, on the other hand.
6. Construction of this Corridor began approximately ten years ago and involves numerous construction projects, including the construction proposed in this proceeding.

7. The Alameda Corridor and related rail projects are required to provide improved goods movement from the Ports of Long Beach and Los Angeles, due to population and economic growth. This improved goods movement will benefit adjacent residential and industrial areas.

8. The proposed consolidated rail corridor will reduce highway congestion, reduce air pollution and noise in the surrounding area for up to 90 miles.

9. Public convenience and necessity require widening of the Downey Road grade separation in connection with the Alameda Corridor project, as set forth in Appendices A to C, and as more fully described in the application.

10. ACTA is the lead agency for this project under CEQA, as amended.

11. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's EIR, EIS, and federal and state approval for construction of the Corridor.

12. At the PHC, ACTA indicated that time is of the essence in approving its application so that construction contracts may be awarded to coordinate the alteration in this proceeding with the entire project.

13. The Staff recommends that the application, as modified, be approved, including the existing maintenance agreement for the Downey Grade Separation. Staff represents that it is standard policy for parties to later submit, and the Commission to authorize, any existing maintenance agreement for an altered structure.

14. The parties have individually provided a written waiver of the 30-day period for public review and comment on the decision in this proceeding.

Conclusions of Law

1. The application, as modified, should be granted as set forth in the following order.

2. BNSF's motion to withdraw its protest should be granted.
3. The order in this proceeding should be effective immediately.
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Burlington Northern Santa Fe Railway's (BNSF) motion to withdraw its protest is granted.
2. Alameda Corridor Transportation Authority (ACTA) is authorized to widen the Downey Street grade separation as more fully described in the application, as modified, and as set forth in Appendices A to C.
3. Construction and maintenance of the grade separation shall be in accordance with the provisions of General Order (GO) 72-B.
4. Crossing warning devices shall be in accordance with the provisions of GO 75-C, and as set forth in Appendices A to C and as more fully described by text and plans in the application.
5. Clearances shall be in accordance with GO 26-D. 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.
6. Construction and maintenance costs shall be borne in accordance with the existing maintenance agreement which BNSF submitted in this proceeding.
7. Within 30 days after completion of the work under this order, ACTA shall notify the Commission in writing that the authorized work was completed.

8. 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.

9. The application is granted as set forth above.

10. Application 99-11-012 is closed.

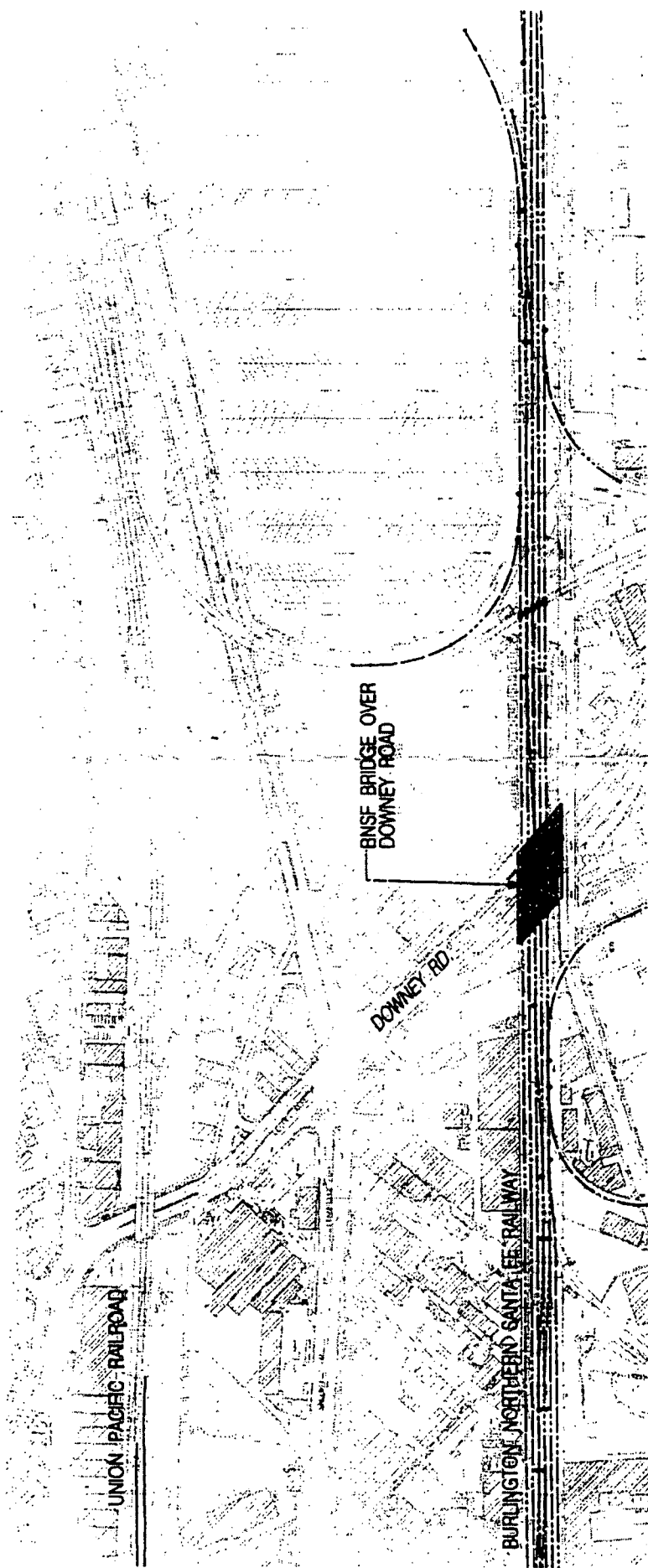
This order is effective today.

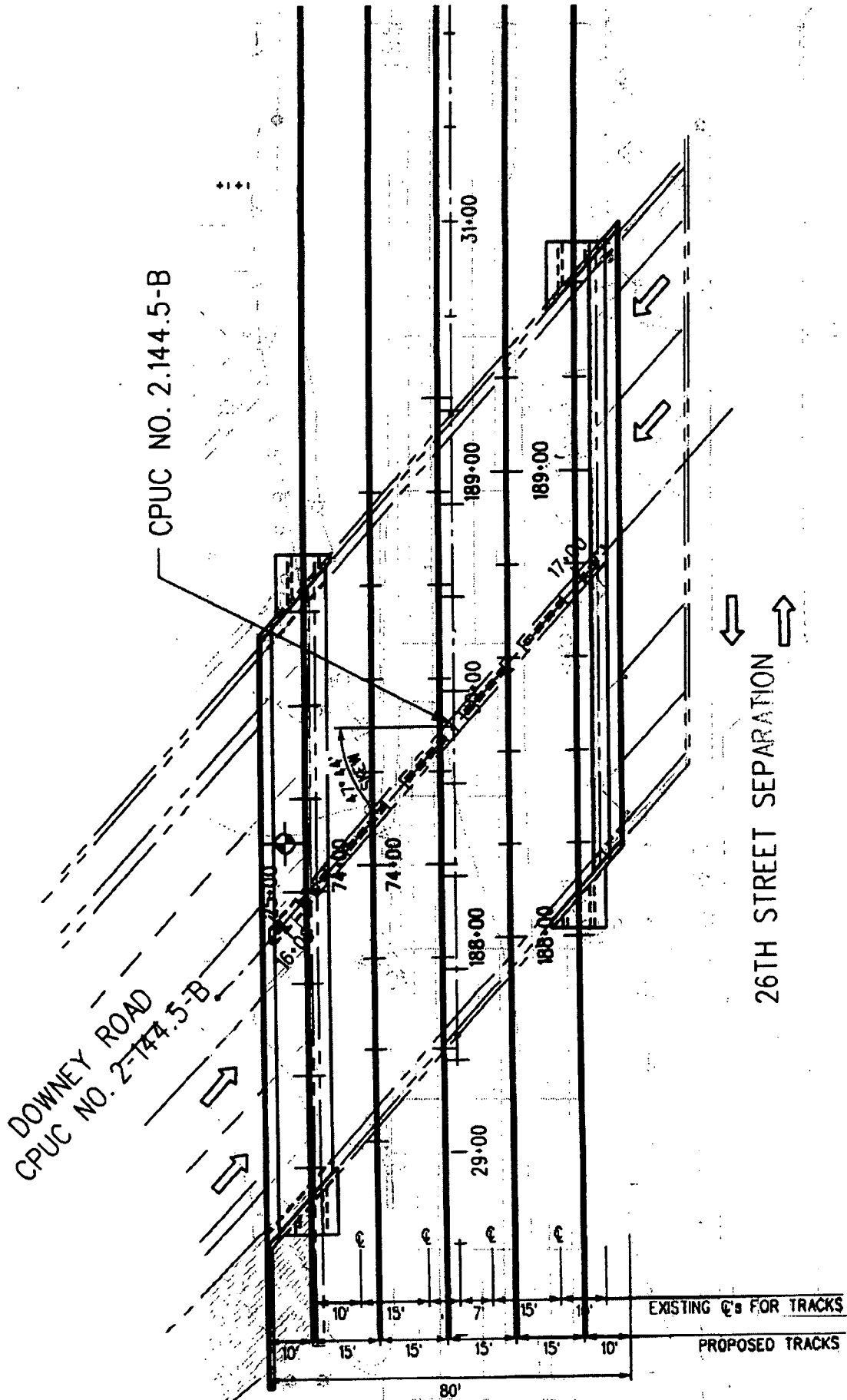
Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily absent, did not participate.

**ALAMEDA CORRIDOR NORTH END
PROJECT DESCRIPTION**





APPENDIX B - CONSTRUCTION AND RECONSTRUCTION

As part of the project to construct the Downey Road grade separation, the Alameda Corridor Transportation Authority (ACTA) proposes:

- (1) [list each construction project in the application]
- (2) [list each reconstruction project in the application].

(END OF APPENDIX B)

APPENDIX C - WARNING DEVICES

The grade crossings shall be protected by automatic gate-type signals and electronic devices to provide constant warning time for gate operation in accordance with General Order 75-C at the crossings, regardless of train speed, as set forth below:

[list type of warning devices set forth in the application].

(END OF APPENDIX C)