

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of the Santa Clara Valley Transportation Authority and the City of Milpitas for an Order authorizing construction of a grade-separated Railroad-across-Railroad crossing (CPUC No. 004G-12.22-AT) of the Union Pacific Railroad Company tracks (MP-12.22) over the tracks of the Bay Area Rapid Transit District and relocation of an existing at-grade crossing (CPUC No. 004G-12.27-C, DOT No. 833898T) of the Union Pacific Railroad Company tracks (MP-12.27) over Piper Drive connecting the UP Milpitas Industrial Lead to the UP Milpitas Yard Lead in the City of Milpitas, Santa Clara County.

Application 13-07-012
(Filed July 16, 2013)

DECISION GRANTING AUTHORIZATION TO THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND THE CITY OF MILPITAS TO CONSTRUCT A NEW GRADE SEPARATED RAILROAD-ACROSS-RAILROAD CROSSING OF THE UNION PACIFIC RAILROAD TRACKS OVER THE TRACKS OF BAY AREA RAPID TRANSIT DISTRICT AND RELOCATE THE PIPER DRIVE AT-GRADE CROSSING IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA

Summary

This decision grants the Santa Clara Valley Transportation Authority and City of Milpitas authorization to construct a new grade-separated railroad-across-railroad crossing of the Union Pacific Railroad Company tracks over the tracks of the Bay Area Rapid Transit District and relocate the existing Piper Drive at-grade crossing in the City of Milpitas, County of Santa Clara. The new grade-

separated railroad-across-railroad overpass crossing will be identified as CPUC Crossing No. 004G-12.25-AT, SCL-1623. The existing Piper Drive at-grade crossing is identified as CPUC Crossing No. 004G-12.27-C, SCL-1571 and DOT No. 833898T.

Discussion

The Santa Clara Valley Transportation Authority (VTA) and City of Milpitas (City) propose a new grade-separated railroad-across-railroad crossing over the Bay Area Rapid Transit District (BART) tracks to continue to allow freight service by the Union Pacific Railroad Company (UPRR). BART and VTA are jointly constructing a BART extension from the City of Fremont to the City of San Jose. This project, previously known as the Silicon Valley Rapid Transit Corridor - BART Extension to Milpitas, San Jose, and Santa Clara, is now known as the Silicon Valley Berryessa Extension (SVBX) project. The proposed grade-separated, track-over-track, crossing and relocation of the existing at-grade spur crossing across Piper Drive are a small portion of the SVBX project. BART purchased the UPRR Milpitas Industrial Lead to be used as the route for the BART extension. The UPRR North Milpitas Industrial Lead begins off of the former UPRR Milpitas Industrial Lead now owned by BART. The BART tracks will be lowered in a trench, causing the UPRR North Milpitas Industrial Lead to lose access from the UPRR Milpitas Industrial Lead. In order to maintain UPRR freight operations on the North Milpitas Industrial Lead, the proposed new railroad-across-railroad grade-separated crossing is required to be constructed to tie the North Milpitas Industrial Lead track to the remaining UPRR Milpitas Yard Lead track. In addition, the Piper Drive at-grade spur crossing of the UPRR North Milpitas Industrial Lead track is required to be relocated in order to align with the proposed grade-separated crossing.

The closest railroad crossings are located about 1.45 miles to the north and 0.1 miles to the south of the proposed grade-separated over crossing and Piper Drive at-grade crossing. The crossing to the north is the Calaveras Road Overpass, which is a grade-separated highway-rail crossing traveling over the UPRR tracks and is identified as CPUC Crossing No. 004G-10.80-A, SCL-1306 and DOT No. 833893J. The crossing to the south is another Piper Drive spur crossing which completes the south leg of the wye track and is at-grade with the UPRR tracks. The southern Piper Drive at-grade crossing is identified as CPUC Crossing No. 004G-12.48-C, SCL-12.48-C and DOT No. 833896E. A vicinity map of the project is attached to the application.

The proposed grade-separated railroad-across-railroad crossing will be approximately 196 feet in length, and 31.5 feet in width. It will have a single track for the UPRR North Milpitas Industrial Lead allowing UPRR to continue to serve existing customers in Milpitas. UPRR operates approximately six freight trains per week on this segment of track.

The relocated Piper Drive at-grade spur crossing will be reconstructed with a concrete panel crossing surface, a sidewalk on the west side, a combined pedestrian/bicycle path on the east side, new curb and gutter, pavement markings, Americans with Disabilities Act compliant tactile warning surfaces at the pedestrian approaches, and two California Public Utilities Commission (Commission) Standard 9 (flashing light signal assemblies with automatic gates) warning devices. A Corridor Protection Barrier topped by a chain link security fence will be provided between the BART trench and the UPRR North Milpitas Industrial Leadtracks, where they are parallel and at the outermost edge of the ends of the overhead crossing.

Two existing at-grade railroad crossings will be closed as part of the project. These two crossings are identified as the southern Piper Drive crossing, CPUC Crossing No. 004G-12.48-C, SCL-1309 and DOT No. 833896E, and Montague Expressway crossing, CPUC Crossing No. 004G-12.30, SCL-1308 and DOT No. 833895X. The tracks, warning devices, and associated signs will be removed from the roadway.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹ or the one with the greatest responsibility for supervising or approving the project

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

as a whole.² Here, VTA is the lead agency for this project because the project is being constructed by it, and subject to its review and approval, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³ Also, as a responsible agency, the Commission must make findings regarding each significant effect of the project components under its jurisdiction; such findings shall include relevant mitigation measures.⁴

In November 2004, VTA issued a Final Environmental Impact Report (FEIR) titled *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara*. In December 2004, VTA certified the FEIR. In May 2007, VTA issued a Final Supplemental Environmental Impact Report (FSEIR). VTA certified the FSEIR in June 2007. The Federal Transit Administration (FTA) issued the Record of Decision (ROD) for the project in June 2010. An addendum to the FEIR, which addressed required easements, was issued in September 2010. In February 2011, VTA issued a Final 2nd Supplemental Environmental Impact Report (FSEIR2) focusing on the Berryessa Extension phase of the project. In August 2011, VTA released an Addendum to the FSEIR2 addressing and

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

⁴ CEQA Guidelines, Section 15096(h)

documenting additional easement requirements. In March 2012, VTA released a Second and Third Addendum to the FSEIR2. The Second Addendum to the FSEIR2 documented changes to system facilities and aesthetics of the project. The Third Addendum to the FSEIR2 documented additional modifications of system facilities and utility configuration. VTA released the Notice of Determination (NOD) on May 10, 2013, determining the project has significant effect on the environment, requiring mitigation measures, and adopting a Statement of Overriding Conditions.

The environmental findings of the FEIR, FSEIR, FSEIR2, and related Addendums indicate the grade-separated rail crossings will have significant effects on the environment. Environmental impacts considered to be significant include biological resources impacts, noise impacts during construction, the possibility of hazardous materials deposited within the soil, and disruption to existing groundwater flow patterns. While the larger project has significant unavoidable impacts, the impacts from the actions within the Commission's jurisdiction can be mitigated to a less-than-significant level.

Regarding biological resources impacts, the FEIR determined approximately 0.128 acres of wetlands in drainage ditches bordering the railroad corridor north of the Montague Expressway would be affected by construction of the No Wye/Industrial Lead Only Option. Mitigations measures are proposed to avoid and minimize impacts "to the maximum extent practicable." Temporarily affected resources will be "restored to pre-disturbance conditions." For unavoidable impacts to biological resources, opportunities will be sought to compensate for impacts on-site. Compensatory mitigation measures will be carried out at a site, or sites, deemed satisfactory by permitting agencies. In consultation with those agencies, pre-construction surveys will be used to assess

the extent and nature of compensatory mitigation measures that may be necessary, based on both the extent of the impact and the quality of the resources being affected. The creation, restoration, and/or enhancement of wetland areas will be at ratios to be determined in consultation with United States Army Corp of Engineers to ensure no net loss of wetlands, or the purchase of wetland creation/enhancement credits will be at an approved mitigation bank.

Regarding hazardous materials, the Draft Second Supplemental Environmental Impact Report (DSEIR2) determined that there are moderate levels of chlorinated solvent in the groundwater underneath the project from North American Transformer located at 1200 Piper Drive, Milpitas. In addition, there are residual petroleum hydrocarbons from the former Ford Automobile Assembly plant. The FEIR also states that hazardous materials commonly associated with railroad facilities may be found at the project site. Mitigation measures consist of sampling and testing for contaminants in the soil and groundwater and using the results to develop environmentally sound procedures for the Construction Impact Management Plan. The proposed BART retained cut may also impact groundwater flow patterns, "possibly resulting in the spread of groundwater contamination and the rise of the water table." Mitigation measures include installing highly permeable gravel channels underneath the U-wall sections.

Regarding construction, the DSEIR2 determined that the Piper Drive construction staging area will experience significant noise impacts due to the project. Mitigation measures include installation of temporary sound walls, noise control curtains, and other measures to reduce impacts to a less-than-significant level.

The Commission finds the proposed mitigation measures feasible and reasonable. The Commission reviewed and considered the FEIR, the FSEIR, the ROD, FSEIR2, the Addendums, the DSEIR2, and NOD and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public highway across a railroad.

The Commission's Safety and Enforcement Division - Rail Crossings Engineering Section has inspected the site of the proposed crossing, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossings be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3318, dated July 25, 2013, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Emory J. Hagan, III is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on July 19, 2013. There are no unresolved matters or protests. A public hearing is not necessary.

2. VTA and the City request authority, under Public Utilities Code Sections 1201-1205, to construct one new grade-separated railroad-across-railroad crossing over the BART tracks to continue freight operations on the UPRR North Milpitas Industrial Lead, in the City of Milpitas, County of Santa Clara. The new grade-separated railroad-across-railroad crossing will be identified as CPUC Crossing No. 004G-12.25-AT, SCL-1623.

3. VTA is the lead agency for this project under CEQA, as amended.

4. VTA prepared a FEIR, titled *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara*, dated November 2004, for this project. In December 2004, VTA certified this FEIR.

5. In May 2007, VTA released a FSEIR describing design changes implemented subsequent to the release of the FEIR.

6. The FTA issued the ROD for the project in June 2010.

7. In September 2010, VTA released an Addendum to the FEIR evaluating environmental impacts due to updates in the project design.

8. In February 2011, VTA released a FSEIR2 documenting additional updates to the project. In August 2011, VTA released an Addendum to the FSEIR2. In March 2012, VTA released Addendums 2 and 3 for the FSEIR2.

9. On March 10, 2013, VTA released the NOD. The DSEIR2 determined that the Piper Drive construction staging area will experience significant noise impacts due to the project.

10. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR, FSEIR, FSEIR2, associated Addendums, ROD, NOD, and DSEIR2.

11. The project will have a potential significant effect on the environment and mitigation measures are required.

12. The environmental findings of the FEIR, FSEIR, FSEIR2 and Addendums indicate the grade-separated railroad-across-railroad over crossing and modified at-grade spur crossing may have significant effects on the environment. Environmental impacts considered to be significant include noise level increases during construction, impacts to groundwater flow patterns, impacts to existing wetlands, and the possibility of hazardous materials deposited within the soil. All impact can be mitigated to a less-than-significant level.

13. Regarding biological impacts to wetlands, the mitigation measures are to restore temporarily disturbed wetlands to pre-disturbance conditions and creation, restoration, and/or enhancement of wetland areas to ensure no net loss of wetlands. The FEIR, FSEIR, FSEIR2, and the Addendums found that this impact is less than significant after mitigation measures.

14. Regarding hazardous material and groundwater impacts, the mitigation measures consist of sampling and testing for contaminants in the soil and groundwater, developing a Construction Impact Management Plan, and installing highly permeable gravel channels underneath the BART tracks. The DSEIR2 found that this impact is less than significant after mitigation measures.

15. Regarding construction impacts, mitigation measures include installing temporary sound walls, noise control curtains, and other measures. The DSEIR2 found that this impact is less than significant after mitigation measures.

16. The Commission finds the mitigation measures adopted in the FEIR, FSEIR, FSEIR2, and Addendums reasonable and feasible.

17. The FEIR, FSEIR, FSEIR2, Addendums, DSEIR2, and NOD reflect the Commission's independent judgment and analysis.

Conclusions of Law

1. The FEIR, titled *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara*, dated November 2004, prepared by the VTA, the FSEIR dated May 2007, the FSEIR2 dated February 2011, the Addendums, DSEIR2, and the NOD prepared by the VTA as the documentation required by CEQA for the project are adequate for our decision-making purposes.

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

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

O R D E R

IT IS ORDERED that:

1. The Santa Clara Valley Transportation Authority and City of Milpitas are authorized to construct one new grade-separated railroad-across-railroad crossing consisting of a single Union Pacific Railroad Company track over Bay Area Rapid Transit District tracks for the Silicon Valley Rapid Transit Corridor – Bay Area Rapid Transit District Extension to Milpitas, San Jose, and Santa Clara project in the vicinity of Mile Post No. 12.22 in the City of Milpitas, County of Santa Clara.

2. The new grade-separated railroad-across-railroad crossing for the Union Pacific Railroad track over Bay Area Rapid Transit District tracks shall be identified as CPUC Crossing No. 004G-12.25-AT, SCL-1623.

3. The Santa Clara Valley Transportation Authority and City of Milpitas are authorized to modify one existing, at-grade, spur crossing located at Piper Drive, identified as CPUC No. 004G-12.27-C, SCL-1571 and DOT No. 833898T at Mile Post No. 12.27 in the City of Milpitas, County of Santa Clara. Modifications shall be consistent with the Application and attachments and shall consist of relocation of the crossing, installation of two California Public Utilities Commission Standard 9 (flashing light signal assemblies with automatic gates) warning devices, a concrete panel crossing surface, a sidewalk on the west side, a combined pedestrian/bicycle path on the east side, new curb and gutter, pavement markings, Americans with Disabilities Act compliant tactile warning surfaces at the pedestrian crossings, and a Corridor Protection Barrier topped by a chain link security fence between the Bay Area Rapid Transit District trench and the Union Pacific Railroad Company tracks, where they are parallel and at the outermost edge of the ends of the overhead crossing.

4. The Santa Clara Valley Transportation Authority and City of Milpitas shall close two existing crossings. These two crossings are identified as the southern Piper Drive crossing, CPUC Crossing No. 004G-12.48-C, SCL-1309 and DOT No. 833896E, and Montague Expressway crossing, CPUC Crossing No. 004G-12.30, SCL-1308 and DOT No. 833895X. The tracks, warning devices, and associated signs shall be removed from the roadway.

5. The Santa Clara Valley Transportation Authority and City of Milpitas shall comply with all applicable rules, including California Public Utilities Commission General Orders, the United States Department of Transportation's

Americans with Disabilities Act Standards for Transportation Facilities and the California Manual on Uniform Traffic Control Devices.

6. The Santa Clara Valley Transportation Authority or City of Milpitas shall notify the California Public Utilities Commission's Safety Enforcement Division – Rail Crossings Engineering Section at least five business days prior to opening of the crossings for public use. Notification should be made to rces@cpuc.ca.gov.

7. Within 30 days after completion of the work under this order, the Santa Clara Valley Transportation Authority or City of Milpitas shall notify the California Public Utilities Commission's Safety and Enforcement Division – Rail Crossings Engineering Section in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission web site Form G page at <http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg.htm>. This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

8. Within 30 days after completion of the work under this order, the Santa Clara Valley Transportation Authority shall notify the Federal Railroad Administration of the existence of the crossings by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. A copy shall be provided concurrently to the California Public Utilities Commission's Safety and Enforcement Division – Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@cpuc.ca.gov.

9. This authorization shall expire if not exercised within three years, unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

10. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

11. The application is granted as set forth above.

12. Application 13-07-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.